

Citation: *R. v. Master Seaman R.J. Middlemiss*, 2008 CM 1018

Docket: 200822

**DISCIPLINARY COURT MARTIAL
CANADA
QUEBEC
ASTICOU CENTRE**

Date: 11 June 2008

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

HER MAJESTY THE QUEEN

v.

**MASTER SEAMAN R.J. MIDDLEMISS
(Accused)**

**DECISION ON PLEA IN BAR OF TRIAL APPLICATION FOR THE COURT
LACKING JURISDICTION (QR&O ARTS 112.05(5)(b) AND 112.24)
(Rendered orally)**

[1] Based on the evidence before me and on the arguments of counsel, which basically concur that further to the decision of the C.M.A.C. in *Trepanier* and in applying the principles followed by my colleague Judge d'Auteuil in *R. v. Strong*, with the caveat that the mode of trial chosen here was by the prosecution as a DCM; i.e., not the choice of Master Seaman Middlemiss where he has indicated clearly that he didn't want to be tried by this Disciplinary Court Martial. The proper remedy is that the court has no jurisdiction, and if it would, it would be in violation of the accused's rights under section 7 and 11(d) of the *Charter*, I will terminate the proceedings.

[2] I do not have to address the issues raised by the prosecution with regard to the other matter, including paragraph 14 of the decision of Commander Lamont in *Liwjy*. But in the circumstances where both parties agree that the court should terminate the proceedings, we will leave it at that. And, as I said prior, I strongly invite counsel involved with cases that have been convened prior to the decision of the Court Martial Appeal Court to try to minimize the impact of this decision—not on the rights of the prosecution, not on the rights of the accused because those have to be protected—on the overall efficiency of the military justice system. People have to act responsively and find ways that justice must not only be done, but at least appear to be done.

[3] The court grants that plea in bar of trial in relation to all charges. The proceedings of this Disciplinary Court Martial are terminated as a result of the plea in bar of trial pursuant to QR&O article 112.05(5)(b) and 112.24.

Colonel M. Dutil
Chief Military Judge

Counsel:

Major R. Henderson, Regional Military Prosecutions Western
Counsel for Her Majesty The Queen
Major L. D'Urbano, Directorate of Defence Counsel Services
Counsel for Master Corporal Middlemiss