COURT MARTIAL

Citation: *R. v. Harper* 2025 CM 6004

Date: 20250527
Docket: 202429

Standing Court Martial

5 Canadian Division Support Group, Garrison St. John's
St. John's, Newfoundland and Labrador, Canada

Between:

His Majesty the King

- and -

Corporal M. Harper, Offender

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

REASONS FOR SENTENCE

(Orally)

I. Overview

[1] Corporal (Cpl) Harper was facing one charge under section 130 of the *National Defence Act* (*NDA*) for assault, contrary to section 266 of the *Criminal Code*, and one charge under section 86 of the *NDA* for having fought with a person subject to the Code of Service Discipline (CSD). The charges related to an incident that allegedly occurred on or about 11 November 2023, at Garrison St. John's, Newfoundland. Cpl Harper pled guilty to the charge of fighting, and the prosecution withdrew the charge of assault. After the Court provided Cpl Harper with the explanations required by the *Queen's Regulations and Orders for the Canadian Forces* (QR&O), the Court accepted and recorded her guilty plea. As part of the sentencing hearing, counsel proposed a joint submission, recommending that the Court impose a punishment of a reprimand, a fine in the amount of $1,500 and up to four hours of extra work and drill per day for a duration of seven working days.

[2] The Court must therefore determine whether imposing the sentence jointly recommended by counsel is contrary to the public interest in the circumstances of this case. For the reasons that follow, the Court accepts and will impose the sentence recommended by counsel.

Context

[3] The relevant facts surrounding the commission of the offence were summarized in the Statement of Circumstances, which Cpl Harper admitted as true, and reads as follows:

"**STATEMENT OF CIRCUMSTANCES**

Background

1. In November of 2023, Cpl Mikayla Harper was serving as a regular force member posted to 5th Canadian Division Support Group at Garrison St. John's, NL.

2. On November 11th 2023, Cpl Harper was at the junior ranks mess at Garrison St. John's, with other Canadian Armed Forces members, including Pte Chloe Gina Parsons, who had gathered following Remembrance Day ceremonies.

3. At one point in the early evening, Cpl Harper and Pte Parsons had a conversation in the women's changing room. Then Pte Parsons returned to the public section of the mess and stood near the bar and pool table. After some time, Cpl Harper approached Pte Parsons and punched her in the face. Pte Parsons fell to the ground. Cpl Harper followed Pte Parsons to the ground and struck her several more times. Cpl Harper was pulled away from Pte Parsons by other members.

4. Later that evening, Cpl Harper sent Pte Parsons a message via social media stating, among other things, "you deserved that."

5. Pte Parsons suffered bruising near her left eye."

II. Whether imposing a reprimand and a fine in the amount of $1,500, combined with up to four hours of extra work and drill for a duration of seven working days would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

Positions of the parties

Prosecution

[4] The prosecution contends that Cpl Harper fought with Private (Pte) Parsons by suddenly attacking her in the junior ranks' mess after a brief conversation with her in the women's changing room. The prosecution considered aggravating, the fact that the offender attacked the victim suddenly by punching her in the face, and when the victim fell to the ground, the offender continued to hit the victim. Also aggravating from the prosecution's perspective was the victim's subordinate rank, the fact that the attack was unprovoked, that the offender showed no remorse immediately after the incident and in fact sent a message to the victim through social media stating, "you deserved that", as well as the fact that the offence took place in the junior ranks' mess after a Remembrance Day ceremony. The prosecution considered mitigating the relative youth and inexperience of the offender, the lack of a conduct sheet, and the fact that the unit chose not to submit a military impact statement, with the prosecution making the inference that the incident did not cause a significant disruption at the unit. As a result, the prosecution contends that denunciation and deterrence should be the most important objectives for this case.

[5] The prosecution is of the view that a sentence of a reprimand and a fine in the amount of $1,500, combined with up to four hours of extra work and drill per day for a duration of seven working days would serve to denounce and deter the conduct. Both the prosecution and defence counsel agree that should Cpl Harper be sentenced to a fine, terms directing Cpl Harper to pay the fine over a six-month period would be appropriate.

Defence

[6] Counsel for the defence provided additional information in relation to the personal situation of the offender. Defence counsel submits that Cpl Harper's actions that day were completely out of character for her. She has successfully served in the regular force for six and a half years aside from the incident in question, and defence counsel is of the view that the reprimand, and fine in the amount of $1,500, combined with up to four hours of extra work and drill for a duration of seven working days would achieve the sentencing objective of denunciation and deterrence and submits that the joint submission proposed is most appropriate based on the facts in this case.

Sentencing principles

[7] When determining a sentence, the Court must be guided by the sentencing principles contained in the *NDA*. In this context, subsection 203.1(1) of the *NDA* provides that, "The fundamental purpose of sentencing is to maintain the discipline, efficiency and morale of the Canadian Forces."

[8] This is to be achieved by imposing punishments that have one or more of the objectives outlined at subsection 203.1(2) of the *NDA*. These objectives include such things as "to promote a habit of obedience to lawful commands and orders", "to maintain public trust in the Canadian Forces as a disciplined armed force" and "to

denounce unlawful conduct and the harm done to victims or to the community that is caused by [the] unlawful conduct".

[9] The fundamental principle of sentencing is found at section 203.2 of the *NDA*. It states, "A sentence must be proportionate to the gravity of the offence and the degree of responsibility of the offender."

[10] There are a number of other sentencing principles outlined at section 203.3 of the *NDA*, that a sentencing judge must also take into consideration when imposing a sentence. They include that "a sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances", and that "a sentence should be the least severe sentence required to maintain the discipline, efficiency and morale of the Canadian Forces".

[11] 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 call 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.

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

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

[14] 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.

[15] Even when a joint submission is made, 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.

[16] As this Court informed the offender when she entered her 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.

[17] 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.

The public interest test

[18] The SCC in the case of *R. v. Anthony-Cook,* 2016 SCC 43 at paragraph 32 has stated that "a trial judge should not depart from a joint submission on sentence unless the proposed sentence would bring the administration of justice into disrepute or is otherwise contrary to the public interest."

[19] The public interest test 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 justice system had broken down. This means that a sentencing judge may only depart from a joint submission where the joint submission is so lenient, or so severe, as the case may be, when viewed in light of the circumstances of the case and the offender, that accepting it would bring the administration of the military justice system into disrepute. Consequently, this recommendation severely limits my discretion in the determination of an appropriate sentence.

[20] 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 channelled into other matters. Furthermore, offenders who are remorseful may take advantage of a guilty plea to begin making amends. The most important benefit of joint submissions is the certainty they bring to all participants in the administration of justice.

Circumstances of the offender

[21] As for the offender's personal situation, the documentary evidence listed at article 111.17 of the QR&O as well as the Agreed Statement of Facts reveal the following:

(a) Cpl Mikayla Harper is twenty-seven years old. She is from New Brunswick. She joined the regular force component of the Canadian Armed Forces (CAF) a few months after her twenty-first birthday. She now has approximately six and a half years of service;

(b) Cpl Harper is a supply technician. Her first years in the CAF were served at Canadian Forces Base Gagetown. She has been posted to Garrison St. John's since June of 2022. Both postings were under the command of the 5th Canadian Division Support Group;

(c) Cpl Harper has no conduct sheet or civilian criminal record. She is single and has no children; and

(d) defence counsel also indicated that Cpl Harper's financial situation is such that she is repaying a Service Income Security Insurance Plan (SISIP) loan at the rate of $350 per month and also pays a high rent for her private accommodations. As such, Cpl Harper is requesting six months to repay any fine imposed. The prosecution has no objection to this request.

Circumstances of the offence - aggravating and mitigating factors

[22] As part of my analysis to decide whether I would accept the joint submission, I have considered the objective gravity of the offence. The offence in section 86 of the *NDA* attracts a maximum punishment of imprisonment for less than two years, which although serious, puts it at the lower end of seriousness amongst all service offences in the CSD, considering that some others refer to five, fourteen years and even to imprisonment for life.

[23] It is clear, however, that Parliament still intended this to be a serious offence since they determined that deprivation of the liberty of an offender for less than two years can be imposed by a sentencing judge.

[24] The purpose of this offence is to ensure that quarrelling or fighting does not occur as it can have significant impacts on discipline, morale and the cohesion of CAF members. One of the goals of this offence is to ensure that CAF members demonstrate self-discipline, even in contexts of emotional or physical violence, in order to refrain from and prevent any disruption to the discipline that must exist in a military environment.

[25] The Court must also consider aggravating and mitigating factors that may justify a higher or lower punishment. The Court considered the following factors to be aggravating in this case:

(a) first is the place and date that this offence occurred, being in Garrison St. John's on Remembrance Day;

(b) second is the rank of the offender as a corporal; and

(c) third is the manner of attack and injury caused to Pte Parsons, a subordinate in rank and the person the offender was fighting with.

[26] It goes without saying that fighting by suddenly attacking a subordinate in the junior ranks' mess at Garrison St. John's after a Remembrance Day ceremony, a day that is meant to solemnly honour the courage, sacrifice and hardships endured by Canadian veterans and military personnel is a significant shortfall of expected military decorum and behaviour, particularly by a member at the rank of corporal who ought to have known better.

[27] The fact that this fight resulted in injury after a sudden attack makes it worse. Pte Parsons chose to read her victim impact statement in Court where she outlined the physical and psychological impact she experienced. The victim impact statement disclosed the detrimental effect that Cpl Harper's actions had on Pte Parson's feelings of trust, belonging and cohesion in a military environment. This is the very thing that Parliament is trying to protect by prohibiting behaviour of this sort.

[28] The unit chose not to prepare a military impact statement, and the Court assesses this factor as neutral.

[29] However, the Court also identified the following mitigating factors:

(a) first, Cpl Harper's age and career potential as a military member, being twenty-seven years old, with many years ahead to contribute positively to the CAF;

(b) second, the absence of a conduct sheet or criminal record, showing that Cpl Harper is a first-time offender; and

(c) last, Cpl Harper's guilty plea, which avoided the expense and energy of running a trial and demonstrates that she is taking responsibility for her actions in this public trial in the presence of members of her unit and the military community. There is no doubt that this had a significant deterrent effect on Cpl Harper and on the members of her unit. The message is that this kind of conduct will not be tolerated in any way and will be dealt with accordingly.

Parity

[30] To determine the appropriate sentence for Cpl Harper, 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.

[31] 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 five cases to my attention, all of which were joint submissions. The Court has also taken note of two additional recent court martial cases.

[32] The cases referred to by counsel include:

(a) *R. v. Balint*, 2011 CM 1012, an absence without leave case under section 90 of the *NDA*, where an officer cadet received a medical chit excusing her from duty for the day and instructing her to remain on

garrison and in quarters. Instead, the officer cadet went to Tim Hortons, then slept over at a friend's house. After a guilty plea and joint submission, the offender was sentenced to a minor punishment of confinement to barracks for twelve days;

(b) *R. v. Wilson*, 2024 CM 5001, a corporal who pled guilty to one charge under paragraph 117(f) of the *NDA* for an act of a fraudulent nature for submitting false insurance claims to Sun Life for a total sum of $2,520. After a joint submission, the offender was sentenced to a reprimand with a fine in the amount of $800, and four hours of extra work and drill for a period of fourteen days;

(c) *R. v. Schenkels*, 2024 CM 6001, a private who pled guilty to fighting with a person subject to the CSD, after he punched another private resulting in minor injuries after the member had directed insulting comments at him. After a guilty plea and joint submission, the offender was sentenced to a severe reprimand and a fine in the amount of $2,000;

(d) *R. v. Reis*, 2023 CM 2006, an officer cadet quarrelled with his roommate at the Royal Military College on three occasions, placing a shoelace around his neck on two occasions, and placing a bayonet dangerously close to his roommates' face, resulting in a fine in the amount of $1,000 and confinement to barracks for a period of twenty-one days on a joint submission; and

(e) *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.

[33] The following additional two cases were also considered by the Court to assess parity of the sentence. These are essentially mirror cases to each other given the fact that the two offenders fought each other and were each convicted of an offence under section 86 of the *NDA*.

(a) *R. v. Lirette*, 2024 CM 5007 (not yet published), where a private was found guilty of fighting with a person subject to the CDS when he was consensually and violently wrestling Cpl Lawless, who was a good friend. Pte Lirette (the accused) received a head wound during the fight and was hospitalized overnight. The offender received a sentence of a fine in the amount of $500; and

(b) *R. v. Lawless*, 2024 CM 3008 (not yet published), a corporal was found guilty of fighting with a person subject to the CDS for the same fight. The offender received a sentence of a fine in the amount of $400, and seven days confined to barracks.

[34] Although this is a relatively small sample, these cases show that the sentence jointly proposed by the prosecution and defence counsel in this case, being a reprimand and a fine in the amount of $1,500, combined with up to four hours of extra work and drill per day for the duration of seven working days, falls within the range of sentences imposed for similar conduct in the past.

Principles of sentencing deserving greatest emphasis/Priority of objectives

[35] 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 both specific and general deterrence in sentencing the offender.

[36] 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 Cpl Harper's conduct in the military community, and to act as a deterrent to others who may be tempted to engage in a similar type of unacceptable behaviour, specifically fighting with a person who is subject to the CSD.

Sentence to impose

[37] Ultimately, 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.

[38] 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.

[40] The imposition of a punishment of extra work and drill was discussed extensively in court with both counsel, including describing the types of tasks that Cpl Harper may be tasked to complete. Although both counsel recommended, and the Court agrees that the administration of the specific timings are best left to the chain of command of the unit, the Court would note that in the Court's view, the punishment of extra work and drill is intended to re-instil discipline in the offender, and therefore is

intended to be completed in addition to the offender's normal work load, and not instead of the offender completing their normal work load.

[41] Having said this, 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.

[42] The proposed sentence of a reprimand and a fine in the amount of $1,500, combined with up to four hours of extra work and drill per day for seven working days is aligned with these expectations. They meet the objectives of denunciation and both general and specific deterrence, without having a lasting effect detrimental to the rehabilitation of the offender.

[43] As recognized by the SCC, trial judges must refrain from tinkering with joint submissions if their benefits can be maximized.

[44] 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.

[45] 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.

[46] Defence counsel is required to act in the accused's best interests, including ensuring that the accused's plea is voluntary and informed.

[47] 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.

[48] 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.

III Conclusion

[49] The circumstances of the offence that you admitted to having committed reveal behaviour that was harmful to military discipline, particularly on a day such as Remembrance Day that called on you as a corporal to conduct yourself in a manner that

would honour the sacrifices of those that have gone before us, and should have increased cohesion amongst unit members instead of reducing it.

[50] Although no explanation has been provided to the Court to explain the cause of your actions, it appears that a comment made to you earlier by the victim may have caused you to experience negative emotions. However, as members of the CAF, we are expected to show courage, resilience and discipline in the face of adversity, including showing restraint in the handling of our emotions and reactions to ensure that unit discipline, morale and cohesion always reign supreme.

[51] I am sure that you have already considered this and have come to this realization yourself. Your counsel has indicated that this behaviour was entirely out of character, and the Court is therefore confident that you understand your personal responsibility to check your own actions and to ensure they are in keeping with the standard expected of you as a member of a disciplined force. It is clear that you accept responsibility for your actions, and I wish you the best in moving forward positively for the continuation of your career.

FOR THESE REASONS, THE COURT:

[52] **FINDS** Cpl Harper guilty of the charge of having fought with a person subject to the CSD, an offence contrary to section 86 of the *NDA*.

[53] **SENTENCES** Cpl Harper to a reprimand and a fine in the amount of $1,500, payable in six monthly instalments of $250 dollars, commencing on 15 June 2025, combined with up to four hours of extra work and drill per day, under the supervision of the member's chain of command, for a period of seven working days. The fine must be fully paid at the latest on 15 November 2025, or on the day prior to release from the regular force of the CAF, whichever comes first.

Counsel:

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

Lieutenant(N) B. Wentzel, Defence Counsel Services, Counsel for Cpl M. Harper