



## COURT MARTIAL

**Citation:** *R v Narynski*, 2011 CM 1008

**Date:** 20110912

**Docket:** 201117

Standing Court Martial

Canadian Forces Base Esquimalt  
Victoria, British Columbia, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Leading Seaman R.P. Narynski, Offender**

**Before:** Colonel M. Dutil, C.M.J.

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### REASONS FOR SENTENCE

(Orally)

[1] Leading Seaman Narynski has entered a plea of guilty to one count of conduct to the prejudice of good order and discipline under s. 129 of the *National Defence Act*. The charge alleged that Leading Seaman Narynski did sexually harass another female crew member on or about 23 September 2010, at or near Guayaquil, Ecuador, onboard HMCS VANCOUVER. The court accepted and recorded the plea of guilty accordingly.

[2] It is now incumbent upon me to determine what shall be an appropriate, fair, and just sentence. Counsel for the prosecution and defence have made a joint submission on sentence. They recommend that Leading Seaman Narynski be sentenced to a reprimand and a fine in the amount of \$1500, payable in five monthly instalments of \$300. Although this court is not bound by this joint submission, it is generally accepted that a joint submission ought to be rejected only if it is contrary to the public interest and the sentence would bring the administration of justice into disrepute.

[3] In the context of sentencing an offender under the Code of Service Discipline, a court martial shall guide itself with the appropriate sentencing purposes, principles, and objectives, including those enunciated in ss. 718.1 and 718.2 of the *Criminal Code*. The fundamental purpose of sentencing at court martial is to contribute to the maintenance of discipline and the respect of the law by imposing punishments that meet one or more of the following objectives: the protection of the public and it includes the interest of the Canadian Forces; the denunciation of the unlawful conduct; the deterrent effect of the punishment, not only on the offender but also upon others who might be tempted to commit such offences; and the reformation and rehabilitation of the offender.

[4] The sentence must also take into consideration the following principles: the sentence must be commensurate with the gravity of the offence, the previous character of the offender and his or her degree of responsibility; the sentence should be similar to sentences imposed on similar offenders for similar offences committed in similar circumstances. A court must also respect the principle that an offender should not be deprived of liberty if less restrictive punishments may be appropriate in the circumstances because punishments in the form of incarceration should be used as a last resort. Finally, the sentence should be increased or reduced to account for any relevant aggravating or mitigating circumstances relating to the offence or the offender. However, the court must act with restraint in determining sentence in imposing such punishment that should be the minimum necessary intervention to maintain discipline.

[5] The facts surrounding the commission of the offence reveal that Leading Seaman Narynski was a crew member on HMCS VANCOUVER as well as the victim during a Pacific cruise in the fall 2010. The two members had developed a light social acquaintanceship prior to the incident in question, limited to the occasional group outing or conversation, but nothing of a dating or intimate nature. On 23 September 2010, the ship was in Ecuador on a port visit. A group of sailors, including the two members, attended a soccer game in town during which Leading Seaman Narynski consumed five or six beers. The victim had consumed no alcohol. On return to the ship, the victim went to an enclosed workspace to use a computer terminal to check her email, Leading Seaman Narynski followed her. As she checked her email, Leading Seaman Narynski reached around from behind and felt her right breast over her clothing with his hands, saying "You have nice boobs" or words to that effect. She tried to shrug it off and then stood up, breaking contact. Leading Seaman Narynski then tried to kiss her to which she responded "You are definitely not kissing me" and headed for the door. Leading Seaman Narynski reached after her and his hand touched somewhere between her navel and pubis. The victim did not consent to the touching. Leading Seaman Narynski was hopeful that the victim would be receptive, but was reckless as to whether consent was present at the time of touching. The two members did not see each other for three days. The victim expressed her anger over the incident to a master seaman, who convened that to the offender. Leading Seaman Narynski apologized to her. The matter was reported further up the chain of command and Leading Seaman Narynski was removed from the ship and sent back to Esquimalt. The forced intimacy aboard ship and attendant repatriation of Leading Seaman Narynski had an adverse effect onboard ship.

[6] The aggravating factors in this case are the following:

- (a) The offence of conduct to the prejudice of good order and discipline is a serious offence; it is punishable to dismissal with disgrace from Her Majesty's service;
- (b) The incident took place onboard ship in a foreign port. I agree with the prosecution that privacy and security must be respected and protected in these situations;
- (c) The specific circumstances surrounding the commission of the offence as previously described. Leading Seaman Narynski was not only reckless about the lack of consent on the victim; his actions were clearly unwanted and unsolicited. It may well be that Leading Seaman Narynski's previous consumption of alcohol contributed to his disinhibition. It remains that a serving member of his experience should know better considering all the emphasis and education that have been put in the Canadian Forces to prevent all forms of harassment in the workplace, including when serving onboard ship with female colleagues; and
- (d) Finally, the offender has a conduct sheet that reveals a previous incident involving the consumption of alcohol.

[7] However, the important mitigating factor consists of the plea of guilty at the earliest opportunity with the apology to the victim shortly after the incident. The court concludes that Leading Seaman Narynski accepts full responsibility for his behaviour and that he is remorseful for his actions.

[8] The court agrees with counsel that this case fits within the range of sentences imposed in similar matters and is not so off the mark that its adoption by this court martial would be contrary to the public interest or bring the administration of justice into disrepute. This offence relates to one of the key attributes required of every member of the Canadian Forces; that is, the respect of the dignity and the sexual integrity of all persons. Any failure to respect this attribute by a military member towards a peer is a serious matter and may reflect on the trustworthy relationship and the reliability that must exist at all times among armed forces' members when performing any task or mission. This kind of behaviour undermines the basics of military discipline and is highly prejudicial to the morale, cohesion, and effectiveness of a military unit. Sexual harassment in the workplace cannot be tolerated. Any sentence for this improper behaviour must emphasize the objectives of denunciation, general, and specific deterrence. The court concludes that the joint proposal meets these key objectives.

**FOR THESE REASONS, THE COURT:**

[9] **FINDS** the offender, Leading Seaman Narynski, guilty of the first charge under s. 129 of the *National Defence Act*; that is to say, conduct to the prejudice to good order and discipline.

[10] **SENTENCES** the offender, Leading Seaman Narynski, to a reprimand and a fine in the amount of \$1500 payable in five monthly equal instalments commencing 15 September 2011.

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**Counsel:**

Major G.T. Rippon, Canadian Military Prosecution Service  
Counsel for Her Majesty the Queen

Major D. Berntsen, Directorate of Defence Counsel Services  
Counsel for Leading Seaman R.P. Narynski