COURT MARTIAL

Citation: *R. v. Loughlin*, 2024 CM 5014

Date: 20240716
Docket: 202343

Standing Court Martial

Canadian Forces Base Edmonton
Edmonton, Alberta, Canada

Between:

His Majesty the King

- and -

Master Corporal T.E. Loughlin, Offender

Before: Captain(N) C.J. Deschênes, C.M.J.

REASONS FOR SENTENCE

(Orally)

I. Introduction

[1] Master Corporal (MCpl) Loughlin appeared before a Standing Court Martial on 15 July 2024 to answer to one charge of striking a person who by reason of rank was subordinate to them, an offence found at section 95 of the *National Defence Act* (*NDA*). The particulars of the charge alleged that, between 1 March and 4 August 2022, at or near 5th Canadian Division Support Base Gagetown, they struck course candidates with a knife. MCpl Loughlin entered a guilty plea to the charge, which I accepted following confirmation that they understood my explanations conditional to the acceptance of a guilty plea. The Statement of Circumstances, which the offender accepted as true, revealed that on multiple occasions, while they were the instructor on a DP-1 combat engineer course at the Canadian Forces School of Military Engineering (CFSME), they used a knife to make contact with candidates' chest area, and on one occasion making contact with a candidate's arm. The candidates described the contact as "stabbing", "poking" and "plate-checking", a means MCpl Loughlin used to determine whether the

candidates were wearing plates in their fragmentation vest (frag vest) or tactical vest (tac vest). One course candidate, Private (Pte) Couture, reported that on one occasion, the blade of the knife went right through his combats because he was not wearing a frag vest nor a tac vest, while another, Pte Marcotte, reported that MCpl Loughlin once missed his plates and the knife hit him. Pte Davidson-Johnson stated that the offender swung the knife towards him using "motions meant to maim or injure". Two other candidates, Ptes Alleyne and Lehoux-Borduas, described these events as occurring "without warning" or as "surprise attack[s]". The latter course candidate referred to the knife as a karambit. The prosecution confirmed that the contact amounted to striking the candidates with the knife. The prosecution also confirmed that the candidates who were subjected to MCpl Loughlin's conduct were informed of the opportunity to provide a victim impact statement but chose not to do so. The commanding officer (CO) CFSME provided an impact statement.

[2] After hearing evidence from both parties, counsel for the prosecution recommended that I impose a punishment of a severe reprimand combined with a fine in the amount of $4,000, while defence counsel submitted that I should impose a reprimand with a fine in the amount of $1,000. The Court must therefore determine a fair and fit sentence that is proportionate to the offence and to the offender's personal situation.

II. The determination of an appropriate and fit sentence

Position of the parties

[3] Counsel for the prosecution contended that, considering MCpl Loughlin's use of a knife on course candidates during the commission of the offence while they were their instructor, denunciation, deterrence and the promotion of a sense of responsibility in offenders and an acknowledgment of the harm done to victims or to the community are the most important objectives for the offender's punishment. However, counsel for the prosecution stated that rehabilitation should always be considered. As a result, a punishment of severe reprimand and a fine in the amount of $4,000 should be imposed, in particular as MCpl Loughlin's conduct amounted to a leadership failure. Their conduct was violent, repetitive, and invaded candidates' personal space; it was perceived as dangerous by numerous candidates. The offender's rank, experience, and role as an instructor are also aggravating. The prosecution acknowledged MCpl Loughlin's guilty plea but nuanced it with its lateness and their defiance during their testimony, where they argued that the knife was made of a material that did not present a security risk. She contended that the knife was intimidating, that it looks real, and that it presents a risk of physical injury. She also argued that the offender's difficult financial situation due to their contribution to most of their former spouse's expenses lacks credibility, in light of their former spouse's professional employment with the federal government.

[4] MCpl Loughlin's counsel generally agreed with the prosecution's position on the relevant factors to consider; however, she submitted that the prosecution's

sentencing recommendation is too severe. She contended that a fine can have an important deterrent effect. Although deterrence and denunciation should be the most important objectives, she claimed that the prosecutor did not give proper weight to the steps MCpl Loughlin took towards rehabilitation. She also contended that if the blade was real, they would have caused injuries, and someone would have stopped them. Further, candidates knew it was not a real knife. As a result, the knife they used should be considered in mitigation.

Sentencing principles of the military justice system

[5] In determining a punishment to impose, I must apply the principles a sentencing judge must follow when determining a fair and fit sentence. The Court must be guided by the sentencing principles contained in the *NDA*, as provided at section 203.1:

> 203.1 (1) The fundamental purpose of sentencing is to maintain the discipline, efficiency and morale of the Canadian Forces.
>
> (2) The fundamental purpose of sentencing is to be achieved by imposing just punishments that have one or more of the following objectives:
>
> (a) to promote a habit of obedience to lawful commands and orders;
>
> (b) to maintain public trust in the Canadian Forces as a disciplined armed force;
>
> (c) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;
>
> (d) to deter offenders and other persons from committing offences;
>
> (e) to assist in rehabilitating offenders;
>
> (f) to assist in reintegrating offenders into military service.

[6] When imposing a punishment, a sentencing judge must also take into consideration other principles, which include that "a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender"; and that it "should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances".

[7] The punishment imposed by any tribunal should constitute the minimum necessary intervention that is adequate in the circumstances. For a court martial, this means imposing a sentence that constitutes the minimum punishment necessary to maintain discipline, efficiency, and morale of the Canadian Armed Forces (CAF). In the end, a sentence must be proportionate to the circumstances surrounding the commission of the offence and to the responsibility of the offender.

Analysis

[8] In my determination of an appropriate punishment, I have considered the objective gravity of the offence. The offence MCpl Loughlin was charged with was preferred in accordance with section 95 of the *NDA* for striking a person who by reason of rank was subordinate to them. This type of offence is punishable by imprisonment for a term not exceeding two years or to less punishment.

[9] I have also considered the subjective seriousness of the offence: that they used a knife to strike course candidates. In this regard, the description of the knife, and its characteristics to inflict harm, were the subject of many discussions in court, including in the context of questions asked by the Court after the Statement of Circumstances was read. During their testimony, MCpl Loughlin explained that the karambit is used as a training weapon for self-defence in the context of practicing Krav Maga, a martial art that aims at inflicting significant harm. They received the knife in 2015 from a colleague and they used it based on their own experience of being subjected to the same means of checking for plates. In a demonstration to the Court, MCpl Loughlin made a slicing motion in the palm of their hand applying pressure with it to show that it did not break the skin. They poked themself with the tip of the blade, and confirmed that it did hurt, but they later told the Court when asked to repeat their answer that they said it "did not hurt". They also believed the knife was made of galvanized rubber, like a hockey puck. MCpl Loughlin admitted in cross-examination that the knife could cause injuries with enough pressure applied, and that the blade looks real.

[10] I have examined the knife. It appears to be made of a type of steel or steel alloy, not of rubber. It has an intimidating curved shape, with a pointy tip, and clearly has the capacity to inflict injuries if used with some force. The *Criminal Code* defines a weapon in section 2 as "any thing used, designed to be used or intended for use (a) in causing death or injury to any person, or (b) for the purpose of threatening or intimidating any person." I have, therefore, concluded that the use of a weapon on course candidates is aggravating. I find that MCpl Loughlin tried to downplay the risk of harm associated with the use of this knife, which, on their own admission, is used for training purposes of self-defence techniques aimed at causing a high degree of injury. I also note that the evidence does not reveal whether MCpl Loughlin took the time to remove the protective blade cover when striking the candidates, which they did when they demonstrated the use of the knife in court. Overall, I find that, in addition to downplaying the risk of injuries associated with the use of the knife, the offender tried to justify its use when they explained that they always had something in their hand because they were fidgeting. While the fidgeting may be true, it does not explain striking course candidates with a karambit. In sum, the offender's contention that the knife they used could not cause injuries to others is not credible and would not, in any event, change the fact that it is a weapon, not a harmless toy. Thankfully, there were no injuries or harm caused. Had there been injuries, it would have constituted an aggravating factor.

[11] I also note that the course candidates that MCpl Loughlin struck with their knife declined to provide a victim impact statement. Their current CO, Lieutenant-Colonel (LCol) Veitch, testified that he could not observe whether there was a break down in trust toward them from subordinates, including a candidate subjected to their conduct

who now serves in the same unit, given where and how the offender is currently employed. However, in his statement, the CO CFSME confirmed that while MCpl Loughlin was entrusted with leadership responsibilities, particularly in relation to instructing, mentoring, and developing the next generation of combat engineers, they engaged in behavior that had profoundly negative consequences for the establishment and the individuals that they train. MCpl Loughlin's behaviour "resulted in a sense of unease and insecurity by subordinates" and worked counter to their efforts to "retain dedicated members, resulting in a degradation of our operational readiness". The offender's conduct, therefore, caused some impact at CFSME.

[12] I agree with the prosecution that the offender's rank, experience in the CAF and position and role as an instructor of very junior candidates constitute aggravating factors.

[13] Finally, I also find aggravating that, in addition to committing the offence while they were entrusted with supervisory and instructing responsibilities over course candidates of the rank of privates for whom they were expected to oversee their well-being, the conduct happened multiple times over the course of several months. The striking was also described as "without warning" or as "surprise attack[s]", increasing the stress and fear for course candidates who had no time to dodge or protect themselves from the strike.

[14] There are also mitigating factors that I have considered:

(a) first, the offender's guilty plea. Through the evidence presented during the trial, the Court must consider the guilty plea as a sign of remorse and that MCpl Loughlin is sincere in their pursuit of remaining a valid asset to the CAF and to this society;

(b) their career potential as a member of the CAF. Looking at their Member's Personnel Record Résumé (MPRR), they progressed very well. They have been a MCpl since 1 December 2021, a strong indication that the CAF recognized their potential as a leader. They are young and thus still have many years ahead of them. As I heard it through the testimony of their current CO, they still have a future in this unit;

(c) the fact that they had to face this court martial, which was announced and accessible to the public and which took place in their own unit, in the presence of some of their peers. This has had a very significant deterrent effect on MCpl Loughlin and on others. It sends the message to others that the kind of conduct they displayed regarding the respect that must exist between a superior and a subordinate will not be tolerated in any way and will be dealt with accordingly; and

(d) the absence of any annotation on their conduct sheet. There is no indication of the commission of any similar military or criminal offence.

Circumstances of the offender

[15] Having reviewed the aggravating and mitigating circumstances of this case, the Court considered the offender's personal situation. The documentary evidence reveals that they are twenty-nine years old. They are married with one young child, but they have testified that they are separated and are in the process of formalizing their new marital status.

[16] MCpl Loughlin enrolled in the CAF on 2 February 2012. During their service in the CAF, they deployed to Egypt from October 2019 to March 2020, and are the recipient of the Canadian Peacekeeping Service Medal and the CAF Decoration.

[17] MCpl Loughlin's evidence reveals that at the time of the commission of the infraction, they were on a temporary medical category, which included no weapon handling, as a result of suffering from Post-Traumatic Stress Disorder (PTSD), depression, anxiety, as well as alcohol abuse. They were medicated to assist in controlling the symptoms in relation to these issues and were in weekly therapy sessions for trauma-related symptoms. Upon hearing that they were going to serve as an instructor at CFSME in Gagetown, they withdrew from therapy and ceased taking their medications because they believed they were ready to serve without restrictions. They told their chain of command that they were indeed fit to perform their assigned role in Gagetown. They explained that their symptoms of anxiety and depression reappeared in Gagetown. They used the knife as a coping tool to keep their hands busy. It made them feel safe, and reminded them of a suicide attempt where they used a different blade to slit their throat.

Attitude to the offence/efforts towards rehabilitation

[18] In their letter of apology, they recognized that their conduct was impulsive and made candidates feel unsafe. They also recognized that their conduct created a negative experience that impacted how these candidates view their career in the CAF. I believe MCpl Loughlin's remorse is genuine. They accepted responsibility for their misconduct despite their mental health struggles which they recognized are not an excuse for their behaviour. They pled guilty and took the time to write this letter, apologizing publicly.

[19] Since they returned from Gagetown, they immediately sought treatment due to the mental breakdown they suffered following their return. MCpl Loughlin attempted suicide in December 2022. Since January 2023, they have attended weekly, or even biweekly therapy that they pay for themself. They have seen improvement with regard to the mental health issues they are struggling with. Since the allegations surfaced in August 2022, they were assigned to serve at the tank barn where they do not really have a specific role.

[20] The offender testified to paying $900 a month for daycare alone, but also paying for their child's clothing and food expenses. Their child currently lives with their former spouse and there is no formal agreement for alimony in place. In addition to their personal lodging, food, vehicle expenses, and therapy sessions, they told the Court that they pay most expenses for their former spouse, including expenses for her vehicle because of issues with her pay as a professional employed by the Federal government. I find this part of MCpl Loughlin's testimony not credible. It makes little sense that, at their pay level, they would be funding most of their child and former spouse's expenses despite her being employed full-time. I have given little weight to this evidence when deciding on a proportionate punishment to impose.

[21] As for their future in the CAF, their CO testified that it was difficult to say whether the offender can continue as MCpl. Their conduct has created some challenges, but it is not irreparable. With work and time, he believed they can rebuild trust between themself and their superiors, and in fact they may be employed as an instructor again in the future. However, in the short term, their CO believed that it would not be fair to MCpl Loughlin and to subordinates that they would resume their role as an instructor, not only because of their conduct, but also because of their personal challenges. The Court accepts the CO's evidence that the offender has a future in the CAF. I believe that they can be rehabilitated and continue serving, possibly proving themself in such a way that they could aspire to find themself at the next rank level with time, patience, and efforts.

Parity

[22] I have also examined precedents for similar offences. While the determination of an appropriate sentence is a challenging exercise, the range of punishment established for similar offences may serve as a guide for the sentencing judge to determine whether a proposed sentence is fair. In this regard, the prosecution provided the case of *R. v. Whitten,* 2012 CM 4004, where a joint submission of a severe reprimand and a fine in the amount of $3,000 was accepted and imposed following a guilty plea for two charges preferred pursuant to section 95 of the *NDA*. In that case, the offender, a master seaman who was an instructor, subjected one of his subordinates to physical and verbal abuse in the classroom and onboard ship on numerous occasions over a lengthy period. The repetition of the conduct along with the lengthy period during which they occurred were considered significant aggravating factors, along with the fact that the offender hit another subordinate with enough force to cause red marks on his calves. The prosecution also submitted *R. v. Bluemke,* 2022 CM 4015, a case where the offender, a sergeant, pled guilty to a charge for conduct to the prejudice of good order and discipline, alleging that, as an instructor, he had uttered comments adverse to the Jewish community in front of course candidates, making frequent inappropriate jokes and comments referring to Jewish people and to the events of the Holocaust. After a contested sentencing hearing, he was sentenced to a severe reprimand and a fine in the amount of $3,000.

[23] The defence submitted the case of *R. v. Dacey*, 2023 CM 4009, a case where the joint submission of a reprimand and a fine in the amount of $1,000 was accepted by the Court following the guilty plea in respect of a charge for having ill-treated a subordinate. In that case, at the end of a group hug, Master Warrant Officer Dacey moved his hand from the shoulder of a warrant officer and touched her buttocks without her permission. Further, in the last case submitted by the offender's counsel, *R. v. Martin*, 2022 CM 5025, Petty Officer, 1st class (PO1) Martin was found guilty of one charge of conduct to the prejudice of good order and discipline for harassment based on race, and of one charge of abuse of subordinate for striking the leg of a sailor 2nd class with his knee. PO1 Martin was sentenced to a severe reprimand.

[24] I examined the cases provided by both counsel and find that the *Dacey* and the *Martin* case are distinguishable because of their lack of similarity of circumstances surrounding the offence. I have further been informed of the case of *R. v. Hanson,* 2013 CM 3021, where a severe reprimand and a fine in the amount of $4,000 was imposed for a warrant officer who pled guilty to a charge of drunkenness and a charge of abuse of subordinate, using a knife on the throat of a corporal (Cpl) as an inappropriate and unlawful means to ensure that the Cpl would enforce orders. I am thus able to conclude that the range of punishments for this type of offence is composed of a severe reprimand combined with a fine. That is sufficient to allow the Court to conclude that the proposed sentence by the prosecution is well within the range of punishments, while the defence's recommended sentence is at the lower end of the spectrum.

Principles of sentencing deserving greatest emphasis

[25] Considering the offence to which the offender pled guilty, and in light of the circumstances surrounding this case, the fundamental purpose of sentencing shall be achieved by imposing a sanction that has the objectives of denunciation, as well as general and specific deterrence while ensuring that the offender's rehabilitation can continue. I agree with defence counsel that rehabilitation is a long and difficult path. While I need to ensure that the objectives of denunciation and deterrence are the main objectives for their punishment I am about to impose, I have to ensure that MCpl Loughlin's rehabilitation would not be compromised.

[26] That said, the recommendations from both parties are not so far from each other that they cannot be reconciled. They both agreed with the most relevant aspects of this case. Their disagreement lies with the quality of the knife used, which I have already addressed. I believe that the recommendation from defence counsel is too lenient and would not meet the main objectives of their punishment in the circumstances, considering that MCpl Loughlin was in a leadership position when he struck course candidates with a knife. However, I do find that the prosecution may not have given sufficient consideration to the steps the offender has taken for their rehabilitation. To be proportionate, the offender's punishment needs to account for the steps they took to better themself. Consequently, I believe that a severe reprimand, combined with a $2,500 fine, is the minimum sentence that would achieve discipline.

III. Conclusion

[27] In conclusion, having reviewed the documentary evidence introduced as exhibits and considering counsel submissions, I find that the need for denunciation and deterrence is met with a punishment of a severe reprimand combined with a fine in the amount of $2,500. This punishment sends a message to serving members that engaging in similar conduct would have both short-term and long-term consequences.

[28] MCpl Loughlin, your conduct was reprehensible; you abused your subordinates, and in doing so, you abused the trust placed in you by the CAF. You may have had good intent to influence course candidates in developing a habit of wearing their protective gear, but in doing so, you instilled a climate of fear and distrust by creating an unsafe environment, using a weapon on very junior and impressionable subordinates. They knew, or reasonably believed, that they could be injured by you with the knife, regardless of whether they complied with the requirement to wear their protective gear as, on one occasion, when one course candidate was indeed properly dressed, you missed the plate and hit him. Conversely, you admitted your wrongdoing. You pled guilty and apologized in public. While I find you downplayed your actions when explaining your possession and use of the knife, the steps you have taken to rehabilitate yourself, including the therapy sessions you pay out of pocket for, are real. You already paid a price for your actions when you were transferred to a position that does not seem to provide any satisfaction. Your punishment accounts for these mitigating circumstances as well.

[29] In sum, in consideration of all the aggravating and mitigating factors and the sentencing principles, I find that imposing a punishment composed of a severe reprimand combined with a fine in the amount of $2,500 would be a proportionate sentence to impose in the circumstances.

FOR THESE REASONS, THE COURT:

[30] **FINDS** MCpl Loughlin guilty of the charge of abuse of subordinates.

[31] **SENTENCES** MCpl Loughlin to a reprimand combined with a fine in the amount of $2,500 payable in monthly installments of $200, starting 1 August 2024. Should they be released from the CAF before the fine is fully paid, the balance would be payable in full, on release.

Counsel:

The Director of Military Prosecutions as represented by Lieutenant-Commander J. Besner

Lieutenant(N) D. De Thomasis, Defence Counsel Services, counsel for Master Corporal T.E. Loughlin