



## COURT MARTIAL

**Citation:** *R. v. MacIsaac*, 2024 CM 4007

**Date:** 20240528

**Docket:** 202359

Standing Court Martial

Canadian Forces Base Kingston  
Kingston, Ontario, Canada

**Between:**

**His Majesty the King**

- and -

**Warrant Officer, S.M. MacIsaac, Offender**

**Before:** Commander J.B.M. Pelletier, M.J.

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### **REASONS FOR SENTENCE**

(Orally)

#### **Introduction**

[1] Warrant Officer (WO) MacIsaac, having accepted and recorded your plea of guilty in respect to the lesser and included charge to the charge of assault causing bodily harm on the charge sheet, the Court now finds you guilty of that charge for assault contrary to section 266 of the *Criminal Code*, a service offence under section 130 of the *National Defence Act (NDA)*.

#### **A joint submission is being proposed**

[2] I now need to impose the sentence. This is a case where a joint submission is made to the Court. Both prosecution and defence counsel recommended that I impose a sentence composed of two punishments: a severe reprimand and a fine in the amount of \$2,500.

[3] The fact that the sentence was jointly recommended severely limits my discretion in the determination of an appropriate sentence. As any trial judge, I may depart from a joint submission only if the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

[4] This high threshold has been set by the Supreme Court of Canada in recognition of the fact that joint submissions of counsel respond to important public interest considerations. The prosecution agrees to recommend a sentence that the accused is prepared to accept, avoiding the stress and expense of a trial and allowing efforts to be channelled into other matters. Furthermore, offenders who are remorseful may take advantage of a guilty plea to begin making amends. The most important benefit of joint submissions is the certainty they bring to all participants in the administration of justice.

[5] Yet, even if certainty of outcome is important for the parties, it is not the goal of the sentencing process. I must also keep in mind the disciplinary purpose of courts martial in performing the sentencing function attributed to me as a military judge. Punishment is the ultimate outcome once a breach to the Code of Service Discipline has been recognized following either a trial or a guilty plea. It is the only opportunity to deal with the disciplinary requirements brought about by the conduct of the offender, on a military establishment, in public, and in the presence of members of the offender's unit.

[6] The imposition of a sentence at courts martial proceedings, therefore, performs an important disciplinary function, making this process different from the sentencing usually performed in civilian criminal justice courts. Even when a joint submission is made, the military judge imposing punishment should ensure, at a minimum, that the circumstances of the offence, the offender, and the joint submission are not only considered, but also adequately laid out in the sentencing decision to an extent that may not always be necessary in other courts.

[7] The starting point for any sentencing decision is found at section 203.2 of the *NDA* which provides that a military judge shall impose a sentence commensurate with "the gravity of the offence and the degree of responsibility of the offender".

### **Matters considered**

[8] In this case, the prosecutor read a Statement of Circumstances which was formally admitted as accurate by WO MacIsaac. It was entered into evidence as an exhibit, along with other documents provided by the prosecution as required at *Queen's Regulations and Orders for the Canadian Forces* (QR&O) article 112.51. The prosecution informed the Court that Private (Pte) Daei, the person victimized by the actions of the offender, was informed of the details pertaining to the current proceedings, including the guilty plea and the joint submission on sentence, and did not wish to provide a victim impact statement.

[9] The defence provided a Statement of Facts outlining WO MacIsaac's circumstances as well as defence counsel's views regarding the offender's conduct,

including an apology. A letter of support was also filed from WO MacIsaac's Regimental Sergeant Major (RSM).

[10] Following the presentation of these documents, both counsel made submissions to support their position on sentence, based on the facts and considerations relevant to this case and other cases, to assist the Court to adequately apply the purposes and principles of sentencing to circumstances of both the individual offender and the offence committed.

[11] The Statement of Circumstances, the Statement of Facts and the information on the other documents entered as exhibits reveal a number of facts relevant to the offence and to the offender.

**The circumstances of the offence**

[12] As it pertains to the circumstances of the offence, the Court first notes that in July 2023, WO MacIsaac had been serving as a member of the regular force with the Peace Support Training Centre, located on Canadian Forces Base (CFB) Kingston, for approximately one year. Just past midnight on 29 July 2023, he was off duty in civilian clothes and a passenger in a GMC Sierra truck that was accessing the drive thru of the McDonald's restaurant located on base and accessible to the public. The Statement of Circumstances provides the following details as to what happened next:

- (a) At about fifteen minutes past midnight on 29 July 2023, Pte Daei was walking through the McDonald's drive thru, on foot, in civilian clothes, when the truck WO MacIsaac was passenger in, was also going through.
- (b) Someone from the truck yelled at Pte Daei to get out of the way and the driver honked the horn at him. Pte Daei and the occupants of the vehicle exchanged words. Pte Daei did not move immediately and continued to wait for his food, but eventually moved out of the drive thru lane.
- (c) WO MacIsaac heard Pte Daei relating information about the truck to someone on his phone. He exited the truck and approached Pte Daei saying, "you need to stop", or words to that effect.
- (d) According to WO MacIsaac, Pte Daei said, "I will end you", or words to that effect. WO MacIsaac responded by grabbing Pte Daei by the throat and slamming him headfirst into the pavement. WO MacIsaac then walked away in the direction of his family quarters on base nearby.
- (e) All occupants of the truck then left the scene and picked up WO MacIsaac. They did not check on or attempt to administer first aid to Pte Daei. However, when WO MacIsaac was interviewed by military police and discovered he was being charged with assault causing bodily harm, WO MacIsaac asked if Pte Daei was okay.

- (f) Responding police observed blood and a one-inch cut to the top of the head of Pte Daei. He obtained assistance from paramedics attending at the scene.

[13] I was informed during submissions that it was the staff of the MacDonald's that alerted authorities of what had occurred and obtained medical assistance for Pte Daei.

[14] WO MacIsaac took responsibility for his conduct upon reporting to military police a few days after the events. The Statement of Circumstances reveals that he agreed to plead guilty at the first opportunity provided in the court martial process.

**The circumstances of the offender**

[15] WO MacIsaac is a thirty-six-year-old engineer who enrolled in the Canadian Armed Forces (CAF) in August 2006. Following successful completion of basic military and occupational training he was posted to combat engineer positions, with 1 Combat Engineer Regiment in Edmonton. He moved to Gagetown in 2014, where he supported training and engineering functions including with 4 Engineering Support Regiment before moving to Petawawa, where he served with the 2 Combat Engineer Regiment, until his latest move to the Peace Support Training Centre in Kingston in the summer of 2022. He has deployed overseas twice in Afghanistan between 2009 and 2011, and once in Latvia in 2020. He also participated in multiple domestic operations across Canada and in several international courses and exercises.

[16] WO MacIsaac expressed an apology to Pte Daei in a Statement of Facts read by his counsel stating that he regretfully allowed his emotions to get the better of him and that he is truly sorry for that. WO MacIsaac states that the incident is not a reflection of who he is as a senior non-commissioned member, nor as a person, and hopes that Pte Daei can move on from this and have a fulfilling career in the CAF.

[17] WO MacIsaac has four children ages fourteen, eleven, eight, and seven, who reside with their mother to whom he is paying child support. He sees his children generally every second weekend and for holidays.

[18] The letter of support from the RSM of the Peace Support Training Centre reveals that WO MacIsaac has had an outstanding career in the corps of Royal Canadian Engineers. He has completed several geographic moves in the last eighteen years, demonstrating willingness to assist in supporting the CAF in its institutional requirements. The RSM knows WO MacIsaac is remorseful and believes that he deserves to be rehabilitated, especially during this period of reconstitution in the CAF where the institution can hardly afford to lose efficient and dedicated leaders such as WO MacIsaac, who hopes to continue a meaningful career in the CAF.

**Seriousness of the offence**

[19] The Court has considered the objective gravity of the offence in this case. The offence in section 266 of the *Criminal Code* attracts a maximum punishment of imprisonment not exceeding five years. It is, therefore, an objectively serious offence

which recognizes the importance of the bodily integrity of every person and sanctions the unjustified use of force threatening this important value. Such sanctions are especially important in a military context where members of the CAF are trained to, and expected to use force in a controlled manner, at all times, and in all circumstances, regardless of animosity, perceived provocation, or other stressors.

[20] WO MacIsaac has pleaded not guilty to the charged offence of assault causing bodily harm contrary to section 267 of the *Criminal Code*, instead pleading guilty to the lesser and included offence of assault. Further, during the discussion with the offender to ensure the guilty plea was voluntary and informed, I did ask WO MacIsaac if he admitted to the particulars of the charge. He stated that he did not admit to causing bodily harm. I accepted the plea to the offence of simple assault, mentioning on the record that the prosecution was on notice that the potential aggravating factor of having caused bodily harm was contested. The prosecutor acknowledged and, in the context of the joint submission that is being made, did not mention any injuries as being aggravating facts.

[21] Essentially then, we are here because of the need to sanction a loss of control on the part of WO MacIsaac which resulted in an assault on a person who is a fellow member of the CAF, although this was unknown to WO MacIsaac at the time. Even if the assault was very short in duration, the level of violence used was significant and very much worthy of sanction as a criminal conduct, especially that it could have resulted in more significant injuries to the victim.

[22] Consequently, as for the main purpose of sentencing in section 203.1 of the *NDA*, namely the maintenance of “discipline, efficiency, and morale of the Canadian Forces”, the sentence I impose must be sufficient to denounce WO MacIsaac’s conduct in the military community and to act as a deterrent to him and others who may be tempted to engage in a similar type of conduct, especially violations of the bodily integrity of other persons, including other members of the CAF.

[23] In addition to meeting the objectives of denunciation and deterrence, the sentence should not be so severe as to cause a disproportionate impact on the offender and risk compromising his necessary rehabilitation. WO MacIsaac is a senior non-commissioned member with considerable military experience in a vast area of environments. He has no disciplinary or criminal record. He supports four children and is an important resource and mentor for subordinates at his unit. The sentence I impose should not make his reintegration into military service more difficult than necessary.

#### **Aggravating and mitigating factors**

[24] The circumstances of the offence reveal aggravating factors in that WO MacIsaac’s conduct constituted an application of a significant level of violence on a stranger during a loss of control of his emotions, which could have caused significant injuries. Even if he did not know the rank or status of the victim of his anger, WO MacIsaac holds an important rank which always comes with expectation as to the

adequacy of his behaviour in all circumstances, but especially on base. I wish to stress that WO MacIsaac was accompanied by others in the vehicle that night.

[25] Whatever remarks may have been made by Pte Daei cannot justify the disproportional response resulting in the victim being slammed headfirst into the pavement. Once that short assault had occurred, it is even more difficult to understand on the facts before me the absence of assistance to the injured victim, a reaction that is contrary to what any CAF members would be expected to do in similar circumstances. Even if others also failed to assist, it remains that WO MacIsaac was the person directly responsible for the predicament of Pte Daei and should have acted. This is aggravating.

[26] However, the Court acknowledge the following mitigating factors:

- (a) First, WO MacIsaac's guilty plea, which avoided the expense and energy of running a trial and demonstrated that he is taking responsibility for his actions, in public, in the presence of members of his unit, and of the broader military community.
- (b) Second, the fact that WO MacIsaac has no conduct sheet and no criminal record, indicating that the offence is outside of character for him.
- (c) Third, the fact that WO MacIsaac collaborated with authorities early on and has been remorseful since, expressing apologies to the victim, through counsel, before the Court today.
- (d) Finally, the significant contribution made by WO MacIsaac made to the CAF in the past and the confidence expressed by the RSM of his unit and the offender's potential to make a positive contribution in the future, which indicates the need for a sentence to take into consideration the fact that rehabilitation has already been initiated.

#### **Assessing the joint submission**

[27] In order to ensure respect for the principle of parity, counsel have discussed in arguments a number of precedents to demonstrate that the joint submission is within a range of similar sentences for similar offences. The difficulty of finding a previous decision reflecting similar facts than those at hand, in this case, is acknowledged. Without going into the details of the three decisions discussed with counsel during submissions, I conclude that the punishments of severe reprimand and fines have been combined in the past to sanction offences of assault, notably in the case of Pte Mentel in 2023 (*R. v. Mentel*, 2023 CM 5003), and WO Hanson in 2013 (*R. v. Hanson*, 2013 CM 3021). The discussion leaves me with no hesitation to conclude that the joint submission of counsel is within the range of sentences previously imposed for similar behaviour.

[28] I do note that the punishments proposed to form the sentence in this case are significant. The sentence expresses disapprobation for the failure in discipline involved by the use of the severe reprimand and has a direct impact on the offender by means of

the fine. I also realize that approval of the proposed sentence as the indirect consequence of resulting in the offender getting a criminal record, which is entirely acceptable in relation to a conviction for a criminal offence. The proposed sentence in my view respects the fundamental principle of proportionality in relation to the gravity of the offence and the degree of responsibility of the offender, without having a lasting effect detrimental to the rehabilitation of WO MacIsaac.

[29] In any event, the issue for me to assess as military judge is not whether I like the sentence being proposed or whether I will have come up with something better. As recognized by the Supreme Court of Canada, trial judges must refrain from tinkering with joint submissions if their benefits can be maximized. Prosecution and defence counsel are well placed to arrive at joint submissions that reflect the interest of both the public and the accused. They are highly knowledgeable on the circumstances of the offender and the offence and as stated during submissions, have taken the interest of the offender, victims, the chain of command, and the broader public into consideration at arriving at their argument on the proposed sentence. I trust that they are entirely capable of arriving at resolutions that are fair and consistent with the public interest.

[30] Considering the circumstances of the offence and of the offender, the applicable sentencing principles, and the aggravating and mitigating factors mentioned previously, I cannot conclude that the sentence being jointly proposed would bring the administration of justice into disrepute or will otherwise be contrary to the public interest. I must therefore accept it.

[31] WO MacIsaac, you have demonstrated today that you accept responsibility for your offence, and you deserve credit for that. At the same time, you have to recognize that slamming someone headfirst into the pavement may have had much more significant consequences detrimental not only for the victim, but also for you, who may have faced a much more significant charge in a court of law. You appear to recognize the need to stay in control of your emotions in the future; I invite you to also realize that you may have ended up in much greater trouble than what you have had to face in these proceedings with potential imprisonment, the loss of your career, and the incapacity to support your children. You have a second chance to continue contributing to your family and the CAF, which very much needs your experience in leadership, especially the junior members as stated by your RSM. The sentence I am about to impose will challenge you and hopefully allow you to realize that staying in control of your emotions regardless of the stressors at play, is an essential part of the privilege of serving as a senior non-commissioned member and mentor in the CAF. Those serving with you must trust that they are safer in your presence than on their own. You have what it takes to demonstrate that to them by completing your rehabilitation and moving on even further as a leader.

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

[32] **SENTENCES** you to a severe reprimand and a fine of \$2,500, payable in ten instalments of \$250, payable no later than the 1st day of June 2024, and then payments will be due the first day of the month from July 2024 to March 2025. The entirety of the

fine becomes payable no later than the day of your release from the CAF, should you be released before having paid the totality of the fine.

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**Counsel:**

The Director of Military Prosecutions as represented by Major R.C. Gallant

Major T. Simms, Defence Counsel Services, counsel for Warrant Officer  
S.M. MacIsaac