



COURT MARTIAL

Citation: *R. v. Livingstone*, 2025 CM 6001

Date: 20250220

Docket: 202414

Standing Court Martial

4th Canadian Division Training Centre
Meaford, Ontario, Canada

Between:

His Majesty the King

- and -

Private S. Livingstone, Offender

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

REASONS FOR SENTENCE

(Orally)

I. Overview

[1] Private (Pte) Livingstone pled guilty to one charge under section 130 of the *National Defence Act (NDA)* for assault with a weapon contrary to paragraph 267(a) of the *Criminal Code*. The particulars of the charge allege that Pte Livingstone did, in assaulting Pte Huang, use a knife, on or about 4 December 2023, at Meaford, Ontario. After Pte Livingstone was provided with the explanations required by the *Queen's Regulations and Orders for the Canadian Forces (QR&O)*, I accepted and recorded his guilty plea. As part of his submissions at the sentencing hearing, the prosecution recommended that I impose a punishment of fourteen days' detention, and a fine in the amount of \$3,000, as well as a weapons prohibition order to be in place for three years. Defence counsel proposed that I impose a punishment of a severe reprimand or a reprimand with a fine in the amount of \$3,000 (to be paid in bi-monthly instalments of \$500), as well as a weapons prohibition order to be in place for one year. I must,

therefore, determine a sentence that is proportionate to the gravity of the offence and to the offender's degree of responsibility.

[2] 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 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 Agreed Statement of Facts, the documentary evidence, the exhibits, testimony and authorities submitted during the course of the sentencing hearing. The prosecution informed the Court that Pte Huang, the person victimized by the actions of the offender, was informed of the details pertaining to the current proceedings, including the guilty plea, and did not wish to provide a victim impact statement. I have also considered the submissions of counsel, both for the prosecution and for the defence.

Context

[4] The relevant facts surrounding the commission of the offence were summarized in the Statement of Circumstances, to which Pte Livingstone admitted as true, and read as follows:

“STATEMENT OF CIRCUMSTANCES

Background

1. In December of 2023, Pte Andrew Huang and Private Shem Livingstone were both serving as regular force members at the 4th Canadian Division Training Centre.

2. On December 4th 2023, at approximately 2000 hrs, Pte Huang and Pte Livingstone and approximately six other students or members awaiting training were in the common room of the accommodation building M-207. Pte Huang was not drinking, but others, including Pte Livingstone, were drinking alcohol.

3. Pte Huang was playing a video game. He heard Pte Livingstone and another Private talking about him. Pte Huang finished the round of his video game, then approached Pte Livingstone and asked why he was talking about him. In response, Pte Livingstone stood up and faced Pte Huang, took out a black-handled knife with a black blade approximately four inches long, and placed the dull side of the blade against Pte Huang's throat. At the same time, Pte Livingstone placed a hand on the back of Pte Huang's neck, preventing Pte Huang from moving backward. Pte Huang did not move. He stared at Pte Livingstone to show he was not scared, and said “do it”. Pte Livingstone turned the blade so the sharp side was against

Pte Huang's throat. He left it there for about ten seconds, then withdrew it. Pte Huang and Pte Livingstone then separated.

4. Pte Huang did not immediately report the incident, but he provided a statement to Military Police when the incident was reported by others. Pte Livingstone was arrested and bladed items were seized from him, including the black knife with a black blade that was used to assault Pte Huang. Two photographs of that knife are entered as exhibits 7 and 8."

Evidence at the sentencing hearing

[5] In this case, the prosecutor provided the documents required under QR&O paragraph 112.51(2) that were supplied by the chain of command, namely a statement as to the particulars of service of the offender, his career summary in the form of a Member's Personnel Record Resume and a copy of Pte Livingstone's pay guide. The offender has no conduct sheet, revealing that Pte Livingstone is a first-time offender with no previous record.

[6] The prosecution called one witness on sentencing who produced the military impact statement.

[7] Prosecution sought to submit into evidence a two-page military impact statement authored by Lieutenant-Colonel (LCol) Tobin, the Commanding Officer (CO) of 4th Canadian Division Training Centre (4 CDTC). LCol Tobin read the military impact statement into the record, and defence counsel sought to cross-examine him with respect to its contents.

[8] Defence counsel objected to the phrases "I do not trust his judgement, and I would not ask any other soldier to serve on a team with him", and "warrant condemnation in the strongest possible terms from the CAF. Since I took command last August, I have had two other complaints of physical assaults between soldiers, with another investigation launched only last week." being included in the statement on the basis that they called for opinions that were not factually based, and on the basis of relevance, in that LCol Tobin did not link these statements to the specific conduct of the offender that is the subject of this sentencing hearing. Defence counsel cross-examined LCol Tobin on the contents of the military impact statement, and the witness provided more details regarding the factual basis for his statements that the Court will refer to later in this judgement.

[9] Prosecution submitted that the phrases at issue are relevant and are based on the CO's assessment of the effect of the offender's actions on discipline, efficiency and morale of the unit and its members, and that the phrases fall within the meaning of subsection 203.71(1) of the *NDA*.

[10] With respect to LCol Tobin's testimony, when asked by defence counsel regarding how he could come to the opinion that he "did not trust his judgement, and

would not ask any other soldier to serve on a team with him”, when he did not directly supervise the member and in fact had only had a few brief interactions with him, the witness specified that he based this opinion on the fact that he would not trust any soldier who had displayed the judgement that Pte Livingstone had in holding a knife to Pte Huang’s throat.

[11] When the witness was asked to explain his opinion that Pte Livingstone’s actions “warrant condemnation in the strongest possible terms from the CAF” and to explain why he felt it was relevant to include a reference to three other complaints of assaults that had occurred since the incident, LCol Tobin confirmed that he did not personally link Pte Livingstone to these assault complaints, however explained the cumulative effect that he observed of these types of occurrences on the discipline, efficiency and morale of the soldiers under his command. By way of example, he explained that many of these soldiers reside in group accommodations on the base, where trust is essential, and when people are assaulted in their homes, he does not see how that could not affect discipline, efficiency and morale in his opinion. He also stated that he felt that these occurrences affected soldiers’ feelings of safety and security. As such, he confirmed his opinion that these actions should be condemned in the strongest possible terms by the Canadian Armed Forces (CAF).

[12] The Court finds that based on the explanations provided by the witness, the statements in question directly address the harm done and the impact to discipline, efficiency and morale as a result of the commission of the offence. As a result, the Court accepted the military impact statement as written and directed that it be marked as an exhibit in the proceedings.

Military impact statement

[13] A military impact statement in the form of a letter by the CO of 4 CDTC, LCol Tobin, dated 14 February 2025, which stated the following:

“1. On four December 2023, Pte(B) Livingstone assaulted a fellow soldier with a weapon. This assault took place in the barracks where all the junior soldiers live in shared accommodations. The negative impact on the soldiers, and the discipline of this unit cannot be overstated.

2. Members of the Canadian Armed Forces hold a monopoly on the application of violence on behalf of Canada. Soldiers in the infantry are closer to this responsibility and are more personally involved in its focused application than any other MOSID in the CAF. Soldiers at 4 CDTC are taught how to operate across the spectrum of conflict, using all manner of tools and weapons. The training is physically and mentally challenging. In the training of soldiers, the ability to do great violence is necessarily balanced against great discipline and the application Canadian ethics and values. It is a tremendous responsibility that must only be borne by those individuals who accept and internalize the CAF Ethos, as clearly

articulated in *Trusted to Serve*. Pte(B) Livingstone received training on *Trusted to Serve* during BMQ, and again during his time at 4 CDTC.

3. Pte(B) Livingstone's actions have not only breached the trust of his fellow soldiers, but have damaged it irreparably. Soldiers are expected to take their place on a team, placing the welfare of that team above their own interests. They are expected accept the hardships of military service, share in the hardships of their team, and look out for their fellow soldiers. Pte(B) Livingstone's actions have shown that he has failed to internalize the CAF Values of loyalty, integrity, courage, and inclusion.

4. Pte(B) Livingstone has failed to live up to the ethical principles of respecting the dignity of all persons, serving Canada before self, and obeying and supporting lawful authority. He has failed in nearly every professional expectation expressed in *Trusted to Serve*. I do not trust his judgement, and I would not ask any other soldier to serve on a team with him.

5. Pte(B) Livingstone's actions are unworthy of the uniform he has chosen to wear and warrant condemnation in the strongest possible terms from the CAF. Since I took command last August, I have had two other complaints of physical assaults between soldiers, with another investigation launched only last week. The members of this unit, and indeed graduates of 4 CDTC across the Army are watching to see the consequences of discarding military discipline and turning on their peers."

[14] For its part, the defence produced the following documents: an Agreed Statement of Facts providing further details regarding Pte Livingstone's arrest and post arrest activities; items seized and surrendered to the military police; information regarding his current medical and mental health challenges; as well as the treatment he has received to date from a social worker with respect to his mental health challenges, and for alcohol.

Circumstances of the offender

[15] The documentary evidence listed at article 111.17 of the QR&O, additional documentary evidence submitted by counsel, as well as the submissions of counsel were examined and considered by the Court and reveal the following circumstances relevant to Pte Livingstone:

- (a) Pte Livingstone is twenty-one years old and joined the CAF as a regular Force member on 8 June 2023. He successfully completed his Basic Military Qualification (BMQ) course on 15 September 2023. He was posted to 4 CDTC in Meaford, Ontario on the same date;
- (b) Pte Livingstone does not have a conduct sheet or a criminal record;

- (c) Pte Livingstone is currently involved in administrative proceedings, related to irregularities on enrolment, which could result in his release. Pte Livingstone is contesting the matter;
- (d) Pte Livingstone wishes to remain employed in the CAF, though he wishes to change his occupation within the CAF;
- (e) on 20 August 2024, Pte Livingstone consulted a psychiatrist. He was diagnosed with post-traumatic stress disorder (PTSD), depression, body dystrophia (with positive insight), some anxiety and insomnia;
- (f) in June of 2024, Pte Livingstone was referred to a social worker to address depressive symptoms, symptoms of post-traumatic stress, and alcohol. It was noted that the symptoms did not stem from an operational stress injury (OSI); and
- (g) Pte Livingstone attended eight appointments with social worker Lori Lanktree between June and November of last year. They have agreed to meet again when needed.

[16] Pte Livingstone apologized to the Court for his actions and stated that he regretted his actions. He stated that this incident made him realize that he needed help, and that he sought help to avoid a reoccurrence. Pte Livingstone stated that he wished to thank Pte Huang for denouncing his conduct as it helped him grow and wished that he could personally tell him this and apologize. He stated that he took full responsibility for his actions and would accept whatever punishment the Court saw fit to impose.

II. What is the appropriate punishment in this case, considering the gravity of the offence and the offender's degree of responsibility?

Positions of the parties

[17] In my determination of a proper punishment to impose in the circumstances, I first considered the position of the prosecution.

[18] The prosecution recommended that the Court impose a sentence of fourteen days' detention, and a fine in the amount of \$3,000, and asked the Court to impose a weapons prohibition order to be in place for three years. He explained that the objective gravity of the offence is serious, considering the maximum punishment that can be imposed is imprisonment for not more than ten years. He contended that the case is also subjectively serious. The conduct of the offender, holding a knife with a 4-inch blade to the offenders throat, first using the blunt side, then on the sharp side for a period of approximately ten seconds, while placing his other hand on the back of the victim's neck, preventing him from moving backward, posed a risk of serious bodily harm to a

fellow CAF member. As a result, denunciation, deterrence, both general and specific, as well as rehabilitation should be the most important objectives for this case.

[19] The prosecution identified the following eight aggravating factors: the offender's use of a potentially lethal weapon with no provocation; that the accused made no attempt to de-escalate the situation; that the offender first placed the blunt side of the knife's blade against the victim's throat, then the sharp side of the knife's blade against the victim's throat; that the offender placed his other hand on the back of the victim's neck, preventing him from moving backward; that there was no evidence that the attack was provoked; that the assault was committed in the presence of six other students; that the offender was not deterred by their presence; and the fact that the offender had consumed alcohol at the time of the offence.

[20] The prosecution also considered as mitigating: Pte Livingstone's relatively young age of twenty-one years old; the absence of a conduct sheet or criminal record; that he sought assistance for mental health and alcohol; and Pte Livingstone's guilty plea which had the effect of saving court time, and the requirement for the victim and witnesses to testify.

[21] The prosecution contended that the sentence must be severe enough to deter and denounce the conduct, and that the proposed sentence takes into account the mitigating factors. It is appropriate based on the circumstances of the offence and the offender and is in line with sentences for similar convictions of assault with a weapon, and is of the view that a sentence of fourteen days' detention would serve to denounce and deter the conduct, and allow the offender the chance of rehabilitation given his relative young age and junior rank. The prosecution stated that but for the mitigating factors, the case may have warranted a sentence of dismissal with disgrace from His Majesty's service, however this would not have allowed the offender the rehabilitative aspect that the punishment of detention offers. The prosecution specifically noted that they are opposed to the suspension of a sentence of detention because in this specific case, the sentence would not have any of the requisite effects of denouncing and deterring the conduct and would also not assist in the rehabilitation of the offender.

Cases relied on by prosecution

[22] In support of his recommendation, the prosecution referred to the following five cases:

- (a) *R. v. NongQayi*, 2023 CM 4017: a case where a private was convicted by General Court Martial (GCM) of three offences, including two under section 130 of the *NDA* for assault with a weapon (a piece of glass) contrary to section 267 of the *Criminal Code*, and uttering threats to cause death or bodily harm (involving a sheathed knife) contrary to section 264.1 of the *Criminal Code*; and for quarrelling with a person subject to the Code of Service Discipline (CSD) contrary to section 86 of the *NDA*. These offences occurred over two distinct incidents and the

offender who had been released after the first incident, subsequently spent ninety-one days in pre-trial custody after a military judge ordered that the accused be retained in custody after the second incident. The military judge ultimately imposed a sentence of one day of imprisonment (suspended) and a fine in the amount of \$2,000, and issued a weapons prohibition order for the period of three years;

- (b) *R. v. Mills*, 2008 CM 4013: a case where a master corporal, whose rank was corporal at the time of the offence, was convicted of an offence punishable under section 130 of the *NDA* of assault with a weapon, contrary to paragraph 267(a) of the *Criminal Code* for cocking his C8 rifle when confronting a fellow soldier in Kandahar, using the weapon in a threatening manner after a brief fight with the soldier while intoxicated. The military judge accepted the joint submission of thirty-days' detention, suspended and issued a weapons prohibition order for the period of two years;
- (c) *R. v. Anderson*, 2014 CM 4013: a case where a master corporal was found guilty of one charge under section 130 of the *NDA* for assault with a weapon contrary to paragraph 267(a) of the *Criminal Code* for holding a pocketknife toward the officer cadet he was instructing, saying "I could kill you right now". This incident occurred at a social event. A punishment of a severe reprimand and a fine in the amount of \$3,000 was imposed. The military judge in that case found that based on the circumstances of the case and the offender that the sentencing objectives should focus on denunciation and rehabilitation, and the military judge determined that detention was not required. Indeed, quoting Lamont M.J. in *R. v. Corporal Levesque*, 2005CM08, he accepted that incarceration may be an appropriate punishment when misuse of weapons is proven, however it will not necessarily be imposed when the offender is not motivated by hostility against a fellow military member. The military judge in *Anderson* ultimately concluded that a reduction in rank would also be a disproportionate punishment and result in an extensive period of rehabilitation for the accused, who held the rank of master corporal. The military judge imposed a severe reprimand combined with a fine, and issued a weapons prohibition order for a period of five years; and
- (d) *R. v. Corporal Levesque*, 2005CM08: a corporal who was a newly qualified member of the military police (MP) pled guilty to two charges of conduct to the prejudice of good order and discipline for pointing his service pistol against the chest of a fellow MP member to demonstrate that the weapon would not fire, and, after being cautioned about the inappropriateness of his actions, a few days later pointed a replica pistol at the same member. Following a joint submission, the member received a reprimand and a fine in the amount of \$1,000;

[23] Counsel for the prosecution explained that he arrived at his recommendation on sentence using the punishments imposed in *NongQayi*, *Anderson*, and *Mills*, which bear the closest resemblance to the case at bar.

[24] In my determination of a proper punishment to impose in the circumstances, I also gave equal consideration to the position of defence counsel.

[25] Counsel for the defence contends that either a reprimand or a severe reprimand and a fine in the amount of \$3,000 would be an appropriate sentence in this case; however, should the Court not support this approach, she recommended the imposition of one day of detention and recommended that the sentence of detention be suspended. Defence counsel also recommended that the Court impose a weapons prohibition order for a period of one year.

[26] Defence counsel highlighted the fact that the offender was only twenty years old at the time of the offence, and his relatively young age is a strong mitigating factor that the Court should use to guide its assessment of an appropriate sentence in this matter.

[27] With respect to other mitigating factors, defence counsel contended that Pte Livingstone was at the very beginning of his career in the CAF, was a first-time offender with no conduct sheet, sought the assistance of medical professionals to diagnose the nature of his mental health challenges, and followed up with medical professionals to ensure he received the support he required to address his challenges.

[28] Defence counsel contended that there is no risk that Pte Livingstone will reoffend because the conduct was out of character and pointed out that Pte Livingstone fully respected his conditions of release, is remorseful, accepted full responsibility by apologizing to the Court for his actions, and pled guilty to this offence. She argued that there was no evidence of hostility in Pte Livingstone's actions when he held the blade of the knife on Pte Huang's throat. She contends that Pte Livingstone would like to continue his career in the CAF, albeit in a different trade, and since the occurrence of the offence, he has taken concrete steps to learn from his mistakes, address his challenges and rehabilitate himself. Defence counsel submitted that denunciation and rehabilitation should be the main objectives of the sentence because the offender would like to continue his career in the CAF and should be allowed to continue making progress.

[29] Defence counsel recommended that a sentence of a reprimand or a severe reprimand, coupled with a fine in the amount of \$3,000, payable bi-monthly in the amount of \$500, would adequately address the requirements of discipline, efficiency and morale and be severe enough to denounce the conduct, while still allowing Pte Livingstone, who at a relatively young age and junior rank, and considering the point where he finds himself in his career with the CAF, could continue making progress towards his rehabilitation.

[30] Counsel for the defence argued that the proposed sentence takes into account the mitigating factors, is appropriate based on the circumstances of the offence and the offender and is in line with sentences for similar convictions of assault with a weapon. Conversely, defence counsel submitted that should the Court be considering a punishment of incarceration, that the punishment of detention be suspended to allow Pte Livingstone the best chances of rehabilitation. Defence counsel emphasized that in her view, there was no evidence that there was any hostility in Pte Livingstone's actions towards the victim, and this fact should guide the Court in imposing either a punishment that does not include detention, or the suspension of the punishment of detention.

Cases relied on by defence counsel

[31] Defence counsel referred to the following cases in support of her recommendation:

- (a) *R. v. Goulding*, 2023 CMAC 2019: a case where a master corporal was convicted by a GCM on a total of four charges; those being two charges under section 130 of the *NDA* for assault, contrary to section 266 of the *Criminal Code* for making unwarranted physical contact by tagging one student in the private area, and disrupting another's balance by shaking him while he was using the urinal, one charge under section 130 of the *NDA* for assault with a weapon contrary to paragraph 267(b) of the *Criminal Code* for striking an unsuspecting student by tossing a shoe at them, and one charge contrary to section 97 of the *NDA* for drunkenness. The military judge described the three assaults factually as more harassing than violent, and directed an absolute discharge on those charges and imposed a severe reprimand and a fine in the amount of \$4,800 for the charge of drunkenness; and
- (b) *R. v. Anderson*, 2014 CM 4013: previously summarized in this judgement.

[32] Counsel for the defence explained that she arrived at her recommendation on sentence using the punishments imposed in *Goulding* and *Anderson*, which bear the closest resemblance to the case at bar.

Sentencing Principles

[33] When determining a sentence, the Court must be guided by the sentencing principles contained in the *NDA*. In this context, section 203 of the *NDA* provides that:

- (1) The fundamental purpose of sentencing is to maintain the discipline, efficiency and morale of the Canadian Forces.
- (2) This is to be achieved by imposing 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;
- (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;
- (g) to separate offenders, if necessary, from other officers or non-commissioned members or from society generally;
- (h) to provide reparations for harm done to victims or to the community; and
- (i) to promote a sense of responsibility in offenders, and an acknowledgment of the harm done to victims and to the community.

[34] When imposing a sentence, a sentencing judge must also take into consideration the following principles:

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

[. . .]

203.3(a) a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender . . . ;

(b) a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;

(c) an offender should not be deprived of liberty by imprisonment or detention, if less restrictive punishments may be appropriate in the circumstances;

(c.1) all available punishments, other than imprisonment and detention, that are reasonable in the circumstances and consistent with the harm done to victims or to the community should be considered for all offenders . . . ;

(d) a sentence should be the least severe sentence required to maintain the discipline, efficiency and morale of the Canadian Forces; and

(e) any indirect consequences of the finding of guilty or the sentence should be taken into consideration.

[35] 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.

[36] As recognized by the Supreme Court of Canada, courts martial allow the military to enforce internal discipline effectively and efficiently.

[37] Punishment is the ultimate outcome once a breach of the CSD has been recognized following either a trial or a guilty plea.

[38] 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.

[39] 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.

[40] The military judge imposing punishment should ensure, at a minimum, that the circumstances of the offence, and the offender 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.

[41] As this Court informed Pte Livingstone when he entered his 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.

[42] 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.

Circumstances of the offence – Aggravating and mitigating factors

[43] The Court has considered the objective gravity of the offence in this case. The maximum punishment that a court martial may impose for assault with a weapon is imprisonment for a term of not more than ten years. Objectively, it is therefore a serious offence.

[44] 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 frustration when things don't go the way we might like, and to refrain from expressing those frustration in acts of physical violence . . .

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

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

[T]he use of violence is not a proper method to deal with personal disputes or conflicts in any circumstances. In the context of the Canadian Forces, public brawling between members of our Forces cannot be condoned or tolerated.

[47] 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 regiment. Promoting cohesion and trust is a responsibility shared by all military personnel, especially those most senior in rank and experience.

[48] The Court considered the following factors to be aggravating in this case:

- (a) the subjective seriousness of the offence committed, in that the level of violence used, most particularly being the escalation of violence displayed by Pte Livingstone, while having a hand placed on the back of the victim's neck preventing him from moving backward, and first, holding the blunt side of a knife's blade against the victim's throat and then, applying the sharp side of the knife's blade against the victim's throat for about ten seconds, when the victim did not show fear. This makes the circumstances of the offence more serious due to the risk of injuries and the level of violence used;
- (b) the fact that the attack was unprovoked;
- (c) the fact that the offender was motivated by hostility or ill-feeling against the victim. The Court makes this finding based on the fact that Pte Livingstone chose to escalate the level of force by applying the sharp side of the knife's blade against the victim's throat when the victim did not show fear after Pte Livingstone had applied the dull side of the knife's blade against his throat; and
- (d) also the fact that Pte Livingstone's 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.

[49] The Court also identified the following mitigating factors:

- (a) Pte Livingstone took responsibility for his actions and apologized to the Court, acknowledging that he regretted his actions;
- (b) Pte Livingstone's guilty plea, 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 unit and the military community;

- (c) the absence of any criminal or disciplinary record, showing that Pte Livingstone is a first-time offender;
- (d) Pte Livingstone's relatively young age and junior rank;
- (e) the fact that Pte Livingstone has taken steps to address his mental health and personal challenges by seeking out medical professionals who could assist him and obtaining treatment; and
- (f) the absence of any evidence demonstrating any temporary or permanent consequences on the victim.

Principles of sentencing deserving greatest emphasis/Priority of objectives

[50] Regarding the objectives 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, but not to the detriment of rehabilitation, which I find important in this case. In hoping to achieve the purpose of denouncing the conduct and deterring others, the challenge lies in reconciling what is needed to deter others from committing something similar, while still ensuring that Pte Livingstone has the best possibility of success in his personal rehabilitation.

[51] In terms of the main purpose of sentencing in section 203.1 of the *NDA*, namely "to maintain the discipline, efficiency and morale of the Canadian Forces", the sentence proposed must be sufficient to denounce Pte Livingstone's conduct in the military community, and to act as a deterrent to others who may be tempted to inflict or threaten violence while using a weapon to settle a disagreement.

Parity

[52] To determine the appropriate sentence for Pte Livingstone, I must first identify the objective range of sentences for similar offences. This assessment considers typical offence characteristics, assuming the accused has good character and no criminal record. The sentencing process requires military judges to closely examine past precedents and compare the facts of the case with similar situations. Treating similar conduct with parity is crucial for maintaining discipline in the military context.

[53] Having considered the circumstances surrounding the commission of the offence and the offender's personal situation, the Court examined precedents for similar offences to determine whether counsel's proposed sentences are similar to sentences imposed on similar offenders in similar circumstances.

[54] Upon reviewing the case law that was provided, I find that some of the cases can be distinguished because of the nature of the facts, which are very different than those in the case at bar, and some of the situations presented in their cases have facts that are

much less aggravating than the case at bar. I find that the case at bar has fairly significant aggravating circumstances, and as such, the cases that guide the Court when applying the parity principle in this case are *NongQayi*, *Mills* and *Anderson*. I also found Lamont M.J.'s words in *Levesque* helpful in assisting this Court in identifying the appropriate range of sentencing to be applied.

[55] Equally, the Court found the case of *Goulding* submitted by the defence of limited value as the assaults in this case were found to be more harassing than violent, and that the weapon used in this case involved the tossing of a shoe, resulting in minimal risk or injury to the victim.

[56] The wide range of cases before me range from a reprimand to imprisonment, which underscores the extensive spectrum of potential punishments for the offence of assault with a weapon. Consequently, it is possible to find case law that supports a varied range of penalties for this offence. A comprehensive examination of the case law exemplifies the critical importance of carefully considering the context and circumstances surrounding an assault when determining the offender's level of responsibility. It is clear that some of the jurisprudence relied on by counsel shows an important distinction, demonstrating that with respect to cases involving unprovoked attacks or the use of weapons, courts have deemed them more deserving of the most severe sanctions.

[57] After thoroughly reviewing all the case law presented by both the prosecution and defence of the precedents of punishments imposed in the past for similar offences, I find that for findings of guilt for offences similar to which Pte Livingstone has pled guilty, punishments range from a fine combined with a severe reprimand, to a relatively short period of detention coupled with a fine for the most serious cases. That is sufficient to allow the Court to conclude that the proposed sentence by the prosecution is well within the range of punishments, while defence counsel's recommended sentence is at the lower end of the spectrum.

Sentence to impose

[58] The imposition of a sentence must be individualized to Pte Livingstone, while promoting the operational effectiveness of the CAF by contributing to the maintenance, efficiency, and morale of the unit.

[59] With respect to his individual circumstances, Pte Livingstone is currently advantageously employed in the printing shop at 4 CDTC. He was diagnosed with PTSD, depression, body dystrophia (with positive insight), some anxiety and insomnia, and has received treatment from a social worker to address depressive symptoms, symptoms of post-traumatic stress, and alcohol. It was noted that the symptoms did not stem from an OSI. Pte Livingstone is currently involved in administrative proceedings, related to irregularities on enrolment, which could result in his release, and he is contesting the matter. Pte Livingstone wishes to remain employed in the CAF, though he wishes to change his occupation within the CAF.

Severe reprimand

[60] Counsel for the defence proposed a reprimand or a severe reprimand as the appropriate sentence, coupled with a fine in the amount of \$3,000.

[61] Based on the scale of punishments set out within the *NDA*, the imposition of a severe reprimand is reserved for serious offences. A severe reprimand is intended to send a message to the larger community and the unit that conduct for which the offender has been found guilty is unacceptable and will be punished. It is intended to be a stain that stays on the member's record for the foreseeable future.

[62] In this case, however, the Court finds that a sentence of a severe reprimand coupled with a fine in the amount of \$3,000 would not sufficiently align with the gravity of the offence and the degree of the offender's responsibility. The circumstances of this offence, and the level of violence used, most particularly being the escalation of violence displayed in an unprovoked attack by Pte Livingstone, requires that a more severe punishment on the scale of punishments be considered to ensure that the objectives of denunciation and general and specific deterrence are met.

Detention

[63] A sentence of detention was proposed by the prosecution. Paragraph 203.3(c) of the *NDA* is clear that an offender should not be deprived of liberty if less restrictive sanctions other than imprisonment or detention may be appropriate in the circumstances. On one hand, general deterrence demands a clear and unequivocal message to dissuade anyone from engaging in such violence against another peer. On the other hand, I must consider whether only a sentence of detention could resonate with would-be offenders as a consequence of engaging in this sort of conduct.

[64] Detention is a form of incarceration which has the specific objective of rehabilitation of the offender as a serving member of the CAF and is not uniquely a punitive tool. Specifically, the Notes of article 104.09 of the QR&O provides in part that:

(A) In keeping with its disciplinary nature, the punishment of detention seeks to rehabilitate service detainees, by re-instilling in them the habit of obedience in a structured, military setting, through a regime of training that emphasizes the institutional values and skills that distinguish the Canadian Forces member from other members of society. Specialized treatment and counselling programs to deal with drug and alcohol dependencies and similar health problems will also be made available to those service detainees who require them. Once the sentence of detention has been served, the member will normally be returned to his or her unit without any lasting effect on his or her career.

[65] A fit sentence must reflect the moral culpability of Pte Livingstone and the gravity of the offence to which he pled guilty. The Court found Lamont M.J.'s comments in *Levesque* useful when he stated at paragraph 20:

In this case, I do not believe that a sentence involving incarceration is called for. The view I take of this case would have been very different if there had been any suggestion that the offender was motivated by any hostility or ill-feeling against his fellow military police member. There is no such suggestion in this case. Rather, the actions of the offender seem to have been impulsive, ill-considered, and not properly thought out.

[66] The Court finds that the circumstances of this offence, and the level of violence used, most particularly being the escalation of violence displayed in an unprovoked attack by Pte Livingstone, while having a hand placed on the back of the victim's neck preventing him from moving backward, and first, holding the blunt side of a knife's blade against the victim's throat and then, applying the sharp side of the knife's blade against the victim's throat when the victim did not show fear, demonstrates that the offender was motivated by hostility or ill-feeling against the victim and requires that a sentence of detention is the minimum punishment that could be imposed in this case to ensure that the objectives of denunciation and general and specific deterrence are met.

[67] After considering the gravity of the offence, Pte Livingstone's level of responsibility and his personal circumstances, I find that the punishment of detention is the most appropriate sentence.

Suspension of detention

[68] In her oral submissions, defence counsel argued that if the Court finds that a sentence of detention is required, the Court should consider suspending the sentence pursuant to section 215 of the *NDA*.

[69] It must be noted that the consideration of a suspension of a term of detention does not come into play until the Court has made a determination that detention is one of the appropriate punishments. An order for suspension of execution of a punishment of detention is not a distinct form of punishment, the punishment itself is detention.

[70] Subsection 215(1) of the *NDA* reads as follows:

215(1) If an offender is sentenced to imprisonment or detention, the execution of the punishment may be suspended by the court martial that imposes the punishment or, if the offender's sentence is affirmed, is substituted or is imposed on appeal, by the Court Martial Appeal Court.

Further, subsection 216(2) of the *NDA* states:

(2) A suspending authority may suspend a punishment of imprisonment or detention, whether or not the offender has already been committed to undergo that punishment, if there are imperative reasons relating to military operations or the offender's welfare.

[71] In considering whether to suspend the execution of a punishment of imprisonment or detention, the Court must weigh several factors. There are two requirements that must be met to obtain a suspension of the custodial punishment:

- (a) the offender must demonstrate, on a balance of probabilities, that his or her particular circumstances justify a suspension of the punishment of imprisonment or detention; and
- (b) if the offender has met this burden, the Court must consider whether a suspension of the punishment of imprisonment or detention would undermine the public trust in the military justice system, in the circumstances of the offence and the offender, including but not limited to, the particular circumstances justifying a suspension.

[72] In advocating for the Court to suspend the execution of the period of detention, defence counsel argued that Pte Livingstone was at the very beginning of his career in the CAF, was of a relatively young age, was a first-time offender with no conduct sheet, sought the assistance of medical professionals to diagnose the nature of his mental health challenges, and followed up with medical professionals to ensure he received the support he required to address these challenges. She contends that Pte Livingstone would like to continue his career in the CAF, albeit in a different trade, and since the occurrence of the offence, he has taken concrete steps to learn from his mistakes, address his challenges and rehabilitate himself, and that a period of detention would not assist Pte Livingstone in making progress in this regard. Defence counsel submitted that these particular circumstances regarding Pte Livingstone justify the suspension of the punishment of imprisonment.

[73] The Court finds that Pte Livingstone has not demonstrated on a balance of probabilities that his particular circumstances justify the suspension of a punishment of detention. Specifically, there is no evidence before the Court to explain what factors exist in his personal circumstances that would justify or require that the punishment of detention be suspended. In sum, Pte Livingstone failed to demonstrate how a period of detention, which is meant to be rehabilitative in nature, would negatively affect his rehabilitative progress. The Court is of the view that a relatively short period of detention would be beneficial to the offender.

[74] Although I need not assess the second requirement to suspend a sentence of detention, the Court will note that even if the Court had found that Pte Livingstone had demonstrated on a balance of probabilities that his particular circumstances justify the suspension of a punishment of detention, the Court would have found that in this case, a suspension of the punishment of detention would undermine the public trust in the military justice system, in the circumstances of the offence and the offender, including but not limited to, the particular circumstances justifying a suspension. The Court would have based this finding on two considerations:

- (a) that public trust in the military justice system would be undermined considering i. the gravity of the particulars of this offence being the violence used in this case, and ii. the degree of responsibility of the offender in this case; and

- (b) the fact that a suspension would have undermined the public trust in the military justice system, as evidenced in the military impact statement and the testimony of Pte Livingstone's CO, who identified the need for strong denunciation and deterrence of these types of offences for his particular unit.

[75] Taking all of the circumstances into consideration, the Court is of the view that suspending the punishment of detention would not be justified in this case and would not allow a punitive component of the requisite magnitude to align with the gravity of the offence and the degree of the offender's responsibility.

[76] The sentence of detention, coupled with a fine is aligned with these principles. They meet the objectives of denunciation, deterrence and rehabilitation, without having a lasting effect detrimental to the rehabilitation of the offender.

[77] The assault with a weapon that Pte Livingstone committed on Pte Huang, culminating in Pte Livingstone holding the sharp side of a 4-inch blade against the victim's neck for a period of approximately ten seconds is serious and warrants a sentence that falls at the higher end of the range identified for similar offences.

[78] Although defence counsel recommended that the period of detention should only be one day, I find this too short, both to address the gravity of the offence and the degree of the offender's responsibility, but also from the rehabilitative aspect. In my view, in order to give Pte Livingstone every possible opportunity to regain the discipline required to turn his life around, I believe that a slightly longer period of detention is necessary in his specific circumstances.

[79] 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 as outlined, I find that imposing a punishment composed of fourteen days' detention and a fine in the amount of \$3,000, payable in six bi-monthly installments of \$500, would be the least severe sentence required to maintain the discipline, efficiency and morale of the CAF, and a proportionate sentence to impose in the circumstances.

Ancillary orders

[80] Pursuant to section 196.14 of the *NDA*, considering that the offence for which the Court has passed sentence is a primary designated offence within the meaning of section 196.11 of the *NDA*, it is hereby ordered that a number of samples and bodily substances that are reasonably required, be taken from Pte Livingstone for the purposes of forensic DNA analysis.

[81] As the offence in this case falls within paragraph 147.1(1)(a) of the *NDA*, an offence in the commission of which violence against a person was used, the Court has the discretion to make a weapons prohibition order. The test is outlined at subsection 147.1(1) and states:

If a court martial considers it desirable, in the interests of the safety of an offender or of any other person, it shall — in addition to any other punishment that may be imposed for the offence — make [such] an order . . .

[82] The prosecution submitted that a prohibition order is required for a period of three years, while defence counsel submitted that a weapons prohibition order is required for a period of one year, given that the offender is not a threat. Although the Court notes that the offender has no conduct sheet or criminal record, his behaviour on 4 December 2023 constituted a threat, in a public place, which remains unexplained. In the circumstances, having considered the submissions made by counsel on this point, the Court considers it desirable, in the interest of the safety of the public, to make a prohibition order under section 147.1 of the *NDA* for a period of three years.

III. Conclusion

[83] The circumstances of the offence that you admitted to having committed reveal behaviour that I consider highly unacceptable. I know that you have reflected on this and have come to that realization as well.

[84] You have demonstrated that you accept responsibility for your offence, and your counsel has asked me to consider your conduct as a significant lack of judgement on your part, during a period in your life and career where you were facing some medical and personal challenges. I am prepared to do that.

[85] Without downplaying the severity of the acts you committed, the Court has decided to impose a sentence that recognizes your capacity to make a positive contribution and limits consequences to you.

[86] I am sure this experience has given you a great deal to consider and that you have taken away from it the appropriate lessons. I believe you should reflect on what you have gone through and recognize your responsibility for your decisions and actions, and for the harm you caused and ultimately conclude that you do not wish to place yourself in a situation where you must face a judge and a court again. I want you to know that everyone deserves a chance to move forward and start anew. As you move forward with the rest of your career, you should focus on the opportunities ahead to learn, grow and emerge from this experience as a stronger and wiser soldier who is determined to do much better in the future. I am certain you are capable of doing this.

FOR THESE REASONS, THE COURT:

[87] **FINDS** Pte Livingstone guilty of the charge under section 130 of the *NDA* for assault with a weapon contrary to paragraph 267(a) of the *Criminal Code*.

[88] **SENTENCES** Pte Livingstone to fourteen days' detention and a fine in the amount of \$3,000, payable in six bi-monthly installments of \$500, beginning on 15

March 2025. The fine must be fully paid at the latest on 31 May 2025, or upon release from the regular Force of the CAF, whichever comes first.

[89] **ORDERS** the taking of bodily substances for forensic DNA analysis pursuant to section 196.14 of the *NDA*.

[90] **ORDERS** Pte Livingstone, for a period of three years starting today, from possessing any firearm, cross-bow, prohibited weapons, restricted weapons, prohibited device, ammunition, prohibited ammunition or explosive substance, or all such things, pursuant to section 147.1 of the *NDA*. Pte Livingstone is ordered to turn over any such weapons within seven days after release from detention or release pending appeal.

The sentence was passed at 1028 hours on 20 February 2025.

Counsel:

The Director of Military Prosecutions as represented by Major E.J. Cottrill and Captain I.M. Shaikh

Lieutenant(N) D. De Thomasis, Defence Counsel Services, Counsel for Private S. Livingstone