



## COURT MARTIAL

**Citation:** *R v Zinck*, 2011 CM 1003

**Date:** 20110412

**Docket:** 201116

Standing Court Martial

Halifax Courtroom  
Halifax, Nova Scotia, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Leading Seaman J.R. Zinck, Offender**

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

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### REASONS FOR SENTENCE

(Orally)

[1] Leading Seaman Zinck was charged with two counts of drunkenness under s. 97 of the *National Defence Act*. The charges alleged that the offences occurred on or about 16 and 17 January 2011 at or near Key West, Florida, United States of America and once on board ship HMCS TORONTO. Leading Seaman Zinck entered pleas of guilty to both charges. The court accepted and recorded the pleas 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 Zinck be sentenced to a reprimand and a fine in the amount of 500 dollars payable in five monthly instalments of 100 dollars. 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 should 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 respect of the law and the maintenance of military discipline 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/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. In other words, 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 offences reveal that Leading Seaman Zinck is a Regular Force sailor posted to HMCS TORONTO. In January 2011, HMCS TORONTO was deployed on Operation CARIBBE, in the Caribbean basin. On 16 January 2011, HMCS TORONTO was alongside in Key West, Florida, United States of America for a brief port visit. That evening in the early evening hours Leading Seaman Zinck was walking on the upper deck, through the Port Breezeway moving aft towards the Ship's brow, when he was observed by Sub-Lieutenant Lashinski to be carrying what Sub-Lieutenant Lashinski thought to be a can of beer. Leading Seaman Zinck had consumed alcoholic beverages at this point and was mildly inebriated. Sub-Lieutenant Lashinski spoke to Leading Seaman Zinck, telling him it was improper to have alcohol outside of the authorized Ship's mess. Leading Seaman Zinck continued to walk past Sub-Lieutenant Lashinski and replied "Fuck off" or words to that effect. This incident was observed by the Acting Chief Bosun Mate, Petty Officer First Class Westcott. Rather than confront Leading Seaman Zinck directly, Sub-Lieutenant Lashinski reported the incident to the Officer of the Day, however, Leading Seaman Zinck had departed the ship by this point.

[6] In the early morning hours of 17 January 2011, at approximately 0400 hours, Sub-Lieutenant Lashinski and a few shipmates were returning to HMCS TORONTO from their evening ashore in Key West. At the same time, the offender and a few of his shipmates were also returning to the Ship from their evening ashore. Leading Seaman Zinck was moderately intoxicated at this point. The two groups met up on the jetty leading to the Ship whereupon Leading Seaman Zinck began yelling discrediting re-

marks at Sub-Lieutenant Lashinski, such as “fuck off” and “what a way to fuck your buddies” or words to that effect. Sub-Lieutenant Lashinski replied to Leading Seaman Zinck to “fuck off”, they were then separated by their shipmates. This incident was observed by other CF members, including an officer senior to Sub-Lieutenant Lashinski.

[7] The court was provided with the following additional information. Leading Seaman Zinck has completed two six weeks deployment on OP CARRIBE, and is eligible to receive the Operational Service Medal (OSM). He performs the following secondary duties: Safety representative, Departmental storesman, Cryptography second in charge.

[8] Leading Seaman Zinck is 27 years old and is in a common law relationship. They have no children. His spouse works part-time. Her total debts amount to 84,000 dollars. They pay monthly mortgage payments of 1,150 dollars and a monthly car payment of 200 dollars. The court is not informed of any other financial information. Leading Seaman Zinck enrolled in 2005 and was promoted to his current rank in 2009. He is a High School graduate.

[9] The aggravating factors in this case are:

- a. The offences of drunkenness involved the disrespect of a superior officer in the presence of other superior officers and a disorderly conduct; and
- b. The incidents took place in a foreign port where the offender's ship was involved in a multi-national operation.

[10] However, the mitigating factors include:

- a. The pleas of guilty to both charges at the earliest opportunity. The incidents took place in mid-January 2011 and the charge sheet is dated 8 April 2011. Considering that this court is held on 12 April 2011, there is no doubt that this complete admission of guilt is a genuine expression of remorse and the full acceptance of responsibility for the impugned misconduct.
- b. The absence of previous disciplinary or criminal record.
- c. The relative young age of the offender. Leading Seaman Zinck is 27 years old and there is no evidence that he represents an administrative burden for the Canadian Forces. It appears to be an isolated incident, and
- d. The financial family situation of Leading Seaman Zinck is fragile.

[11] 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 mar-

tial would be contrary to the public interest or bring the administration of military justice into disrepute. The proposed sentence is sufficient to meet the objectives of denunciation, general and specific deterrence and rehabilitation.

**FOR THESE REASONS, THE COURT:**

[12] **FINDS** you guilty of the first and second charges under s. 97 of the *National Defence Act*; that is to say, drunkenness.

[13] **SENTENCES** you to a reprimand and a fine in the amount of 500 dollars payable in five monthly equal instalments commencing 15 May 2011.

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**Counsel:**

Lieutenant-Commander D.T. Reeves, Canadian Military Prosecution Services  
Counsel for Her Majesty the Queen

Major E. Charland, Directorate of Defence Counsel Services  
Counsel for Leading Seaman J.R. Zinck