



COURT MARTIAL

Citation: *R. v. Lloyd-Trinque*, 2015 CM 3001

Date: 20150130

Docket: 201406

Standing Court Martial

Asticou Courtroom
Gatineau, Quebec, Canada

Between:

Her Majesty the Queen

- and -

Corporal M. G. C. Lloyd-Trinque, Accused

Before: Lieutenant-Colonel L.-V. d'Auteuil, M.J.

Restriction on publication: By court order made under section 179 of the *National Defence Act* and section 486.4 of the *Criminal Code*, information that could disclose the identity of the person described in this judgement as the complainant shall not be published in any document or broadcast or transmitted in any way.

REASONS FOR FINDING

(Orally)

[1] Corporal Lloyd-Trinque is charged with five service offences, which are:

- (a) two offences punishable under paragraph 130(1)(a) of the *National Defence Act*, for having allegedly committed a sexual offence against a fellow soldier contrary to section 271 of the *Criminal Code*;
- (b) two offences punishable under section 93 of the *National Defence Act* for behaving in a disgraceful manner; and

- (c) one service offence punishable under section 129 of *the National Defence Act* for conduct to the prejudice of good order and discipline.

[2] Those offences relate to two different alleged incidents of a sexual nature that would have both occurred overnight on two different dates in June 2013, between the accused and a classmate in the accused's room.

[3] This prosecution's case relies more than anything else on the testimony of the complainant. The prosecution called one other witness and introduced a picture of a couch, two drawings of the accused's room made by each witness and the audio-video recorded statement of the accused made to the police just some time after the incidents.

[4] The accused testified on his behalf and also introduced some close pictures of a couch. He called two other witnesses and also introduced a memo made by the complainant about two security incidents unrelated to the matter before this court.

[5] Finally, the court took judicial notice of the matters listed at article 15 of the Military Rules of Evidence.

[6] The accused and the complainant did not know each other until they both met on a trade course they were part of. It took place from 21 May to 29 August 2013 at Canadian Forces Base Valcartier in the province of Quebec. There were two groups on that course, one Anglophone and one Francophone, in order to teach accordingly in both official languages to candidates. The Anglophone's group was composed of about 12 members and both the accused and the complainant were part of that group. The complainant was the only female in this group, while there were two other female Francophone candidates in the other group.

[7] The complainant was sleeping at building 511 on the base. She had two other roommates who were the two females on the Francophone course. Because they were both from the area, one would not sleep at all there, returning home every night and weekend, while the other one would only return home on weekends. Because of the course's policy, female candidates were located at a different building than the male candidates. The latter, including the accused, were sleeping at building 504, which was an unconnected building located at a football field's distance from her building.

[8] The accused had two roommates: Private Berlingette and Private Brunelle who were both on the course and in the same group as him. The room was set up to accommodate four candidates but there were only three beds in it.

[9] Private Berlingette's bed was located close to the entrance door, while Corporal Lloyd-Trinque and Private Brunelle's beds were close to the windows on the other side of the room, while facing each other.

[10] As a matter of well-being, the occupants of that room made a decision to bring into their room a three-cushion couch from the common area. It allowed them to have a

place to sit in their room with more comfort in order to study or watch movies or television shows together on their laptop. They put the couch in the empty space where the fourth bed should have been normally located, just facing Private Berlingette's bed. However, further to an inspection, they were told to bring back the couch to its initial location. Then, they made the decision to bring the couch in their room only when they needed it and especially on the weekend while they were not subject to formal inspection and return it to the common area prior to any inspection of their room.

[11] The evidence disclosed that among the candidates, as it is usually on any other such course of that duration and nature in the Canadian Forces, some form of camaraderie took place. Obviously, some candidates had a better relationship with some of the soldiers than others. As described by witnesses, some connections would be developed further to the fact that they spend weekdays all together, that they study some evenings in small groups and that they spend weekends on the base because they do not go back to their hometown, considering that they had too much travelling to do.

[12] It appears that the complainant developed some kind of friendship with two members of that room: Private Brunelle and the accused, Corporal Lloyd-Trinque. The complainant being the only female on the Anglophone course, started to go see and study with male members of her own course to prepare for various tests and exams. Sometimes, she would study on her own, and other times, she would go with the guys to do so and cross the football field to go meet them during the evening.

[13] About 10 days after their arrival on the course, around Friday, 31 May 2013, all members of the Anglophone course got together in Private Tessier's room in order to party. People there drank some alcohol, chatted and played cards. During that party, it appears that the complainant sat beside the accused. At some point during that night, an argument took place between Private Tessier and the accused, which resulted in putting some end to that party. Private Berlingette, Private Brunelle and Corporal Lloyd-Trinque left Private Tessier's room and went back to their own room. The complainant followed them.

[14] Private Berlingette laid in his bed. Private Brunelle started to do some other business; he was in and out of the room. Corporal Lloyd-Trinque and the complainant started to watch a show on a laptop. They sat on the couch together and put the laptop at the end of Private Berlingette's bed in order to watch the show.

[15] According to the complainant, the accused offered to massage her shoulders and she accepted. She did the same to him. The complainant described this as being something that she would have done for any other classmate on her course and not being out of the ordinary in such a context. To the contrary, the accused said that he went a bit further.

[16] According to him, while they were both sitting on the couch, the accused pointed to his own shoulder, suggesting to her to massage him there. She agreed and started to

massage him on the shoulder and the back of his neck for about a minute. He did the same to her after, and they switched like this, three or four times.

[17] He described that, while massaging the complainant, he put his hands down from her shoulders to her chest under her T-shirt and massaged her bare breast, under her bra. According to Private Berlingette, he was present and saw such thing happen briefly. He had made eye contact with the accused. He told the court that both people on the couch were smiling as it was happening.

[18] In addition, he said that the complainant slept on the couch in their room for the first time that night. He told the court that he got, from a room-mate, a pillow, sheets and a fire blanket to allow her to have everything necessary for her to sleep on the couch. The complainant denied having done such thing because she slept in her room that night.

[19] As a matter of context, two other moments prior to the alleged incidents, involving the complainant and the accused, were presented before the court. First, there was a time where both were seen tickling each other. According to the complainant, Corporal Lloyd-Trinque found out that she was ticklish and started to tickle her while in his room. She said that in order to get out from the control of the accused, she tickled him back and hit him accidentally in the crotch. She mentioned that the room's door remained open during that time.

[20] The accused confirmed that event but presented it as something more consensual and where he had to close the door to avoid disturbing other people. He also mentioned that on that same night and the night after, Friday and Saturday, 7 and 8 June 2013, the complainant slept on the couch in their room, which she totally denied.

[21] Finally, it appears that the complainant is a fan of the martial arts and when she learned that the accused liked to grapple, she asked him to do it with her. Both were training at the same time at the gym and she saw the accused grappling with somebody else. She then discussed it with him and asked him to grapple in order to learn something.

[22] The accused confirmed this. However, he mentioned that they were training at the gym together often and when he grappled with her, he quickly realized that he was stronger than her and decided to slow down a bit to allow her to learn something.

[23] On Friday, 14 June 2013, the accused was away due to his convocation ceremony at the University in Ottawa. He returned late that evening, dressed in a dress shirt, dress pants and dress shoes. He took leave on that day and was supposed to recover the day of training he missed on Saturday, 15 June.

[24] On the evening of 14 June, the complainant watched a movie with Private Brunelle and Private Berlingette in their room. When the accused came back, the four of them discussed how their day went. Private Berlingette and Private Brunelle went to sleep. Corporal Lloyd-Trinque decided to watch a show on his laptop. He put it at the

end of Private Berlingette's bed and sat on the couch where the complainant was laying down.

[25] According to the complainant, she decided to sleep on the couch there for her very first night because of a security issue. She said that, at the beginning of the week, an unknown male from another course who had his room in the same building as her, knocked on her door for no specific reason. Because of that incident, she did not want to stay alone in her room, not having any roommate during the weekend, and she asked the accused and his roommates if they would allow her to sleep on the couch in their room, to which she said they all agreed. Private Brunelle confirmed her version. For Private Berlingette and Corporal Lloyd-Trinque, they hadn't really heard about such thing.

[26] Because he was sitting in the middle of the couch, there was not much space for the complainant's legs so he took her feet and put them on his lap. She thought it was a nice gesture by him, allowing her to be more comfortable. She tried to watch the show with him but she was resting her eyes.

[27] According to the complainant, the accused watched the television show late, until 2 a.m. Then he removed her feet from his lap, took his laptop with him and got undressed. She stretched out her legs and tried to go to sleep. The fire blanket was fully covering her, including her feet. She heard the accused getting undressed.

[28] She told the court that Corporal Lloyd-Trinque came back to the couch in his boxers, caressed her hand, kneeled down on the floor, removed the fire blanket on her feet, took off her socks one at a time and started to kiss her feet and suck her toes. She said that she was frozen; she did not know how to react. She was shocked, could not speak or do anything. She wanted to leave but could not.

[29] Suddenly, she felt a warm substance on her feet. She assumes it was his semen, but did not see the accused masturbate. The accused then went to the washroom for about 30 seconds, came back and cleaned up her feet. He went outside again, came back and went to sleep in his bed.

[30] She did not really fall asleep that night, waiting for more to come. She woke up and went back to her room before 8 a.m.

[31] Corporal Lloyd-Trinque told the court that while he was sitting on the couch watching the television show, he put her feet on his lap, covered by the fire blanket. At some point, while she was rubbing one of his arms with her foot, he made jokes about the holes in one of her socks, took it off and threw it in the corner.

[32] Later, she put her feet under his butt, and then put them on his lap. She finally put her feet on his crotch, moving them back and forth. He got an erection. She rubbed his penis and testicles with the arches and heel of her feet for about 5 minutes. His arms were on the back of the couch and he let things happen. He suddenly unzipped his pants, turned on his right and ejaculated onto the couch. No semen went on the feet of the

complainant who was on his left. He was embarrassed because he considered that he had prematurely ejaculated and he was not trying to have an orgasm. He cleaned up the couch with paper towel and soap and put everything in the garbage.

[33] He said that he went to bed in his boxers and both of them said nothing. He told the court that he did not kneel down, that he did not lick the complainant's feet. According to him, the complainant also slept the following night in his room, which was clearly denied by the complainant.

[34] Concerning the second incident that took place on 21 June 2013, Private Brunelle, Corporal Lloyd-Trinque, Private Fletcher, Private Rector and the complainant spent time in the accused's room playing cards and consuming alcohol. At some point during the game, while sitting on the accused's bed and playing, the complainant decided to have a quick nap. According to Private Rector and Corporal Lloyd-Trinque, the latter woke her up by splashing a glass of water on her crotch. The complainant denied that she was woken up in that way. The game came to an end. Private Fletcher and Rector went back to their room. Private Brunelle and the accused went on their respective beds in order to play or watch something on their laptop.

[35] The complainant went to Private Berlingette's bed who was absent that night. She made that request for security reasons again. Private Berlingette agreed having the complainant sleep in his bed while he was away, which she did.

[36] Late in the night, around 3 a.m., she was woken by a big sound. She recounted that she saw a silhouette and she recognized it as the accused that was standing up at the end of her bed, facing her. She asked him if he was okay and he answered "yes." She recognized his voice. He left the room and returned later to his bed. She noticed that the blanket and sheet at the bottom of her bed were untucked, leaving her feet exposed to the ankle. Her socks were still on.

[37] She then feared that the accused would act in the same way as the prior alleged incident. She did not want to leave or to wake up Private Brunelle. She noticed that the accused was checking on her and that after five minutes, he went to sleep. She could not sleep. She left in the morning.

[38] Corporal Lloyd-Trinque confirmed that the complainant slept that night in Private Berlingette's bed. He said that in the middle of the night, around 3 a.m., he came back from the washroom and got into the wrong bed, making a noise. He realized that he tried to enter by the foot of Berlingette's bed and not his own bed. He woke up the complainant in doing so. He went to his bed, played some games on his computer and fell asleep.

[39] The next day, the complainant had a discussion with Private Brunelle at the mess where he told her that the accused was talking behind her back. She told her version of both incidents to him and he told her that she should make a complaint to the chain of command.

[40] Three days later, she told her story to some members of the course staff. On 28 June 2013, she made a formal complaint. Later, she had an argument at the cafeteria with the accused in front of all their classmates where she confronted him because of his derogatory comments about some officer cadet's demeanour. He had made violent comments towards the complainant.

[41] She was interviewed later by police, on 6 and 7 July 2013, and charges were laid accordingly.

[42] She told the court that because of those events, despite having finished the course and having succeeded, her performance deteriorated, as did her academic performance later at university. She had some problems concentrating throughout the course and thereafter.

[43] Before this court provides its legal analysis, it's appropriate to deal with the presumption of innocence and the standard of proof beyond a reasonable doubt, a standard that is inextricably intertwined with the principle fundamental to all Code of Service Discipline and criminal trials. And these principles, of course, are well known to counsel, but other people in this courtroom may well be less familiar with them.

[44] The first and most important principle of law applicable to every Code of Service Discipline and criminal case is the presumption of innocence. Corporal Lloyd-Trinque enters the proceedings presumed to be innocent, and the presumption of innocence remains throughout the case unless the prosecution, on the evidence put before the court, satisfies it beyond a reasonable doubt that he is guilty.

[45] Two rules flow from the presumption of innocence. One is that the prosecution bears the burden of proving guilt. The other is that guilt must be proved beyond a reasonable doubt. These rules are linked with the presumption of innocence to ensure that no innocent person is convicted.

[46] The burden of proof rests with the prosecution and never shifts. There is no burden on Corporal Lloyd-Trinque to prove that he is innocent. He does not have to prove anything.

[47] Now what does the expression "beyond a reasonable doubt" means? A reasonable doubt is not an imaginary or frivolous doubt. It is not based on sympathy for or prejudice against anyone involved in the proceedings. Rather, it is based on reason and common sense. It is a doubt that arises logically from the evidence or from an absence of evidence.

[48] It is virtually impossible to prove anything to an absolute certainty, and the prosecution is not required to do so. Such a standard would be impossibly high. However, the standard of proof beyond a reasonable doubt falls much closer to absolute certainty than to probable guilt. The court must not find Corporal Lloyd-Trinque guilty

unless it is sure he is guilty. Even if the court believes that he is probably guilty or likely guilty, that is not sufficient. In those circumstances, the court must give the benefit of the doubt to Corporal Lloyd-Trinque and find him not guilty because the prosecution has failed to satisfy the court of his guilt beyond a reasonable doubt.

[49] The important point for the court is that the requirement of proof beyond a reasonable doubt applies to each of those essential elements. It does not apply to individual items of evidence. The court must decide, looking at the evidence as a whole, whether the prosecution has proved Corporal Lloyd-Trinque's guilt beyond a reasonable doubt.

[50] Reasonable doubt applies to the issue of credibility. On any given point, the court may believe a witness, disbelieve a witness, or not be able to decide. The court need not fully believe or disbelieve one witness or a group of witnesses. If this court has a reasonable doubt about Corporal Lloyd-Trinque's guilt arising from the credibility of the witnesses, then it must find him not guilty.

[51] The court has heard Corporal Lloyd-Trinque testify. When a person charged with an offence testifies, the court must assess that evidence as it would assess the testimony of any other witness, keeping in mind instructions mentioned earlier about the credibility of witnesses. The court may accept all, part, or none of Corporal Lloyd-Trinque's evidence.

[52] It is one of those cases where the approach on the assessment of credibility and reliability expressed by the Supreme Court of Canada in *R. v. W. (D.)*, [1991] 1 S.C.R. 742, must be applied, because Corporal Lloyd-Trinque testified.

[53] This test was enunciated mainly to avoid for the trier of facts to proceed by establishing which evidence it believes, the one adduced by the accused or the one presented by the prosecution. However, it is also clear that the Supreme Court of Canada reiterated many times that this formulation does not need to be followed word for word as some sort of incantation. The pitfall that this court must avoid is to be in a situation as appearing, or in reality, to choose between two versions in its analysis. As recently established by the Supreme Court of Canada in its decision of *R. v. Vuradin*, 2013 SCC 38, at paragraph 21:

The paramount question in a criminal case is whether, on the whole of the evidence, the trier of fact is left with a reasonable doubt about the guilt of the accused: *W.(D.)*, at p. 758. The order in which a trial judge makes credibility findings of witnesses is inconsequential as long as the principle of reasonable doubt remains the central consideration. A verdict of guilt must not be based on a choice between the accused's evidence and the Crown's evidence: *R. v. C.L.Y.*, 2008 SCC 2, [2008] 1 S.C.R. 5, at paras. 6-8. However, trial judges are not required to explain in detail the process they followed to reach a verdict: see *R. v. Boucher*, 2005 SCC 72, [2005] 3 S.C.R. 499, at para. 29.

[54] Of course, if the court believes the testimony of Corporal Lloyd-Trinque that he did not commit any offence charged, the court must find him not guilty of it.

[55] However, even if the court does not believe the testimony of Corporal Lloyd-Trinque, if it leaves it with a reasonable doubt about an essential element of the offence charged, the court must find him not guilty of that offence.

[56] Even if the testimony of Corporal Lloyd-Trinque does not raise a reasonable doubt about an essential element of the offence charged, if, after considering all the evidence, the court is not satisfied beyond a reasonable doubt of his guilt, it must acquit.

[57] About the evidence, it is important to say that the court must consider only the one presented in the courtroom. Evidence is the testimony of witnesses and things entered as exhibits, including pictures and drawings. It may also consist of admissions. The evidence includes what each witness says in response to questions asked. Only the answers are evidence. The questions are not evidence unless the witness agrees that what is asked is correct.

[58] Corporal Lloyd-Trinque is charged with sexual assault. Section 271 of the *Criminal Code* reads, in part, as follows:

271. Everyone who commits a sexual assault is guilty of

- (a) an indictable offence and is liable to imprisonment for a term not exceeding 10 years and, if the complainant is under the age of 16 years, to a minimum punishment of imprisonment for a term of one year ...

[59] In *R. v. Chase*, [1987] 2 SCR 293, at page 302, Judge McIntyre provided the definition of a sexual assault:

Sexual assault is an assault within any one of the definitions of that concept in s. 244(1) [now section 265(1)] of the *Criminal Code* which is committed in circumstances of a sexual nature, such that the sexual integrity of the victim is violated.

[60] Paragraph 265(1)(a) of the *Criminal Code* reads, in part, as follows:

265. (1) A person commits an assault when

- (a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly ...

[61] In *R. v. Ewanchuk*, [1999] 1 SCR 330, it was established that a conviction for sexual assault requires proof beyond reasonable doubt of two basic elements, that the accused committed the *actus reus* and that he had the necessary *mens rea*.

[62] The *actus reus* of assault is unwanted sexual touching and is established by the proof of three elements: touching, the sexual nature of the contact, and the absence of consent.

[63] Consent involves the complainant's state of mind. Is it the voluntary agreement of the complainant that the accused do what he did in the way in which he did it and when he did it? In other words, did the complainant want the accused to do what he did? A voluntary agreement is one made by a person, who is free to agree or disagree, of his or her own free will. It involves knowledge of what is going to happen and voluntary agreement to do it or let it be done.

[64] Just because the complainant did not resist or put up a fight does not mean that she consented to what the accused did. Consent requires knowledge on the complainant's part of what it is going to happen and a decision by him or her, without the influence of force, threats, fear, fraud or abuse of authority, to let it occur.

[65] The *mens rea* is the intention to touch, knowing of, or being reckless of or wilfully blind to, a lack of consent, either by words or actions, from the person being touched and it contains two elements: intention to touch and knowing of, or being reckless of or wilfully blind to, a lack of consent on the part of the person touched.

[66] Then, the prosecution had to prove the following essential elements beyond a reasonable doubt on the first charge: the identity of the accused, the date and place as alleged in the particulars of the charge on the charge sheet.

[67] The prosecution also had to prove the following additional elements:

- (a) the fact that Corporal Lloyd-Trinque used force directly or indirectly against the complainant;
- (b) the fact that he used intentionally the force against the complainant;
- (c) the fact that the complainant did not consent to the use of force;
- (d) that Corporal Lloyd-Trinque knew, or was reckless of or wilfully blind to, a lack of consent on the part of the complainant; and
- (e) the fact that the contacts made by him on the complainant were of a sexual nature.

[68] Corporal Lloyd-Trinque is also charged with having behaved in a disgraceful manner. Section 93 of the *National Defence Act* reads as follows:

Every person who behaves in a cruel or disgraceful manner is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding five years or to less punishment.

[69] In addition to identity, the date and place of the offence, the prosecution had to prove beyond a reasonable doubt that the accused's conduct was disgraceful.

[70] On this point, I rely on the test established by the Supreme Court of Canada majority decision in *R. v. Labaye*, 2005 SCC 80, for proving indecent criminal conduct. In my opinion, this test is fully applicable in the context of the offence at issue here because the purpose of the test is to determine the extent to which the disgraceful conduct in question constitutes a service offence. The test is based on the harm component, which entails that the risk of harm is easier to prove than the military social standard. Here, the idea is therefore to protect military order against the different types of harm that could negatively affect the maintenance of discipline and thereby threaten the morale and cohesion of the Canadian Forces.

[71] Simply put, a disgraceful conduct means that the accused's behavior was unacceptable, shocking, degrading or indecent, or that the accused behaved very badly. However, from a legal perspective, two things must be proved beyond a reasonable doubt:

- (a) First, by its nature, the conduct at issue causes harm or presents a significant risk of harm to individuals or society in a way that undermines or threatens to undermine a value reflected in and thus formally endorsed through the Constitution or similar fundamental laws by, for example:
 - (i) confronting members of the public with conduct that significantly interferes with their autonomy and liberty;
 - (ii) predisposing others to anti-social behavior; or
 - (iii) physically or psychologically harming persons involved in the conduct.
- (b) Second, the harm or risk of harm is of a degree that is incompatible with the proper functioning of society.

[72] Finally, Corporal Lloyd-Trinque is charged with attempt to commit the offence of sexual assault contrary to section 271 of the *Criminal Code* and with attempt, without consent, to perform a sexual act on the feet of the complainant contrary to section 93 of the *National Defence Act*. Concerning the fourth charge, subsection 137(1) of the *National Defence Act* must find application and reads as follow:

If the complete commission of an offence charged is not proved but the evidence establishes an attempt to commit the offence, the accused person may be found guilty of the attempt.

[73] About the fifth charge, subsection 129(3) of the *National Defence Act* reads as follows:

An attempt to commit any of the offences prescribed in sections 73 to 128 is an act, conduct, disorder or neglect to the prejudice of good order and discipline.

[74] In addition to the identity, date and place of the offence, the prosecution must prove beyond a reasonable doubt that:

- (a) Corporal Lloyd-Trinque's conduct was an attempt; and
- (b) Corporal Lloyd-Trinque meant to perform a sexual assault and/or a sexual act on the feet of the complainant, without her consent, contrary to section 93 of the *National Defence Act*.

[75] The crime of attempt to sexual assault and attempt to behave in a disgraceful manner involves conduct, doing something, and state of mind. This question has to do with Corporal Lloyd-Trinque's conduct, what he did.

[76] The conduct alleged in this case is that he tried to commit a sexual assault on the complainant and that he tried to perform a sexual act on the feet of the complainant by licking and ejaculating on her feet, without her consent, contrary to section 93 of the *National Defence Act*. Proof beyond a reasonable doubt of the conduct, I have just described, is proof of an *attempt*.

[77] Both crimes of attempt to commit a sexual assault and to behave in a disgraceful manner require prosecution to prove that Corporal Lloyd-Trinque had a particular or specific state of mind. Prosecution must satisfy the court beyond a reasonable doubt that when he tried to sexually assault and/or to perform a sexual act on the feet of the complainant by licking and ejaculating on her feet, without her consent, contrary to section 93 of the *National Defence Act*, Corporal Lloyd-Trinque meant to sexually assault or to behave in a disgraceful manner. Nothing less will do.

[78] The court should look at what Corporal Lloyd-Trinque said and did before, at the time, and after he tried to sexually assault and/or to perform a sexual act on the feet of the complainant by licking and ejaculating on her feet, without her consent, contrary to section 93 of the *National Defence Act*. All these things, and the circumstances in which they happened, may shed light on Corporal Lloyd-Trinque's state of mind at the time. They may help the court decide what he meant or didn't mean to do.

[79] In order to decide, the court must make first a determination about the credibility and reliability of the testimony provided by all witnesses in this matter.

[80] Corporal Lloyd-Trinque testified in a clear, calm and straightforward manner. The story he told in relation to all charges he is facing was consistent with itself. He had an excellent recollection of both incidents and the description he made of them appeared logical and coherent. In relation to the existing relationship with the complainant, he clearly stated that some kind of flirting was existing between them, that they had a good relationship but not to the extent that they were going out together, and it was supported by some other witnesses. Concerning the first incident, the way he described it and the way he reacted to it, appeared as reasonable and probable to the court, fitting also the

evidence adduced in relation to the stain on the couch. His description of the second incident was rational and logical.

[81] Corporal Lloyd-Trinque was responsive to questions asked by lawyers, went under a long cross-examination during which he answered in a straightforward and detailed manner, never hesitated to ask lawyers to repeat if he did not understand a question and asked for additional details if he was unable to understand to what topic a question was related. He clearly admitted that he had some difficulty to control his anger and that he was moody. He never hid the fact that he was physically attracted to the complainant and that he tried to get close to her during the course. For sure, there were some discrepancies with some details brought by other witnesses, which did not appear to the court as unusual in the circumstances or would make his account unbelievable. As an example, he told the court that he went through the collar of the complainant's T-shirt to touch her breasts while another witness reported that he put his hands through the bottom of her T-shirt. From the court's perspective, considering the time elapsed and the fact that witnesses did not really pay attention at the time to the manner but more to the result of this type of gesture by the accused, it appears as normal that such difference exists in the circumstances and surely it does not make the story told by the accused unbelievable.

[82] The accused's testimony was honest, reasonable and consistent with itself. The context he described and in which those incidents allegedly occurred was confirmed by some other witnesses. There is nothing in his testimony that would make the court disbelieve it. Then, for these reasons, applying the test enunciated in the Supreme Court decision of *R. v. W. (D.)*, and in light of the totality of the evidence adduced in the proceedings, it is the opinion of the court that the accused's evidence must be believed. Then, the court does believe that he did not sexually assault or behave in a disgraceful manner toward the complainant regarding the charges related to the incident of the night from 14 to 15 June 2013. The court also believes his denial with attempt to sexually assault and to perform a sexual act on the feet of the complainant without her consent, contrary to section 93 of the *National Defence Act*, on or about 22 June 2013.

[83] Mr. Berlingette testified also in a calm and straightforward manner. He had some good recollection of some specific events and did his best to answer to all questions. Clearly, he did not want to take any side and did his own business while on the course, not paying too much attention to what was going on between the accused and the complainant. He did not try to change or improve anything in his testimony to favour any side. His testimony is credible and reliable.

[84] Corporal Rector is probably the witness who had the best perspective on the matters he testified on, being some kind of outsider to all the events on the course. He had an excellent recollection of what he witnessed and he had no specific relationship with anybody. He qualified the relationship between the accused and the complainant as flirty, confirming the testimony of the accused on that matter. He also clearly explained the dynamic on the course and confirmed some aspects of the accused's testimony. His testimony is also credible and reliable.

[85] The testimony of the complainant was not delivered in an easy way. The court understands that for such person, being on the stand on a matter where you are at the origin of the proceedings does not make it easy, as it is for any complainant. However, she was very argumentative, reworded many questions asked by defence counsel, tried to adjust her testimony in order to make it fit to the particulars of the charge, belittle her relationship with the accused to a point that she wanted to believe that it was a platonic one and sometimes would provide an answer by asking a question or providing general statistics on an issue. Basically, it appears to the court that she tried to avoid being linked too much to the accused while she was on the course.

[86] She told the court that she considered the accused as somebody angry, moody and did not want to be around him. She had difficulty admitting that she spent time with the accused at different moments prior to the first incident. She was reluctant to admit the simple fact that she sat beside the accused during the party on 31 May. She denied giving a massage to the accused and reluctantly admitted it at some point.

[87] She had difficulty explaining contradictions she made during her testimony with the two interviews she gave to the police. As an example, she stated to the police that the accused kneeled down during the first incident while she told in court that he bent over or he was in a squat position when he started to lick her feet. She said that kneeling down would also mean bending over in a squat position. The court considers that it is a situation that would defy logic as a matter of explanation.

[88] She told the court that those events had some impact on her performance at university, where it finally ended up that she had to interrupt her first Master's with the agreement of the university in order to start a second one.

[89] Depending of the topic, it appears to the court that she had a tendency to exaggerate or play down some details in order to make her recount of her story fit the particulars of the charges.

[90] From that perspective, the court concludes that her testimony is not credible and unreliable, especially regarding the way things happened during the incident of 14 to 15 June 2013 and for the one that allegedly occurred on or about 22 June 2013.

[91] Concerning the testimony of Corporal Brunelle, it appears that he had an interest in the way the complainant would be believed by the court. First, he saw and heard anything concerning both incidents. He told the court that the accused tried to ensure his dominance over the complainant by grappling with her and tickling her.

[92] Second, it appears that the complainant told him her story many times in different contexts: alone, with course staff and in writing when he reviewed her complaint. He was also her confident and they spent the remaining of the course together, practically isolated from other classmates. He was close to her and did not appear to the court as having the necessary perspective to testify without trying to influence the outcome of the trial. His testimony gave the court the impression that he had some bias in favour of the

complainant's story. For these reasons, the court comes to the conclusion that his testimony is not credible and reliable.

[93] Concerning the fourth and fifth charges, the testimony of Corporal Lloyd-Trinque raised a reasonable doubt about the fact that he committed an attempt to sexually assault and to perform a sexual act on the feet of the complainant without her consent, contrary to section 93 of the *National Defence Act*. The court would add that if it had not believed the accused, it would have had a reasonable doubt on this issue because it would have concluded that, except for the fact that the accused was standing at the end of the complainant's bed facing her, no other fact about this issue was clearly established by the prosecution, leaving the court with a reasonable doubt that he attempted something or meant to do it.

[94] Then, on those two charges, it is the conclusion of the court, having regard to the evidence as a whole, that the prosecution has not proved beyond a reasonable doubt all the essential elements of the offence of attempt on both charges.

[95] Now, about the first, second and third charges, it is the court's conclusion that the testimony of Corporal Lloyd-Trinque raised a reasonable doubt about some essential elements on those charges.

[96] On the first charge, accepting that it is the complainant that did something to the accused, other than the date and place, the prosecution has not proved all other essential elements beyond a reasonable doubt. If, for any reason, the court would have not accepted the testimony of the accused, the court would have been left in doubt about what really happened in the circumstances. Clearly, something happened but in the context of considering the evidence as a whole, it would not have appeared obvious that it happened in the way as described by the complainant.

[97] The court concludes that, having regard to the evidence as a whole, the prosecution has not proved beyond a reasonable doubt all the essential elements of the offence of sexual assault.

[98] Concerning the second and the third charges, it is also the court's conclusion that the testimony of Corporal Lloyd-Trinque raised a reasonable doubt about the fact that he behaved in a disgraceful manner.

[99] His conduct did not disclose that he behaved in a shockingly unacceptable manner and that his behaviour caused harm to anybody. If, for any reason, the court would have not accepted his testimony, then the court would have been left with a doubt that things turned out in the way described by the complainant. As mentioned earlier, what really happened in the circumstances would have been unclear for the court because it would have been left in doubt about what really happened.

[100] The court concludes that, having regard to the evidence as a whole, the prosecution has not proved beyond a reasonable doubt all the essential elements of the

offence of having behaved in a disgraceful manner concerning the second and third charges.

FOR THESE REASONS, THE COURT:

[101] **FINDS** Corporal Lloyd-Trinque not guilty of the first, second, third, fourth and fifth charges on the charge sheet.

Counsel:

The Director of Military Prosecutions as represented by Major E. Carrier

Lieutenant-Commander B. Walden, Defence Counsel Services, Counsel for Corporal Lloyd-Trinque