

Case Summary
Office of the Judge Advocate General

DEFENDANT: LCDR Poulton

TYPE OF PROCEEDING: Defence Force Magistrate

DATE OF TRIAL: Tuesday 02 – Friday 05 May 2023 and Monday 22 May 2023

VENUE: Garden Island, NSW

Charges and plea

	Statement of Offence	Plea
Charge 1	DFDA, s. 61(3) and Crimes Act 1900 (ACT), s. 60(1) Act of indecency without consent	Not Guilty
Charge 2	DFDA, s. 61(3) and Crimes Act 1900 (ACT), s. 60(1) Act of indecency without consent	Not Guilty
Charge 3	DFDA, s. 61(3) and Crimes Act 1900 (ACT), s. 60(1) Act of indecency without consent	Not Guilty
Charge 4	DFDA, s. 61(3) and Crimes Act 1900 (ACT), s. 60(1) Act of indecency without consent	Not Guilty

Pre-Trial: Closed hearing and non-publication orders

Application made:	Yes. The prosecution applied under the <i>Evidence (Miscellaneous Provisions) Act 1991</i> (ACT), s. 50 for the hearing to be closed during the evidence of the complainant based on the nature of Charge 1.
Determination:	The application was unopposed and was granted. While no orders were made under the DFDA, due to the nature of Charge 1, it is an offence to publish the details of the complainant under the <i>Evidence (Miscellaneous) Provisions Act 1991</i> (ACT).

Trial: Facts and legal principles

The defendant and complainant were both guests of two other colleagues at a social gathering on the evening of 8 July 2022. At about midnight, the defendant returned to the complainant's house and continued drinking with her. The complainant was intoxicated and became unwell. The defendant ended up getting into bed with the complainant and touching her on various areas of her body without consent. The defendant eventually left the complainant's house at approximately 0500 on 9 July 2022. A complaint was made. At trial there were 6 witnesses called by the Prosecution. The defendant also gave evidence denying the offences.

Legal principles involved included: the credibility and reliability of the complainant and defendant, complaint evidence, distressed condition, sexual interest, lies going to the credibility of the defendant and good character.

The DFM found each element of all charges proven beyond reasonable doubt.

- *This summary is not intended to be a substitute for the reasons of the Service tribunal or to be used in any later consideration of the tribunal's reasons.*

Findings

	Finding
Charge 1	Guilty
Charge 2	Guilty
Charge 3	Guilty
Charge 4	Guilty

Sentencing: Facts and legal principles

The defendant was of prior good character but had no remorse. The DFM held that the defendant's behaviour constituted an egregious breach of trust and that he took advantage of the complainant when she was most vulnerable. The DFM found that dismissal from the Defence Force was the appropriate sentence in all of the circumstances. The Defending Officer submitted that reduction in rank to LEUT would be sufficient to meet the principles of general deterrence and maintenance of good order and discipline. This submission was rejected by the DFM.

Punishments and orders

Charge 1	Dismissal from the Defence Force
Charge 2	Dismissal from the Defence Force
Charge 3	Dismissal from the Defence Force
Charge 4	Dismissal from the Defence Force

Outcome on automatic review

The Reviewing Authority's decision on automatic review was handed down on 15 June 2023.

	Conviction	Punishments / Orders
Charge 1	Upheld	Upheld
Charge 2	Upheld	Upheld
Charge 3	Upheld	Upheld
Charge 4	Upheld	Upheld

Outcome on petition

The Reviewing Authority's decision on petition was handed down on 27 July 2023.

	Conviction	Punishments / Orders
Charge 1	Upheld	Upheld
Charge 2	Upheld	Upheld
Charge 3	Upheld	Upheld
Charge 4	Upheld	Upheld

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Outcome on appeal to DFDAT

The member appealed all convictions in the Defence Force Discipline Appeals Tribunal. The DFDAT dismissed the appeal on 22 December 2023, effectively upholding the convictions. Orders and reasons can be found in *Poulton v Chief of Navy* [2023] ADFDAT 1.

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