



## COURT MARTIAL

**Citation:** *R. v. Moreau*, 2010 CM 1019

**Date:** 20101104

**Docket:** 201058

Standing Court Martial

Canadian Forces Base Esquimalt  
Esquimalt, British Columbia

**Between:**

**Her Majesty the Queen**

- and -

**Leading Seaman S. Moreau**

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

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### **REASONS FOR SENTENCE**

(Orally)

#### ***INTRODUCTION***

[1] Ex-Leading Seaman Moreau was originally facing three charges under the *National Defence Act*. The first charge laid under section 85, behaved with contempt toward a superior officer, of the *National Defence Act* was withdrawn by the prosecution. The remaining two charges relate to an offence under section 84, offering violence to a superior officer, and to an offence under paragraph 116(a), wilfully damaged public property, of the same *Act*. The particulars of the second charge alleged that, on 20 April 2010, at Canadian Forces Base Esquimalt, Leading Seaman Moreau would have brandished a hot clothes iron toward a person of the rank of Petty Officer 2nd Class. The third charge alleged that Leading Seaman Moreau would have damaged a clothes iron and mirror, the following day, by striking them together and wrenching the mirror to the floor. The incidents would have occurred while Leading Seaman Moreau was serving a punishment of confinement to barracks imposed by a delegated officer presiding at a summary trial on 14 April 2010. Yesterday, ex-Leading Seaman Moreau entered pleas

of guilty to the second and third charges. The court accepted and recorded the pleas of guilty to these charges.

[2] The court shall now impose an appropriate, fair and just sentence that will maintain military discipline. Counsel for the prosecution and defence have made a joint submission on sentence. They recommend that ex-Leading Seaman Moreau be sentenced to imprisonment for a period of 10 days and a fine in the amount of 1,000 dollars payable on 15 November 2010. Counsel recommend that this court suspends the carrying into effect the punishment of imprisonment. Although this court is not bound by this joint submission, it is generally accepted that a joint submission should be departed from only where to accept it would be contrary to public interest or would bring the administration of military justice into disrepute.

[3] 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 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. 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.

[5] In determining sentence, I have considered the totality of the circumstances surrounding the commission of the offences as revealed by the statement of circumstances that ex-Leading Seaman Moreau has accepted as conclusive evidence, I have also considered the documentary evidence provided to the court as well the offender's testimony. I have also considered the submissions made by both counsel. Finally, I have taken into account any direct and indirect consequences that the findings and sentence will have on the offender.

[6] The facts surrounding the commission of the offences reveal that ex-Leading Seaman Moreau was a member of the crew of HMCS Regina, a frigate then in refit at Canadian Forces Base Esquimalt. At the time that these offences were committed, in April 2010, he was taking prescription medication and he was under a great deal of mental and psychological stress.

[7] On 14 April 2010, he was convicted at summary trial by a delegated officer for insubordinate behaviour. He received a sentence of 10 days confinement to barracks and a fine of \$1100. That same day he deliberately ingested an overdose of prescription medication. He was immediately taken to local hospital for physical and mental assessment and returned for duty on 16 April 2010.

[8] Because HMCS Regina was in refit, he could not serve his sentence aboard ship, as it is customary. He therefore was subject to the Base routine for his confinement to barracks, based at the Nelles Block. He began the routine on 16 April 2010. The chain of command did not feel that Leading Seaman Moreau was in a fit state for the performance of his trade in naval communications. He was therefore set basic duties such as cleaning, in addition to drill instruction. His chain of command was also concerned about his mental state and his potential for self-harm, in view of what had occurred on 14 April 2010, notwithstanding his release from medical care on 16 April 2010. They therefore set a rotating watch of ship's personnel to be with him throughout.

[9] At 1000 hrs on 20 April 2010, Petty Officer 2nd Class Blore and Petty Officer 2nd Class Castellani went to Leading Seaman Moreau's room to discuss prior kit maintenance deficiencies. When the offender muttered "Whatever" to him, Petty Officer 2nd Class Castellani rebuked him for his manner. Leading Seaman Green, who was also in the room, observed Leading Seaman Moreau develop more and more suppressed anger. The two petty officers left the room, whereupon Leading Seaman Moreau went directly to his locker and emptied his bottle of prescription clonazepam pills into his mouth, the amount of pills was estimated to be between 15 and 17. Leading Seaman Green saw this and shouted an alarm to this effect down the hallway to the petty officers.

[10] Petty Officer 2nd Class Blore ran to call 911 and Petty Officer 2nd Class Castellani re-entered the room. Leading Seaman Moreau still appeared to have a few pills in his mouth. He picked up a hot clothes iron, with steam still rising from it, and held it to Petty Officer 2nd Class Castellani and also Leading Seaman Green, who were about 10 feet away, telling them to "stay back or I'll hurt you or myself" or words to that effect. This reaction was prompted by the offender to gain time in order to inflict harm on himself. Petty Officer 2nd Class Castellani saw an opening and grabbed the arm holding the iron, and the two plus a newly arrived third person then subdued him and removed the iron. Once he had ingested the pills, he relaxed. Petty Officer 2nd Class Castellani checked his breathing and heart rate, and the Emergency Response Team arrived soon after to take over. He was medically assessed and returned to barracks at 2000 hours.

[11] The following day Leading Seaman Moreau worked outside in the morning. He then went back to his room to sleep. At 0820 hours, Petty Officer 2nd Class Blore entered the room and directed Leading Seaman Moreau to get up and shower in preparation for the rest of the day. Leading Seaman Moreau said he was too tired, but Petty Officer 2nd Class Blore insisted and Leading Seaman Moreau eventually complied. Concerned about the events of 14 and 20 April 2010, Petty Officer 2nd Class Blore directed him not to lock the door. Petty Officer 2nd Class Blore did not observe Leading

Seaman Moreau, but soon heard a great banging. He turned to see Leading Seaman Moreau smashing a clothes iron into the washroom mirror, breaking it and the mirror. Petty Officer 2nd Class Blore was able to grab the iron from him, and Leading Seaman Gastonguay pushed past to him to restrain Leading Seaman Moreau, who was now trying to pull the mirror from its wall bracket. Eventually he wrenched the mirror from its wall brackets to the floor. As he was subdued again he began to calm down, but continued to speak to no one in particular, saying things such as “give me the mirror so I can cut myself” or words to that effect. According to his testimony, ex-Leading Seaman Moreau wanted to hurt himself again. After treatment, Leading Seaman Moreau completed his sentence of confinement to barracks without further incident. He was released from the Canadian Forces, on 31 October 2010, under item 5(f) in part as a consequence of these events and those set out on the conduct sheet.

[12] During his 10-year career in the Canadian Forces, ex-Leading Seaman Moreau had a long history of mental health issues. He is currently unemployed and does not earn any income. His spouse is employed as a school teacher and she is the sole income earner.

[13] To contribute to the respect of the law and the maintenance of military discipline, the sentence in this case must emphasize the need for general deterrence and the denunciation of the conduct. However, the particular circumstances of the offender are sufficiently compelling that the sentence should not unduly interfere or impair his rehabilitation. Although the facts surrounding the commission of the offence under section 84 of the *National Defence Act*; that is, striking or offering violence to a superior officer, can be considered to be at the lower end of the spectrum for this type of offence, it remains that offering violence to a superior officer is objectively one of the most serious offence in military law. It is punishable of imprisonment for life. Although it is correct to state that this offence is objectively serious because the Canadian Forces is an institution focused in the discipline of the use of force, as it was mentioned by the prosecution, it is also important to emphasize that its members must obey and refrain from insubordinate behaviour in order to achieve their mission. It should be of no surprise if the offence of disobedience of a lawful command under section 83 of the *Act* and the offence of striking or offering violence to a superior officer are punishable by imprisonment for life.

[14] In making its recommendation, the prosecution argued that the punishment of imprisonment is aimed at the objective of general deterrence for those who remain in the Canadian Forces. The court believes that such punishment should also address the importance of denouncing the conduct. It is particularly aggravating that these offences occurred while ex-Leading Seaman Moreau was undergoing a punishment that had just been imposed on him at summary trial. I agree with counsel, that the punishment of last resort would be warranted in the circumstances.

[15] Objectively a very serious offence, the circumstances of the commission of the offence are aggravating, particularly where the offender was already undergoing a punishment imposed at summary trial. It represents a profound disrespect to military disci-

pline and compliance with the law. The court also considers that the sentence should be increased because the conduct sheet of ex-Leading Seaman Moreau shows that he has had a previous history of convictions at summary trial for offences of insubordination. With regard to the offence of wilfully damaging public property, the circumstances of this case are such that it does not have an impact on the sentence in the context of this joint submission.

[16] However, the mitigating circumstances are also significant. First, it is recognized that the pleas of guilty saved the need to call prosecution witnesses, who could not attend at the proceedings before today. The fact that ex-Leading Seaman Moreau intended to make an application alleging that his *Charter* rights were violated does not diminish the mitigating effect of the plea in the circumstances. Second, the evidence indicates that ex-Leading Seaman Moreau has had significant mental health issues over the years. It seems that his personal problems related to addiction disorders to alcohol and other stimulants were the key factors in relation to his misconduct that led to the charges. There is no doubt that he was in mental distress when the offences were committed. The evidence shows that when he offered violence toward his superior officer, Leading Seaman Moreau did it to save himself time in order to hurt himself in ingesting a significant amount of prescription drugs. The medical evidence filed with the court would also support the view that his previous convictions in 2009 and 2010 had a clear connection with his alcohol and stimulants abuse. Ex-Leading Seaman Moreau was released from the Canadian Forces shortly before the beginning of the court martial proceedings. His release is attributable in part to the events before the court and those set out on the Conduct Sheet. Prior to his release, he attended a 50-day closed program at Edgewood for the treatment of substance abuse. Ex-Leading Seaman Moreau has now been sober for almost six months. He testified that he feels ashamed for what he did and he apologized for his conduct. The medical evidence concludes that his prognosis for a successful recovery is fair. He continues to attend AA meetings and he enjoys the support of his wife who is the sole income provider as a school teacher. The court found that he is sincere in his efforts to move on and start a new life as a civilian, but that he will need intensive counselling and support for a significant period. Balancing the need to have the offender physically serve his punishment to ensure military discipline through the objectives of general deterrence and denunciation with the importance of the offender's rehabilitation, in the particular circumstances, the suspension of the period of imprisonment would not be contrary to the proper administration of military justice. Therefore, the court accepts the joint submission made by counsel.

**FOR THESE REASONS, THE COURT:**

[17] **FINDS** you guilty of the second charge, for an offence under section 84 of the *National Defence Act* and guilty of the third charge, for an offence under paragraph 116(a) of the *National Defence Act*

[18] **SENTENCES** you to imprisonment for a period of 10 days and a fine of \$1,000 payable on 15 November 2010, by money order or certified cheque to the Receiver General of Canada.

[19] **SUSPENDS** the carrying into effect of the punishment of imprisonment.

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**Counsel:**

Major G. Rippon, Director of Military Prosecutions  
Counsel for the prosecution

Lieutenant-Commander M. Létourneau and Captain S. Collins, Directorate of Defence  
Counsel Services  
Counsel for ex-Leading Seaman S. Moreau