



## COURT MARTIAL

**Citation:** *R. v. Taylor*, 2018 CM 2031

**Date:** 20181015

**Docket:** 201743

Standing Court Martial

St-Jean Garrison  
St-Jean-sur-Richelieu, Quebec, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Private B.T. Taylor, Offender**

**Before:** Commander S.M. Sukstorf, M.J.

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**Restriction on Publication: By court order made under section 179 of the *National Defence Act* and section 486.5(1) of the *Criminal Code*, information that could disclose the identity of the person described during these proceedings as the complainants shall not be published in any document or broadcast or transmitted in any way.**

### **REASONS FOR SENTENCE**

(Orally)

[1] Private Taylor, today the Court found you guilty of one charge contrary to section 129 of the *National Defence Act* (NDA) for conduct to the prejudice of good order and discipline. The particulars read as follows:

“In that he, on or about 31 March 2016, at the Canadian Forces Leadership and Recruit School, Saint-Jean-sur-Richelieu, Québec, touched T.M. on the buttocks without her consent.”

[2] It is now my duty as the military judge presiding at this Standing Court Martial to determine the sentence.

### **Joint submission**

[3] In a joint submission, both the prosecution and defence counsel recommend that the Court impose a sentence of a fine in the amount of two thousand dollars.

[4] In *R. v. Anthony-Cook*, 2016 SCC 43, the Supreme Court of Canada clarified that a trial judge must impose the sentence proposed in a joint submission, “unless the proposed sentence would bring the administration of justice into disrepute, or is otherwise not in the public interest.”

[5] The prosecutor, who jointly proposes the sentence, is aware of the needs of the military and its surrounding community and is responsible for representing those interests. The defence counsel, Mr Hodson, acts exclusively in the accused’s best interest, including ensuring that the accused’s agreement to the sentence is a voluntary and informed choice.

[6] As members of the legal profession, they are accountable to their respective law societies. The Court relies heavily on the professionalism, honesty and judgement of both counsel and their higher duty to the Court.

### ***Assessing the joint submission***

#### **The offender**

[7] Private Taylor is twenty-two years old. He enrolled in March 2016 and would have been eighteen years old at the time of the offences. He has successfully completed his basic training and he is currently posted to Canadian Forces Base Wainright, Alberta awaiting his training as a rifleman.

#### **The victim**

[8] It takes courage and emotional strength for a victim or complainant to come forward to his or her chain of command to report conduct that has made him or her feel uncomfortable. Our criminal justice system relies on the reporting of offences and, in particular, those where a person’s physical integrity has been breached. Victims are provided assurances, within the system, that their truths will be heard, without stigmatization. The *NDA*, too, recognizes the importance of the victim in an offence and specifically provides for their statement to be presented in a court martial.

[9] Pursuant to the new provision under *Queen’s Regulations and Orders for the Canadian Forces* (QR&O) article 112.481, T.M. prepared and read for the Court a victim impact statement. In her statement, she summarized the physical and emotional harm that flowed from this incident. She was clear in expressing how the incident has affected her and the fact that it became a catalyst for her to quit the Canadian Armed

Forces (CAF). Her fiancé is currently in the CAF and she struggles with attending CAF events.

**Purpose, objectives and principles of sentencing to be emphasized in this case**

[10] The fundamental purpose of sentencing in a court martial is to promote the operational effectiveness of the CAF by contributing to the maintenance of discipline, efficiency and morale and to contribute to respect for the law and the maintenance of a just, peaceful and safe society. In order to accomplish this, it is imperative that members be provided opportunities for reforming their conduct and shortcomings.

[11] The fundamental purposes of sentencing are achieved by imposing sanctions that have one or more of the objectives set out within the *NDA* at subsection 203.1(2). The prosecution has emphasized that in negotiations on the sentence, he and defence counsel closely considered the objectives of sentencing set out therein. In the case at bar, the prosecution and defence submit that the objectives they considered most important are general and specific deterrence as well as denunciation. The Court agrees with their assessment.

**Accounting for relevant aggravating or mitigating circumstances**

[12] In the military justice system, under section 203.3 of the new *NDA* provision, in imposing a sentence, the Court shall also take into consideration a number of principles relevant to the case; a sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender.

***Aggravating factors***

[13] After hearing these submissions from counsel, the Court highlights the following aggravating factors for the record:

- (a) impact on the victim's life, including the emotional consequences, the termination of her own basic training and its impact on her anxiety;
- (b) the act was committed in the complete absence of provocation;
- (c) act was committed in a training environment where military ethics are taught;
- (d) at the time of the incident, the accused and T.M. were colleagues and the accused's conduct violated the trust that should exist between them.

***Mitigating factors***

[14] After hearing the submissions of counsel, the Court highlights the following mitigating factors for the record:

- (a) first-time offender. Private Taylor must be treated as a first-time offender for this incident;
- (b) age. He is a young man and he has learned a valuable lesson from this. He has demonstrated the resourcefulness and commitment to succeed in the CAF or outside;
- (c) the public announcement of the charges has already caused significant stress, ostracism and humiliation. It would have been easy for him to leave the CAF and avoid the scrutiny, but he did not. He faced the consequences, while being determined to pursue his military career;
- (d) the Court recognizes that he has already paid a very steep price for conduct both in terms of his career being put on hold as well as the effect on his family.

### **Parity**

[15] Pursuant to paragraph 203.3(b) of the *NDA*, the law requires that the sentence imposed be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances.

[16] In making the joint recommendation on sentence, the prosecution and defence relied upon the following precedents: *R. v. Duvall*, 2017 CM 2008, *R. v. Duvall*, 2018 CM 2027, *R. v. Riddell*, 2017 CM 1014 and *R. v. Morgan*, 2015 CM 4005. In short, based on the case law and the submissions made by counsel, it is clear that the sentence recommended in the joint submission is within an acceptable range based on the type of punishment historically awarded for this type of offence.

### **Summary**

[17] After considering counsel's submissions in their entirety and all the evidence before the Court, I must ask myself whether the acceptance of the proposed sentence would cause the general public, the CAF community and its members to lose confidence in the military justice system?

[18] As this Court stated in its decision on finding, it is imperative to address misconduct at the outset. As damaging as each act may be, even the smallest indiscretions can have far-reaching effects and are unacceptable between colleagues working closely together. The failure act on misbehaviour threatens and undermines the military ethos, values, norms and ethics expected of every CAF member.

[19] Any indirect consequences of the finding of guilty or the sentence should be taken into consideration.

[20] The joint submission on sentence before the Court recognizes that even lower level misconduct bears significant consequences; however, the fine considered does not result in a criminal record notation, which the Court considers unwarranted in the circumstances.

[21] Counsel have recommended a significant fine which is intended to send a message to the larger community that any inappropriate conduct involving even slight touching is unacceptable and will be severely punished.

[22] Finally, the accused was given an opportunity to speak. He apologized for the impact of his conduct on the victim, his family and his unit. He spoke with humility and a level of maturity exceeding both his rank and age. This gives the Court confidence that he accepts responsibility for his behavior and has learned a valuable lesson.

[23] In closing, the Court recognizes that this has been a long two-and-a-half year journey for everyone: the victim, the accused and their families. Tough lessons at a young age can breed either a strong motivation for future success or it can derail you.

[24] Considering all of the factors, the circumstances of the offence and of the offender, the indirect consequence of the finding and the sentence, the gravity of the offence and the previous character of the offender, I am satisfied that counsel have discharged their obligations in making their joint submission on sentence.

**FOR THESE REASONS, THE COURT:**

[25] **SENTENCES** Private Taylor to a fine in the amount of two thousand dollars payable in four equal instalments of five hundred dollars beginning in the month of November 2018.

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**Counsel:**

The Director of Military Prosecutions as represented by Major M.-A. Ferron and Lieutenant(N) J.M. Besner.

Mr D.M. Hodson, David Hodson Criminal Defence Law, 16 Lindsay Street North, Lindsay, Ontario, Counsel for Private B.J. Taylor.