**COURT MARTIAL**

**Citation:** *R. v. Thurber,* 2019 CM 5002

**Date** : 20190910
**Docket** : 201926

Standing Court Martial

Halifax Courtroom Suite 505
Halifax, Nova Scotia, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Petty Officer 1st Class (Retired) D.C. Thurber, Offender**

**Before:** Commander C.J. Deschênes, M.J.

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## REASONS FOR SENTENCE

(Orally)

### ***Introduction***

[1] Petty Officer 1st Class (Retired) Thurber pleaded guilty to the first charge contrary to section 95 of the *National Defence Act* (*NDA*), that is to say, ill-treated a person who, by reason of rank, was subordinate to her. The second charge was withdrawn by the prosecution. The maximum punishment that the court may impose for an offence under section 95 is imprisonment for less than two years. The particulars of the first charge read as follows:

> "**FIRST CHARGE** ILL-TREATED A PERSON WHO BY
> Section 95 of the REASON OF RANK WAS
> *National Defence Act* SUBORDINATE TO HER
>
> *Particulars:* In that she, on or about 5

December 2017, aboard HMCS VILLE DE QUEBEC, did slap the buttocks of PO2 B.T."

[2] The Statement of Circumstances filed in court reads as follows:

"Statement of Circumstances

(*Queen's Regulations and Orders for the Canadian Forces*, art. 112.51(3))

1. At all material times, the offender, PO1 Thurber, was a member of the Regular Force, Canadian Armed Forces, employed with HMCS Ville de Québec.

2. PO1 Thurber was employed as the senior Electrical Technician on board HMCS Ville de Québec in the closing months of 2017. PO2 Towns was her deputy.

3. In early Dec 2017, HMCS Ville de Québec was out at sea in the vicinity of New-York City and making its way back to Halifax, NS.

4. On or about 3 Dec 2017, while PO2 Towns was slightly bent over and shredding documents, PO1 Thurber forcefully slapped his buttock with one hand.

5. When PO2 Towns turned around, he was surprised to see PO1 Thurber smiling at him. He said: "Really, did you just do that" or words to that effect.

6. PO2 Towns then told the offender that she could not do things like that, to which she replied: "I just couldn't resist".

7. Despite that discussion, on or about 5 Dec 2017, while PO2 Towns was bent over working on something, the offender slapped his buttock hard again.

8. PO2 Towns bolted upright and, again, saw PO1 Thurber smiling at him. He also noticed the shock in the face of several of his subordinates that witnessed the incident."

[3] Defence counsel introduced as exhibit an Agreed Statement of Facts which reads as follows:

**"AGREED STATEMENT OF FACTS**

1. PO1 Thurber has a conduct sheet. However, these convictions are not in similar matters.

2. This is PO1 Thurber first appearance before a Court Martial.

3. Shortly after charges were preferred, PO1 Thurber instructed his Defence Counsel to resolve this matter efficiently and to proceed with a guilty plea. Prosecution was engaged quickly thereafter.

4. This guilty plea is an economy of time and resources for the Military Justice System.

**PO1 THURBER'S PERSONAL CIRCUMSTANCES**

5. The offender was administratively released of the Canadian Armed Forces on 5 November 2018 under the item 4A (Voluntary Release).

6. PO1 Thurber is still active and is employed full time with Fleetway Inc., as a Senior Marine Electrical Technologist.

7. PO1 Thurber joined this private company in November 2018.

8. Fleetway Inc. is a consulting company offering a comprehensive range of naval architecture, marine and electrical engineering services, they are active throughout Canada."

***The joint submission***

[4] Counsel are asking this Court to accept their joint submission. They recommend that the court impose the punishments of a severe reprimand and a fine in the amount of $1,500. This Court now has to examine the joint submission and apply the principles established by the Supreme Court of Canada (SCC) in *R. v. Anthony-Cook*, 2016 SCC 43. In that case, the SCC emphasized the importance of trial judges exhibiting restraint when it comes to rejecting a joint submission. In its decision, the SCC set out a test to apply when trial judges are presented with a joint submission on sentence:

> [32]. . . 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.

[5] In other words, unless the joint submission is contrary to public interest, or would cause an informed and reasonable public to lose confidence in the institution of the courts, the trial judge cannot depart from it.

[6] Joint submissions have many benefits, one of which is an economy of time and effort for all those involved in the process, and for the system as a whole. They also assist the defence in knowing in advance, or at least provide some sense of certainty, as to what the offender can expect in terms of sanction for the reproachable conduct. A joint submission assures both parties of a high probability that if they discharge their burden according to the law, their recommendation will be accepted and endorsed by the Court. Agreements of that nature are commonplace and they are vitally important to the well-being of any justice system, whether it is the military justice system or the criminal justice system, because they free up valuable resources and allow justice participants to put these resources to other matters.

[7] The SCC in *Anthony-Cook* makes it clear that it is a desirable practice for the prosecution and for the defence to agree on a recommended sentence. The SCC also confirms the fact that counsel are responsible and accountable for their joint submission. Therefore, trial judges have to assume that counsel took all relevant facts into consideration when mutually agreeing on an appropriate sentence.

***The evidence***

[8] When considering a joint submission at a trial, the Court has to rely on documents provided by counsel: the Statement of Circumstances; the Agreed Statement of Facts (which were both read in court), and the documents related to the service of the offender as provided for in the *Queen's Regulations and Orders for the Canadian Forces*, article 111.17. Additionally, for this case, the victim impact statement was read in court by the victim, but was not introduced as an exhibit. Nevertheless, the victim impact statement was considered by this Court when deciding on the joint submission. This evidence produced at the trial provides the Court with the factors considered by counsel in order to guide them in coming to a common ground on sentencing. It also assists the Court in determining whether the joint submission passes the legal test.

[9] Through the Statement of Circumstances and the Agreed Statement of Facts, counsel identified the circumstances of the offender, the relevant facts pertaining to the commission of the offence and the aggravating and mitigating factors. With their respective submissions, counsel addressed the applicable principles and objectives of sentencing in this case. That exercise in the making of a joint submission is theirs and I have no reason to question or doubt that they did not perform the requisite considerations in fulfillment of this task.

***The offender***

[10] The offender joined the Canadian Armed Forces (CAF) in 1996, and served for 22 years. Although she has two entries on her conduct sheet, the particulars of both

charges indicate that these offences are fairly low on the spectrum of gravity and, in any event, are not related to the offence for which she pleaded guilty today. Except for these two entries, the offender has an excellent record. She served in a variety of positions and is the recipient of military decorations and medals. She has since retired from the CAF. In a matter of days after her retirement, she has found employment and is currently gainfully employed by a company as a senior Marine Electrical Technologist. She pleaded guilty today, and instructed her counsel to do so at the earliest opportunity.

[11] Nevertheless, the Court considered the following aggravating factors:

(a) The offender slapped a subordinate, who was her deputy, on the buttocks;

(b) She did so in front of other subordinates;

(c) Two days prior to the commission of the offence, she committed a similar act on the same individual, who told her at the time that her action was unacceptable; and

(d) The victim has indicated, when he read his statement in court, that he suffered prejudice as a result of the conduct of the offender.

[12] Both counsel confirmed that, before arriving at the joint submission, they did consider all of these factors, including the victim impact statement. Prosecution mentioned that the victim was also consulted regarding the joint submission. Consequently, I am satisfied that all documents introduced as exhibits, with the victim impact statement read in court, provide a clear and complete picture of both the offence and the offender and I accept that the joint recommendation meets the need for general deterrence and rehabilitation. Therefore, the Court is persuaded that the proposed sentence would not bring the administration of justice into disrepute or would not otherwise be contrary to the public interest. I thank both counsel for their representations, and for having provided a complete picture to the Court for the offence and the offender.

**FOR THESE REASONS, THE COURT:**

[13] **FINDS** Petty Officer 1st Class (Retired) Thurber guilty of one offence under section 95 of the *NDA*: ill-treated a person who by reason of rank was subordinate to her.

[14] **SENTENCES** the offender to a severe reprimand and a fine in the amount of $1,500.

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**Counsel**

The Director of Military Prosecutions as represented by Major M.L.P.P. Germain

Major B.L.J. Tremblay, Defence Counsel Services, Counsel for Petty Officer 1st Class (Retired) Thurber