

BREAKING CASE LAW

R. v. Anthony-Cook,
2016 SCC 43, [2016]
S.C.J. No. 43 (QL)



This Issue

Joint Submissions on Penalty

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Although professional regulation is distinct from the criminal law, many of the same principles apply. This case is important for administrative tribunals as the principles that apply to joint submissions in criminal law have been imported into the administrative law setting (see *Rault v. Law Society of Saskatchewan*, 2009 SKCA 91 at para. 19).

In this case, Mr. Anthony-Cook (“A-C”) attended a drop-in centre where he punched a volunteer. The volunteer fell, hit his head on the pavement, and died. After several days of trial, A-C pleaded guilty to manslaughter. The prosecutor and the defense made a joint submission on sentence of 18 months in custody with no period of probation. The trial judge applied a “fitness test” to the joint submission, rejected it and ordered a sentence of two years less a day, plus three years of probation. The British Columbia Court of Appeal then dismissed A-C’s sentence appeal on the basis that the sentence imposed was fit in the circumstances.

A-C appealed to the Supreme Court of Canada. The Supreme Court considered a variety of tests that judges apply to decide when it is appropriate to depart from a joint submission. In the end the Supreme Court definitively stated that the appropriate test is the “public interest test” (paragraph 32). Under the public interest test, a trial judge should not depart from a joint submission on sentence unless it would bring the administration of justice into disrepute or is otherwise contrary to the public interest.

The Court added that a joint submission will be contrary to the public interest when reasonable persons aware of the circumstances of the case would view it as a break down in the proper functioning of the criminal justice system (para 33).

The Supreme Court found that a high threshold for departing from joint submissions is not only necessary to obtain all the benefits of joint submissions, it is appropriate, and emphasized that:

- A joint submission should not be rejected lightly.

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- When properly conducted joint submissions benefit not only the accused, but also victims, witnesses, counsel, and the administration of justice generally.
- Guilty pleas help to minimize the stress and legal costs associated with trials.
- For those who are truly remorseful, a guilty plea offers an opportunity to begin making amends.
- If the parties negotiating compromise agreements cannot expect their efforts will be respected, there is little incentive to attempt to negotiate a resolution.

The Court also offered some practical guidance when considering a departure from a joint submission including:

- If the parties have not asked for a particular order, the trial judge should assume that it was considered and excluded from the joint submission.
- In assessing the severity of a joint submission judges should be mindful of both the power imbalance that may exist particularly for self-represented accused and that the community's confidence in the administration of justice may suffer if an accused enjoys the benefits of a joint submission without having to serve the agreed-upon sentence.
- Counsel should provide a full description of the relevant facts so that the judge can determine whether the joint submission should be accepted.
- If a judge concludes that they might not accede to a joint submission, the judge should notify counsel of their concerns, and invite further submissions on those concerns before imposing a sentence (citing *R. v. G.W.C.*, 2000, ABCA 333).

In summary, when discipline tribunals are faced with a joint proposal on penalties they can expect a full recitation of the facts and supporting rational from both counsel; they should presume that the parties canvassed all options and should not depart from the joint submission in the absence of a clear and cogent reason to do so. If the tribunal is considering a departure from a joint submission, they should warn both parties of their intention and their rationale and allow the parties to make additional submissions before making an order.

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