



COURT MARTIAL

Citation: *R. v. Therrien* 2025 CM 7010

Date: 20251002
Docket: 202515

Standing Court Martial

Halifax Courtroom, Suite 505
Halifax, Nova Scotia, Canada

Between:

Lieutenant-Colonel Y. Therrien, Applicant

- and -

His Majesty the King, Respondent

Before: Colonel S.S. Strickey, M.J.

Restriction on publication: Pursuant to paragraph 183.5(4)(b) and section 183.6 of the National Defence Act, the Court directs that any information that could disclose the identity of the persons described in these proceedings as the complainants, including the persons referred to in the charge sheet as "J.A." and "L.P.", shall not be published in any document or broadcast or transmitted in any way.

DECISION ON VOIR DIRE PURSUANT TO DEFENCE'S REQUEST TO REDACT PORTIONS OF A VICTIM IMPACT STATEMENT

(Orally)

Introduction

[1] The offender, Lieutenant-Colonel (LCol) Therrien, has pleaded guilty to two charges contrary to section 129 of the *National Defence Act* (*NDA*). It is my understanding that a joint submission on sentencing will be proposed to the Court. At the beginning of the sentencing hearing, the defence brought forth a motion seeking the Court to redact certain portions of a Victim Impact Statement (VIS) as it would, among

other things, undermine the fairness towards the offender and the court martial process in general. From the applicant's perspective, there are numerous comments throughout the VIS that are highly prejudicial to the offender and are not related to the charges before the Court.

[2] At the outset, the *NDA* is clear that victims have the right to present a VIS at a court martial. section 71.11 provides that "Every victim has the right to present a victim impact statement to the appropriate authorities in the military justice system and to have it considered". This mirrors a similar right enshrined at section 15 in the *Canadian Victims Bill of Rights*. Therefore, courts must be extremely circumspect when curtailing these rights.

[3] The statutory regime surrounding VIS begins at subsection 203.6(1) of the *NDA* that obligates the court martial to consider "the statement of any victim of the offence describing the physical or emotional harm done to, or property damage or economic loss suffered by, the victim as a result of the commission of the offence and the impact of the offence on the victim." In addition, as per subsection 203.6(3) of the *NDA*:

Unless the court martial considers that it would not be in the best interests of the administration of military justice, the court martial shall, at the victim's request, permit the victim to present the statement by

- (a) reading it;
- (b) reading it in the presence and close proximity of any support person of the victim's choice;
- (c) subject to subsection 203.7(4), reading it outside the courtroom or behind a screen or other device that would allow the victim not to see the offender; or
- (d) presenting it in any other manner that the court martial considers appropriate.

[4] Importantly as it relates to this matter, subsection 203.7(5) states that "in considering the statement, the court martial shall take into account the portions of the statement that it considers relevant to the determination referred to in subsection 203.6(1)" as previously listed at paragraph 3.

[5] The rights of victims are further reinforced in the purposes and principles of sentencing by courts martial. It is trite law that the fundamental purpose of sentencing is to "maintain the discipline, efficiency and morale of the Canadian Forces". This fundamental purpose is to be achieved by imposing just punishments that have one or more of the following objectives, in particular, subsection 203.1(2):

[. . .]

- (c) to denounce unlawful conduct and the harm done to victims or to the community that is caused by unlawful conduct;

[. . .]

- (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 or to the community.

[6] In their submission, defence counsel provided a VIS into evidence that highlighted various portions that were, in their view, highly prejudicial to the offender, not relevant to the proceedings or were unproven allegations not supported by any facts before the Court.

[7] A Court redacting portions of a VIS appears rare. No cases cited were cited in the military justice system. Several civilian cases were brought to the Court's attention in particular, *R. v. Dillon*, 2022 SKCA 17; *Lacelle Belec c. R.*, 2019 QCCA 711; *R. v. Berner*, 2013 BCCA 188; *R. v. Jackson*, [2002] 58 O.R. (3d) 593 and *R. v. C.C.*, 2018 ONCJ 542.

[8] Perhaps the most relevant case to the one before this Court is *C.C.* In that case, defence counsel sought the Court to exclude or redact portions of certain VIS sought to be introduced by the Crown during the sentencing hearing.

[9] In that case, Justice Green (at paragraph 14) outlined the process of the sentencing hearing:

While some parts of the victim impact statements that were submitted in this case may be improper and I will not consider any fact that is not in evidence nor will it impact the outcome of the sentencing, this sentencing hearing is not just about the outcome. The process itself is an invaluable experience for all of the participants. It is an opportunity for Mr. C.C. to hear directly from the victims about the immense harm that his action have caused which may achieve some of the principles of sentencing by deterring this offender from harming other children, promoting a sense of responsibility and encouraging rehabilitation. It is an opportunity to treat these victims with compassion and dignity by allowing them to voice their pain and suffering. It is a means to begin making reparations and a chance to start the process of healing. As a result, the sentencing provisions allow for some flexibility to achieve a just result and a fair hearing while permitting the victims a fulsome opportunity to express themselves within some boundaries.

[10] Importantly, Justice Green reinforced the requirement of the Court to consider the portions of the VIS that are admissible and relevant when determining the appropriate sentence and can "disregard" any other portion of the statement. In the civilian system, this is codified in the *Criminal Code* at subsection 722(8). In the military justice system, I have referred to the applicable section in the *NDA* subsection 203.7(5).

[11] Justice Green noted that there may be instances that warrant judicial intervention and that a judge may choose to exercise that discretion and exclude inflammatory or offensive parts of VISs that create the appearance of unfairness in the proceedings or reflect negatively on the integrity of the administration of justice (paragraph 14). That

said, the Court highlights this excerpt from the decision at paragraph 23, “[i]t is imperative, however, that this Court should not preclude victims from providing impact statements in their own words just because they operation unfortunately for the accused”.

[12] Using the rationale in *C.C.*, I see nothing in the VIS in this case that would necessitate judicial intervention to ensure the appearance of fairness or protect the integrity of the administration of justice. While the prosecution could have provided the victim with some earlier guidance and supervision with the VIS, as there are statements that are not the subject of this proceeding, requiring the victim to rewrite or have the Court redact portions of it would be insensitive and unnecessary (see paragraph 27). I am confident that using the authority granted to me at *NDA* subsection 203.7(5), will balance the offender’s right to a fair hearing with the right of the victim to be provided an opportunity to express the impact the offence has had on their life (see paragraph 24).

[13] Therefore, in this case the victim will be permitted to provide their victim impact statement. To be clear, I am mindful of the portions of the material highlighted by the applicant and will not rely upon any information not directly related to the charges before this Court martial when determining sentence. In my view, this process will strike the balance between the offender and the victim.

FOR THESE REASONS, THE COURT:

[14] **DENIES** the applicant’s request to have the Victim Impact Statement redacted.

Counsel:

Major I. Gagné, Defence Counsel Services, Counsel for Lieutenant-Colonel Y. Therrien

The Director of Military Prosecutions as represented by Major O. Vinet-Gasse