



## COURT MARTIAL

**Citation:** *R. v. Schenkels*, 2024 CM 6001

**Date:** 20241002

**Docket:** 202434

Standing Court Martial

4 Canadian Division Training Centre  
Meaford, Ontario, Canada

**Between:**

**His Majesty the King**

- and -

**Private C.A. Schenkels, Offender**

**Before:** Colonel N. Isenor, M.J.

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### **REASONS FOR SENTENCE**

(Orally)

[1] Private (Pte) Schenkels, having accepted and recorded your plea of guilty in respect of the only charge in the charge sheet, the Court now finds you guilty of that charge for having fought with a person subject to the Code of Service Discipline contrary to section 86 of the *National Defence Act (NDA)*.

[2] It is now my duty, as the military judge presiding over this Standing Court Martial, to determine the sentence. In the course of my deliberations, I have taken into consideration the principles of sentencing applicable to criminal and penal courts in Canada, as well as to courts martial.

[3] I also took into consideration the relevant facts of this case, as they appear in the Statement of Circumstances read by the prosecutor, as well as the Statement of Facts and the documents and evidence submitted during the sentencing hearing, and the arguments of counsel, both for the prosecution and for the defence.

[4] This is a case where a joint submission is made to the Court concerning the sentence to be imposed. Both prosecution and defence counsel jointly recommend that the Court impose a sentence of a severe reprimand and a fine in the amount of \$2,000.

#### **Description of joint submission**

[5] This recommendation severely limits my discretion in the determination of an appropriate sentence. As any other 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. This is the test promulgated by the Supreme Court of Canada in *R. v. Anthony-Cook*, 2016 SCC 43.

[6] Indeed, the threshold to depart from the joint submission being made is high as joint submissions 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 channeled 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.

#### **Goals and objectives of sentencing**

[7] Yet, even if certainty of outcome is important for the parties, it is not the ultimate goal of the sentencing process. The goals and objectives of sentencing generally relate to the protection of society, of which of course the Canadian Armed Forces (CAF) is a part, by fostering and maintaining a just, peaceful, safe, and law-abiding community.

[8] Importantly, in the context of the CAF, these objectives include the maintenance of discipline, that habit of obedience which is critical 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.

[9] One or more of these objectives will inevitably predominate in the crafting of a fit sentence in an individual case, yet it must be kept in mind that each of these goals calls for the attention of the sentencing court, and a fit sentence should reflect an appropriate blending of these goals, tailored to the particular circumstances of the case.

[10] I must also keep in mind the disciplinary purpose of the Code of Service Discipline and military tribunals in performing the sentencing function attributed to me as a military judge. As recognized by the Supreme Court of Canada, courts martial allow the military to enforce internal discipline effectively and efficiently. Punishment

is the ultimate outcome once a breach of the Code of Service Discipline has been recognized following either a trial or a guilty plea.

[11] It is the only opportunity for the Court 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. The imposition of a sentence at court martial proceedings, therefore, performs an important disciplinary function, making this process different from the sentencing usually performed in civilian criminal justice courts.

[12] 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 submissions 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.

[13] As this Court informed you when you entered your plea of guilty, section 139 of the *NDA* 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.

[14] 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.

[15] It is an important principle that the Court should impose the least severe punishment that will maintain discipline.

### **Fundamental principles of sentencing**

[16] The fundamental principle of sentencing found at section 203.2 of the *NDA* provides that a military judge shall impose a sentence commensurate with the gravity of the offence and the degree of responsibility of the offender.

[17] In this case, the prosecutor read a Statement of Circumstances which was formally admitted as accurate by Pte Schenkels and includes details as to his personal circumstances. It was entered in evidence as an exhibit, along with other documents provided by the prosecution as required at *Queen's Regulations and Orders for the Canadian Forces* 111.17.

[18] In addition to this evidence, counsel made submissions to support their position on sentence on the basis of the facts and considerations relevant to this case and of precedents in four other cases in order to assist the Court to adequately apply the purposes and principles of sentencing to the circumstances of both the individual offender and the offence committed.

### **Circumstances of the offence**

[19] The Statement of Circumstances and the information on the documents entered as exhibits reveal the following circumstances relevant to the offence:

“3. On 24 March 2023, between 1830 and 2200 hrs, Pte(B) Sudhan and another PAT platoon member went to the common room of Meaford South Barracks Building M-207. He saw Pte(B) Schenkels playing video games. Pte(B) Sudhan commented “it smells pretty bad in here.” The other PAT platoon member responded, “it’s probably Schenkels.”

4. After speaking with Pte(B) Schenkels about the video game, Pte(B) Sudhan and the other PAT platoon member went up to Pte(B) Sudhan’s room.

5. At around 2030 hrs, Pte(B) Schenkels knocked on Pte(B) Sudhan’s door and requested the return of some electronics that he had left in Pte(B) Sudhan’s room. Pte(B) Sudhan gave Pte(B) Schenkels the electronics, and Pte(B) Schenkels left.

6. At approximately 2035 hrs, Pte(B) Schenkels returned to Pte(B) Sudhan’s room and knocked on the door. As Pte(B) Schenkels did not state the reason for his visit, Pte(B) Sudhan did not open the door.

7. Pte(B) Schenkels continued to knock on Pte(B) Sudhan’s door for three to four minutes. Pte(B) Sudhan told Pte(B) Schenkels to leave. As Pte(B) Schenkels would not leave, Pte(B) Sudhan opened the door.

8. Pte(B) Schenkels entered Pte(B) Sudhan’s room and screamed “don’t say that again,” “don’t tell me to take a shower.” Pte(B) Sudhan stepped back and leaned on his bed and tried to calm Pte(B) Schenkels down. Pte(B) Schenkels then grabbed Pte(B) Sudhan by the shirt with his left hand and punched him with his right fist three times in the left eye.

9. After punching Pte(B) Sudhan, Pte(B) Schenkels exclaimed “do you understand?” Pte(B) Schenkels then left Pte(B) Sudhan’s room and returned to the common room to play video games.

10. The punches caused some bruising around Pte(B) Sudhan’s left eye, and some small cuts and swelling on his left cheek.

11. The following day, Pte(B) Schenkels apologized to Pte(B) Sudhan.

12. Pte(B) Sudhan has declined to provide a Victim Impact Statement.”

[20] The unit submitted a military impact statement that was submitted as an exhibit. It outlines that Pte Schenkels' actions had a negative effect on discipline, efficiency and morale of the unit and impacted all the new soldiers present in the platoon at the time.

**Circumstances of the offender**

[21] The documents examined by the Court and the submission of counsel reveal the following circumstances relevant to Pte Schenkels. He joined the CAF on 8 September 2022 and completed basic training in St-Jean-sur-Richelieu on 27 January 2023. Pte Schenkels is twenty-one years old. At all material times, Pte Schenkels was a regular force member of the CAF, assigned to the Persons Awaiting Training (PAT) Platoon at 4 Canadian Division Training Centre (CDTC), Meaford, Ontario. Pte Schenkels was released from the CAF on release item 5(f) on 15 June 2024.

[22] Upon his release, Pte Schenkels moved to Fort Saskatchewan, Alberta. He is not from there (nor anywhere else in Alberta) and has no family there. His move was purely for a clean start in life. He just turned twenty-one a few days prior to the hearing of the Standing Court Martial. Pte Schenkels is unemployed. He has a high school education and is at present trying to decide between going to work or back to school.

[23] Pte Schenkels is not married or in a common law relationship and he has no children.

[24] Pte Schenkels apologized to the victim for his actions the next day after the incident.

**Seriousness of the offence**

[25] The Court has considered the objective gravity of the offence in this case. The offence in section 86 of the *NDA* attracts a maximum punishment of imprisonment for less than two years. It is therefore an objectively serious offence.

[26] As mentioned previously, the purpose of a separate military tribunal system is to allow the CAF to deal with matters affecting discipline, efficiency and morale. The very nature of the offence provided for in section 86 of the *NDA* pursues this objective by recognizing that quarrels and disturbances between soldiers constitute an offence which threatens discipline, that crucial quality that each soldier must possess in order to place the interests of Canada and those of the CAF ahead of their personal interests.

[27] As mentioned by Gibson M.J. in the case of *R. v. Burton*, 2014 CM 2024, at paragraph 9:

One of the most important components of discipline, in the military context, is self-discipline. This includes the self-discipline required to restrain one's frustrations when things don't go the way we might like, and to refrain from expressing those frustrations in acts of physical violence or insubordination.

[28] I am of the opinion that Pte Schenkels demonstrated a serious breach of self-discipline and respect for his peer in March 2023.

[29] As mentioned by Dutil C.M.J. in *R. v. Ordinary Seaman J.D. Durante*, 2009 CM 1014, at paragraph 7:

[7] It must be understood that the use of violence is not a proper method to deal with personal disputes or conflicts in any circumstances. In the context of Canadian Forces, public brawling between members of our Forces cannot be condoned or tolerated. It affects cohesion, morale and discipline.

[30] In the context of the CAF, public fighting can neither be forgiven nor tolerated. Even if there was no specific impact, this type of gesture is not likely to promote the necessary cohesion and trust between the soldiers assigned to a common task in support of a course held in a CAF school. It also does nothing for confidence within a unit. Promoting cohesion and trust is a responsibility shared by all military personnel

**The objective of sentencing to be emphasized in this case**

[31] Regarding the objective of sentencing to be emphasized in this case, in the Court's view, the circumstances of this case require that the focus be placed on the objectives of denunciation and general deterrence in sentencing the offender.

[32] In terms of the main purpose of sentencing in section 203.1 of the *NDA*, namely the maintenance of discipline, efficiency and morale of the CAF, the sentence proposed must be sufficient to denounce Pte Schenkels' conduct in the military community, and to act as a deterrent to others who may be tempted to settle a disagreement with someone subject to the Code of Service Discipline by fighting.

**Aggravating and mitigating factors**

[33] The Court considers as aggravating, in the circumstances of this case, the subjective seriousness of the offence committed, in that Pte Schenkels chose to resolve a conflict by using violence, a reaction that he regrets and for which he is entirely responsible.

[34] Also aggravating is the fact that Pte Schenkels' unit has written a military impact statement that outlines the negative effect his actions took on the discipline, efficiency and morale of the unit, most particularly in a platoon of other new soldiers early in their formation in the CAF undergoing training.

[35] That said, the Court acknowledges the following mitigating factors: Pte Schenkels took responsibility for his actions and apologized to the victim the next day; Pte Schenkels' guilty plea today, which avoided the expense and energy of running a trial and demonstrates that he is taking responsibility for his actions in this public trial in the presence of members of his former unit and the military community; the fact that the level of violence used was low; that there is some suggestion that bullying may have

been a factor in the lead up to events, as well as the unsolicited statement of the victim earlier in the interaction; and the fact that Pte Schenkels has no criminal or disciplinary record.

**Determination of the sentence to be imposed/assessment of the joint submission**

[36] In terms of assessing the joint submission, in the context of arguments to demonstrate that the joint submission was within a range of similar sentences for similar offences, counsel brought four court martial cases to the Court's attention, many of which were joint submissions:

- (a) *R. v. Boudreault*, 2011 CM 1011: Following a dispute with a co-worker who accused him of stealing, Corporal (Cpl) Boudreault grabbed him by the throat and pushed him up against a wall. The co-worker sustained scratches and red marks on his neck and his uniform was torn. Cpl Boudreault was charged under section 130 of the *NDA* to assault causing bodily harm pursuant to section 267 of the *Criminal Code*, but pleaded guilty to the lesser and included offence of assault under section 266. The military judge accepted the joint submission of a reprimand and a fine of \$2,000;
- (b) *R. v. Castagner*, 2020 CM 4010: A case where the offender pled guilty to a charge under section 86 of the *NDA* for quarrelling with a person subject to the Code of Service Discipline, and a charge under section 97 of the *NDA* for drunkenness. Major (Maj) Castagner was drinking with other CAF members at a bar on Canadian Forces Base (CFB) Trenton and their discussion became heated. When the dispute became physical, the other major cocked a fist and Maj Castagner hit him in the face with a pint glass, causing lacerations, nerve damage, and psychological injuries. The offender was sentenced to the joint submission of a reduction in rank to captain and a fine of \$3,500;
- (c) *R. v. MacDonald*, 2021 CM 4002: Following an argument while manning trenches during an exercise, Pte MacDonald obtained a handful of heavy snow and dumped it on another private's head, leading to minor bruising and swelling near his eye. Following a guilty plea to a charge under section 86 of the *NDA*, the Military Judge accepted the joint submission and sentenced the offender to minor punishment of confinement to barracks for a period of fifteen days; and
- (d) *R. v. Ordinary Seaman J.D. Durante*, 2009 CM 1014: Following a brief encounter inside a bar in Norfolk, Virginia, the victim significantly provoked Ordinary Seaman Durante who then punched him. The victim, who fell and hit his head, required medical attention at a hospital and was placed in a medically induced coma. Following a contested

sentencing hearing, the offender was sentenced to a severe reprimand and a fine of \$2,000.

[37] Although this is a small sample, these cases show that the proposed sentence in this case of a severe reprimand and fine in the amount of \$2,000 is within the range of sentences imposed for similar conduct in the past.

[38] In any event, the issue for me to assess as military judge is not whether I like the sentence being jointly proposed or whether I would have come up with something better. As stated earlier, I may depart from the joint submission of counsel only if I consider that the proposed sentence would bring the administration of justice into disrepute or would otherwise be contrary to the public interest.

[39] In determining whether that is so, I must ask myself whether the joint submission is so markedly out of line with the expectations of reasonable persons aware of the circumstances, that they would view it as a breakdown in the proper functioning of the military justice system. In this case, I do believe that a reasonable person aware of the circumstances would expect the offender to receive a punishment which expresses disapprobation for the failure in discipline involved and have a direct impact on the offender.

[40] The proposed severe reprimand and fine is aligned with these expectations. They meet the objectives of denunciation and general deterrence, without having a lasting effect detrimental to the rehabilitation of the offender.

[41] 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 interests of both the public and the accused. They are highly knowledgeable about the circumstances of the offender and the offence, as they are with the strengths and weaknesses of their respective positions. The prosecutor who proposes the sentence is in contact with the chain of command and victims. They are aware of the needs of the military and civilian communities and is charged with representing the community's interest in seeing that justice be done. Defence counsel is required to act in the accused's best interests, including ensuring that the accused's plea is voluntary and informed. Both counsel are bound professionally and ethically not to mislead the Court. In short, they are entirely capable of arriving at resolutions that are fair and consistent with the public interest, as they have demonstrated in this case.

[42] Considering all the circumstances of the case, 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 would otherwise be contrary to the public interest and I therefore accept the joint submission.



[43] The circumstances of the offence that you admitted to having committed reveal behaviour that is unacceptable. However, you have demonstrated that you accept responsibility for your offence. I hope that this serves as a model to others who may find themselves in similar situations in the future.

[44] As you move forward with the rest of your life away from the military, I believe you should reflect on what you have gone through and recognize the need to respect your future colleagues and to actively promote cohesion and mutual trust, even when this may require you to compromise on your own priorities and ultimately conclude that you do not wish to place yourself in a situation where you must face a judge and a court again.

**FOR THESE REASONS, THE COURT:**

[45] **FINDS** Pte Schenkels guilty of the charge of having fought with a person subject to the Code of Service Discipline, an offence contrary to section 86 of the *NDA*.

[46] **SENTENCES** Pte Schenkels to a severe reprimand and a fine in the amount of \$2,000.

[47] With respect to time to pay the fine, I note that there was no agreement between counsel on this point. I will be frank; I am concerned with your immediate ability to pay this fine. I understand that you are requesting time to secure employment to be able to raise the funds to pay the fine. As such, subsection 145(2) of the *NDA* allows the Court the discretion to determine the terms of payment.

[48] I will direct that Pte Schenkels pay the fine in ten monthly installments of \$200 beginning on 3 January 2025. In my view this will allow Pte Schenkels the opportunity to secure employment and be in a position to pay this fine. Pte Schenkels, it is open for you to pay this fine sooner should you wish to, but this should allow you ample time to pay it.

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**Counsel:**

The Director of Military Prosecutions as represented by Major E. Cottrill

Lieutenant(N) B. Wentzell, Defence Counsel Services, Counsel for Private C.A. Schenkels