COURT MARTIAL

Citation: *R. v. Munro*, 2024 CM 5015

Date: 20240730
Docket: 202427

Standing Court Martial

Halifax Courtroom, Suite 505
Halifax, Nova Scotia, Canada

Between:

His Majesty the King

- and -

Captain R.M. Munro, Offender

Before: Commander C.J. Deschênes, C.M.J.

Restriction on publication: Pursuant to subsection 183.5(3) of the *National Defence Act*, the Court directs that any information that could disclose the identity of the persons described in these proceedings as the complainants, including the persons referred to in the charge sheet and in the Statement of Circumstances as "D.M." and "C.H.", shall not be published in any document or broadcast or transmitted in any way. This order does not apply to disclosure of such information in the course of the administration of justice, when it is not the purpose of the said disclosure to make the information known in the community.

REASONS FOR SENTENCE

(Orally)

I. Introduction

[1] Captain (Capt) Munro pled guilty to two charges for an act to the prejudice of good order and discipline that occurred between 2012 and 2014 for harassing two cadets, "D.M" and "C.H.", both under the age of eighteen at the time of the incidents. The incidents occurred when Capt Munro was a platoon commander with 219 Royal Canadian Army Cadet Corps (RCACC) under the Regional Cadet Support Unit Atlantic

in New Glascow, Nova Scotia. As a Cadet Instructor Cadre (CIC) officer, he supervised cadet activities outside of regular cadet training hours on a voluntary basis. Between 2013 and 2021, Capt Munro was the instructor for the marksmanship and biathlon teams. Biathlon training occurred on Sundays between 0800 and 1200 hours at the New Glasgow armouries. "D.M" was a cadet at the New Glascow armouries where he participated in the extracurricular activities of marksmanship and biathlon. One fall day between 2012 and 2014, cadets, including "D.M", were gathered in a small group. Capt Munro approached the group and told cadets that he knew something that always worked to take someone down. The offender then grabbed "D.M." by the head with both hands and put pressure on his eyes with his thumbs. "D.M." had to pull away backwards to break free. This incident was described in the first charge. As for the second offence, around that same period but in a separate incident, "C.H.", a cadet at the New Glascow armouries who participated in the biathlon program, was also talking amongst cadets in a small group. The offender came up behind her and placed a white cord around her neck with enough force to bring her down to the ground. She was able to escape the rope but had temporary red marks on the side of her neck.

[2] After the Court accepted and recorded his guilty plea on both charges, Capt Munro accepted, as conclusive evidence, the facts summarized in the Statement of Circumstances. As part of the sentencing hearing, counsel proposed a joint submission, recommending that the Court impose a punishment of a reprimand combined with a fine in the amount of $1,750. The issue therefore is to determine if the joint submission is contrary to the public interest.

II. Whether imposing a reprimand combined with a fine in the amount of $1,750 would bring the administration of justice into disrepute or is otherwise contrary to the public interest

Position of the parties

[3] In her submissions, counsel for the prosecution confirmed that both victims had been informed of their rights to prepare a victim impact statement (VIS). They had also been informed of the resolution of this case. Counsel for the prosecution contended that denunciation, deterrence, promoting a sense of responsibility in offenders and acknowledging the harm done to victims or to the community are the objectives that the punishment should aim. She considered aggravating that first, Capt Munro was a CIC officer and was often the only adult present with cadets. The conduct breached the trust not only of the cadets but of other CIC officers. Second, she contended that the conduct was unprovoked. Lastly, she considered the impact on "C.H.". In mitigation, she considered the guilty plea for both charges. Challenged by the Court as to whether the joint submission would meet the objective of denunciation, particularly, compared to the case in *R. v. Bannister*, 2020 CM 4005 where the offender was imposed a sentence of a reduction in rank with a fine, she argued that the *de facto* removal of the offender as a CIC officer as a result of the charges being laid, and his request for a voluntary release, satisfied her that the joint submission is a fair and fit punishment.

[4] Counsel for Capt Munro agreed generally with the prosecution but opposed the idea that the unprovoked conduct constituted an aggravating factor. He contended that the VIS should be measured with the statement made by "C.H." that she was allowed to continue and progress as a cadet. He also confirmed that the offender has not been parading since the charges were laid, which demonstrates the indirect consequences flowing from these trial proceedings, which should be factored in. He further confirmed that Capt Munro wants to voluntarily release from the Canadian Armed Forces (CAF). Defence counsel contended that the fine is meaningful because of his client's modest means; he took it upon himself to save and bring the full amount to his trial today. The reprimand will have an impact regarding his eligibility to receive a clasp to his Canadian Forces Decoration. Defence counsel explained that when Capt Munro found out about the complaints, he took steps by apologizing, and by engaging in remedial training to better guide his conduct. The incidents are dated, and there have been no other incidents since then. The joint submission is within the range of punishment. Defence counsel seeks a period of thirty days to pay the fine because of the CAF's administrative process precluding the immediate payment of the fine. Should the offender be released, the amount shall be paid in full.

Sentencing principles of the military justice system

[5] When deciding on a punishment to impose, a sentencing judge must be guided by the sentencing principles contained in the *National Defence Act* (*NDA*) as provided at subsection 203.1(1) of the *NDA*:

> The fundamental purpose of sentencing is to maintain the discipline, efficiency and morale of the Canadian Forces.

[6] The fundamental purposes of sentencing shall be achieved by imposing just sanctions that have one or more of the objectives listed at subsection 203.1(2), such as deterrence, denunciation, to promote a habit of obedience to lawful commands and orders, to maintain public trust in the CAF as a disciplined armed force, and to assist in rehabilitating offenders. The objectives of the sentence are dictated by the particularity of the case and of the offender.

[7] Section 203.2 of the *NDA* provides for the fundamental principle of sentencing:

> A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender.

Public interest test

[8] When counsel present a joint submission, the sentencing judge must apply the public interest test which requires that the joint submission be rejected only when it is so unhinged from the circumstances of the offence, and the offender, that its acceptance would lead reasonable and informed persons, aware of all the relevant circumstances, including the importance of promoting certainty in resolution discussions, to believe that the proper functioning of the military justice system had broken down. In other

words, having regard to the circumstances of the case and of the offender, the joint submission is either so severe, or so lenient, as the case may be, that accepting it would bring the administration of military justice into disrepute. Consequently, a joint submission should not be rejected lightly. This high threshold means that the sentencing judge has limited discretion when considering a fair and fit sentence and must exhibit restraint when considering rejecting a joint submission.

[9] Joint submissions provide many benefits to the accused, the participants, the unit, and the military justice system because they save both time and resources. They provide some level of certainty for the accused person who would see their matter resolved more expeditiously, while saving the witnesses involved in the case, in particular the complainant, the emotional cost generally associated with their participation at trial when providing their testimony in court.

[10] When considering a joint submission, trial judges can rightfully assume that counsel were mindful of the statutory sentencing principles when agreeing on the joint submission. It is also assumed that counsel took into consideration all relevant facts when mutually agreeing upon an appropriate sentence. Counsel's submissions usually provide confirmation that they did in fact consider key aspects of the case, including the existence of aggravating factors, and of the offender's personal situation. Additionally, when adduced as part of the sentencing hearing, the offender's evidence provides information that may present additional factors that were also considered during the negotiations, which would further support the joint submission.

Analysis

[11] In consideration of the joint submission, I have been informed of the circumstances surrounding the commission of the offences when determining whether the proposed punishment meets the public interest test.

[12] The Court finds particularly aggravating that as an officer, platoon commander, instructor for the marksmanship and biathlon teams, and occasionally as the only adult supervisor for the cadets, Capt Munro was in a privileged position of trust towards underage cadets. He had the duty and the responsibility to guide young cadets towards adult life by promoting an environment imbued with a sense of civic responsibility and respect for others in order to prepare them, amongst other things, to become responsible citizens. The treatment to which he submitted these two young cadets not only undermined the respect these young people had towards authority, it likely deprived them of the trust they should have towards a responsible adult who has been assigned to pave their way towards adult life (see *R. v. Captain J.C.B. Gagnon*, 2005CM34).

[13] In harassing these youths, Capt Munro exploited his privileged position by undermining or abusing the trust that was placed in him, not just by the CAF, but by the parents who entrusted the safety and education of their children into his hands. Additionally, the conduct was purposely done in front of other impressionable young cadets. In sum, not only "D.M." and "C.H." were subjected to the reprehensible

conduct, but the other cadets were also affected by the breach of trust when they witnessed the conduct.

[14] I concur with the statements made by the presiding military judge in *R. v. Captain L.M. Paquette*, 1997 CM 27 where he says at paragraph 5:

> [W]here the military has placed the officers and non-commissioned members of the cadet instructor cadre in charge of, and in a position of authority over young cadets at a summer cadet camp, away from their parents, the punishment may well have to be more severe than in a purely civilian context to properly account for the additional factor of military discipline.

Subsumed in this aggravating factor was the young age of the victims. Because the exact dates of the commission of the offences are unknown, the two instances happened anywhere between 2012 and 2014, where "C.H." would have been between fourteen and sixteen, while "D.M." was between sixteen and eighteen.

[15] I also considered the physical and emotional impact on "C.H." who read her VIS in court. She shared that she remembers feeling hate towards the offender to the point where she could not stand to be in the same room, much less be expected to salute and show respect to a man that she felt did not deserve it. She felt anger, observing that Capt Munro received praise for his efforts on the team after harassing her. She used to love field training exercises, but started to dread them because she would have to spend more time with him. She lost respect for his rank. The impugned conduct still has a way of impacting her future.

[16] Conversely, there are factors that weigh in Capt Munro's favour. He pled guilty to two offences before this Court, which is always considered an acknowledgement by an accused person of his or her misconduct and is a meaningful demonstration of remorse. The offender's plea of guilty has spared the complainants and other young witnesses the ordeal of testifying in public. Further, Capt Munro expressed his intent to plead guilty at an early opportunity. The plea of guilty and indication of remorse are mitigating factors and serve to diminishes the need, in my view, for specific deterrence. There are also, of course, the years of good performance in the CAF and that he is a first-time offender.

Circumstances of the offender

[17] Capt Munro's military records indicate that he is forty-eight years old. Counsel informed the Court that prior to being a CIC officer with the RCACC, the offender was a cadet himself from September 1990 until his nineteenth birthday, obtaining the rank of cadet warrant officer; he was then a platoon second-in-command.

[18] He joined the CIC in March 1995. His records also show that throughout his career in the Reserve, he generally served on Class A service, except from 1996 to 2002 where he served on Class B service during the summer months in Gagetown and Whitehorse amongst other places. He was promoted to captain in December 2003 and

holds a Canadian Forces Decoration with his first clasp. The Master Pay Record Report confirms that he has not been paid since 2022.

[19] The Agreed Statement of Facts indicates that the offender was born and raised in New Glascow, Nova Scotia in a loving home with four siblings. His family's military history dates back to World War I where his great-great-grandfather was a prisoner of war held by German forces. Capt Munro graduated from high school in 1994 and received a culinary arts diploma from the Nova Scotia Community College in 2000. Shortly after graduating, he pivoted from culinary arts to a career with Sobey's, from a part-time capacity to a full-time position where he now occupies the night clerk position, ensuring the store's operations continue throughout the night in support of daytime opening hours, exercising leadership and organizational skills in a diverse work environment.

[20] Since approximately 2017/2018 he has complied with Sobey's obligation to obtain and maintain annual training with respect to sensitivity and prevention of harassment and discrimination in the workplace. He received commemoration of his twenty-year anniversary with the organization. Capt Munro is single and has no dependents.

[21] The Agreed Statement of Facts also indicates that from about 1998 to 2006, he oversaw the National Star Certification Exam (NSCE) program for the 219 RCACC. In that role, he successfully assisted over sixty cadets achieve their National Star Certification, the highest proficiency level a cadet can achieve in this program. After a brief change in responsibilities, Capt Munro resumed charge of the NSCE program for the 2019 RCACC from 2008 to 2011. As a result of the NSCE program requirements to be overhauled, he was made the coordinator for the new program at 219 RCACC which involved facilitating access to opportunities for cadets to further their development within the cadet program. In this role as coordinator, he assisted approximately twenty cadets achieve their various levels of the National Star Program.

Attitude to the offence/efforts towards rehabilitation

[22] Shortly after the incident, the offender was informed by his chain of command that they had received complaints from two cadets alleging they were harassed by him. Capt Munro acknowledged that such behaviour was not appropriate and expressed remorse to his chain of command in a general way. Since this incident, in May 2017 he completed the CIC Positive Youth Development training. This course included how to provide for a healthy training and learning environment. In May 2019, he successfully completed the Creating Respectful Workplace training.

[23] In the Agreed Statement of Facts, it is mentioned that he would like to extend a sincere apology to both "D.M." and "C.H." for any impact his actions had on either of them.

[24] In January 2022, prior to being charged or aware of the investigation, he initiated his voluntary release from the CAF and is currently awaiting a decision on his release pending the outcome of this matter.

Parity

[25] Counsel informed the Court that they could not find a similar case in order to determine an appropriate range of punishment. The Court considered the case of *Bannister*, where Capt Bannister pled guilty to two offences pursuant to section 129 of the *NDA*. The joint submission of a reduction in rank to lieutenant and a fine in the amount of $1,500 was imposed. Capt Bannister had made inappropriate sexual comments to the victim while in his office. I was also informed of the cases of *R. v. Havas*, 2020 CM 2001, where a severe reprimand and a fine in the amount of $2,000 was the punishment imposed (see also *R. v. Reid*, 2022 CM 2004 and *R. v. O'Malley*, 2021 CM 5014). I noted that some of these cases pertain to sexual harassment. I considered the case of *R. v. Martin*, 2022 CM 5025, a case of harassment based on race.

[26] Comparing sexual harassment with harassment generally is a difficult exercise. I do not believe necessarily that one is more serious than the other. Therefore, when considering the parity principle, I am not necessarily bound by the range established for sexual harassment. I am, however, satisfied for a case of an offender harassing a cadet, the range includes reduction in rank at the higher end of the spectrum to a reprimand with a fine. This allows me to conclude that the joint submission is within the range, but at the lower end.

Principles of sentencing deserving greatest emphasis

[27] The Court is of the view that the fundamental purpose of sentencing shall be achieved by imposing a sanction, in this case, that has the objectives of denunciation and deterring others from adopting the same conduct, as to promote a sense of responsibility in offenders and an acknowledgement of the harm done to victims or to the community. In applying the public interest test and considering all of the evidence with counsel's submissions, the Court is of the view that the joint submission is compliant with the test.

III. Conclusion

[28] Capt Munro, I find your position of trust to be a significant aggravating factor. Your conduct towards young cadets was despicable. But for your guilty plea, steps to better yourself and to release from the CAF, I believe that a reduction in rank may have been a proper punishment. That said, while at the lower end of the range, I find that a reasonable person aware of the circumstances would expect you to receive a sentence which includes punishments expressing disapprobation for the failure in discipline involved. The sentence being proposed composed of the punishment of a reprimand and a fine in the amount of $1,750 is aligned with these expectations.

[29] In sum, you took full responsibility for your actions. Considering the aggravating and mitigating factors and the sentencing principles, the Court finds that the joint recommendation is not contrary to the public interest and would not bring the administration of military justice into disrepute.

FOR THESE REASONS, THE COURT:

[32] **FINDS** Capt Munro guilty of the two charges on the charge sheet.

[33] **SENTENCES** the offender to a reprimand and a fine in the amount of $1,750 to be paid as soon as possible and within the next thirty days. Should he be released before that date, the full amount is to be paid in full.

Counsel:

The Director of Military Prosecutions as represented by Major A. Dhillon

Major C. Da Cruz, Defence Counsel Services, Counsel for Captain R.M. Munro