

**Citation:** *R. v. Sergeant J.J. Tourigny*, 2007 CM 1026

**Docket:** 200737

**STANDING COURT MARTIAL  
CANADA  
ONTARIO  
CANADIAN FORCES BASE BORDEN**

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**Date:** 27 November 2007

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**PRESIDING: COLONEL M. DUTIL, C.M.J.**

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**HER MAJESTY THE QUEEN  
v.  
SERGEANT J.J. TOURIGNY  
(Offender)**

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**SENTENCE  
(Rendered orally)**

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[1] Sergeant Tourigny, after having accepted and recorded a plea of guilty in respect of the second charge, the court finds you guilty of that charge. This is a case where the prosecution and defence have made a joint submission on sentence. They have recommended that the court sentence you to a fine in the amount of \$200.

[2] Although the court is not bound by the joint recommendation, it is generally accepted that a joint submission should be departed from only where to accept it would be contrary to public interest and would bring the administration of justice into disrepute. This is not the case here.

[3] It has long been recognized that the purpose of a separate system of military justice or tribunal is to allow the armed forces to deal with matters that pertain directly to discipline, efficiency, and morale of the military. It is also recognized that the military context may, in appropriate circumstances, justify and at times dictate a sentence that would be more severe than if committed in a purely civilian context in order to promote military objectives. That being said, any punishment, be it before a civil tribunal or military tribunal, should constitute the minimum necessary intervention that is adequate in the particular circumstances of the case.

[4] In determining sentence today, the court has considered the totality of the circumstances surrounding the commission of the offence as read by the prosecutor earlier today. I have also considered the documentary evidence that was filed before the court by the prosecutor and also by your defence counsel. And I have also, finally, considered the representations that were made by counsel, and mostly by the prosecutor. As your counsel said, this is a case—and I think I must say this is probably a case where he spoke the least amount of words before the court, and I think it is directly attributable to what was said by the prosecutor. If there's one thing, also, that I have considered in accepting this joint submission, it is also the effect and the consequences, either direct or indirect, that the sentence will have on you.

[5] We all know that a court must sentence an offender for offences that he has committed, but only in light of the applicable sentencing principles. These principles will vary, as well as the objectives will vary, from case to case, but they must always be adapted to the circumstances of the offence, but, also, of the offender. In order to contribute to military discipline, the sentencing principles and objectives could be listed as follows:

Firstly, the protection of the public, and, of course, that includes the Canadian Forces;

secondly, the punishment and the denunciation of the unlawful conduct;

thirdly, the deterrence of the offender as well as for other persons who would be tempted in committing similar offences;

fourthly, the separation of offenders from society, including from members of the Canadian Forces, where necessary;

fifthly, the rehabilitation of offenders;

sixthly, the proportionality to the gravity of the offence and the degree of responsibility of the offender in the commission of that offence. And I think it is of the utmost importance in this context, considering the behaviour of Master Seaman Thibault at the time;

seventhly, the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances;

eighthly, an offender should not be deprived of liberty if less restrictive punishment or combination of punishments may be appropriate in the circumstances; and

finally, the court should consider any relevant aggravating or mitigating circumstances relating to the offence or to the offender.

[6] This is a case, of course, that deals with QR&O article 19.13, which prohibits the rebuke of a person in the presence of anyone junior to that person. This specific regulation is part of the basic rules governing the conduct and discipline applicable to all members of the Canadian Forces. And as it was pointed out by Mr Prosecutor, it is the public rebuke in presence of juniors that is prohibited, not the rebuke itself. And certainly, in these circumstances, Master Seaman Thibault, as pointed out by the prosecutor, was certainly deserving of a rebuke, but not a public one, as you knew at the time, and as you should have known at the time.

[7] I fully agree with the prosecutor that there is no aggravating circumstances in this case, and that explains as well why your counsel was so short in his remarks. Not to say that what you did was not wrong, and with your guilty plea and your issuance of regrets at the earliest stage of this affair, I think you understand that, and you have understood that for some time. And your promotion to the rank of sergeant is certainly indicative of the fact that you have learned from your mistakes and that your chain of command fully trusts you and believes that it should not be held against you.

[8] You were certainly victim of your impatience, and, as I have said, this should be put behind you and used as a positive experience, if one might say, in the sense that you will use that not to do it again and to make sure that people under your command will not do it as well. It's absolutely prohibited, and I accept your plea of guilty as a profound sign of remorse in that regard.

[9] I consider to be mitigating, in this case, your plea of guilty; your acknowledgement of full responsibility, and that, at the very first opportunity. I also accept as a mitigating fact, to some extent, the fact that you have been promoted to the rank of sergeant and that this incident is, for all intents and purposes, behind you, and, especially in light of your personal evaluation reports, at least the most recent ones, which establish beyond any doubt that you are an outstanding performer. So I consider that to be a very mitigating fact in this case.

[10] For all these reasons, the court has absolutely no difficulty whatsoever to accept this joint submission made by counsel which is totally adequate in the circumstances to achieve the need for discipline, and also put in perspective your lack of

judgement at the time, but, also, to put your conduct in perspective with regard to the conduct of the person that was the subject of your rebuke. I am satisfied, also, that the acceptance of this joint submission will not bring the administration of justice into disrepute with regard to the specific circumstances of this case as have been described by your counsel as unique in the circumstances. In addition, I am totally convinced that you will not be involved in similar conduct in the future and that you will also make sure that no one under your command or co-workers or colleagues will be tempted to do the same. So therefore, I accept this joint submission and I sentence you to a fine in the amount of \$200.

[11] March out Sergeant Tourigny. Finally, I would like to thank both counsel for their professionalism in providing a fair and accurate rendition of the circumstances of this case. I thank you for your work in that. The proceedings of this court martial in respect of Sergeant Tourigny are terminated.

COLONEL M. DUTIL, C.M.J.

Counsel :

Major A.M. Tamburro, Regional Military Prosecutor, Central Region  
Counsel for Her Majesty The Queen  
Lieutenant-Commander J.A. McMunagle, Directorate of Defence Counsel Services  
Counsel for Sergeant J.J. Tourigny