



## COURT MARTIAL

**Citation:** *R. v. Stillman*, 2013 CM 4028

**Date:** 20131023

**Docket:** 201322

Standing Court Martial

Canadian Forces Base Shilo  
Shilo, Manitoba, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Master Corporal C.J. Stillman, Accused**

**Before:** Lieutenant-Colonel J-G Perron, M.J.

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### REASONS FOR FINDING

(Orally)

[1] The accused, Master Corporal Stillman, is charged with having discharged a firearm with intent contrary to section 244 of the *Criminal Code of Canada*; of discharging a firearm recklessly contrary to section 244.2 of the *Criminal Code*; of aggravated assault contrary to section 268 of the *Criminal Code*; of using a firearm in the commission of an offence contrary to section 85 of the *Criminal Code*; and of possession of a loaded restricted firearm contrary to section 95 of the *Criminal Code*. Every charge was laid under section 130 of the *National Defence Act*. The accused pled not guilty to each charge.

[2] Before this court provides its analysis of the evidence and of the charges, it is appropriate to deal with the presumption of innocence and the standard of proof beyond a reasonable doubt. Although these principles are well known to counsel, other people in this courtroom may be less familiar with them.

[3] The presumption of innocence is probably the most fundamental principle in our criminal law and the principle of proof beyond a reasonable doubt is an essential part of the presumption of innocence. In matters dealt with under the Code of Service Discipline, as with cases dealt under Canadian criminal law, every person charged with an offence is presumed to be innocent until the prosecution proves his or her guilt beyond a reasonable doubt. An accused person does not have to prove that he or she is innocent. It is up to the prosecution to prove its case on each element of the offence beyond a reasonable doubt. An accused person is presumed innocent throughout his or her trial until a verdict is given by the finder of fact.

[4] The standard of proof beyond a reasonable doubt does not apply to the individual items of evidence or to separate pieces of evidence that make up the prosecution's case, but to the total body of evidence upon which the prosecution relies to prove guilt. The burden or onus of proving the guilt of an accused person beyond a reasonable doubt rests upon the prosecution and it never shifts to the accused person. A court must find an accused person not guilty if it has a reasonable doubt about his or her guilt after having considered all of the evidence.

[5] A reasonable doubt is not a far-fetched or frivolous doubt. It is not a doubt based on sympathy or prejudice, it is a doubt based on reason and common sense. It is a doubt that arrives at the end of the case based not only on what the evidence tells the court, but also on what the evidence does not tell the court. The fact that a person has been charged is no way indicative of his or her guilt. The reasonable doubt standard falls much closer to absolute certainty than to proof on a balance of probabilities.

[6] On the other hand, it should be remembered that it is nearly impossible to prove anything with absolute certainty. The prosecution is not required to do so. Absolute certainty is a standard of proof that does not exist in law. The prosecution only has the burden of proving the guilt of an accused person, in this case, Master Corporal Stillman, beyond a reasonable doubt. To put it in perspective, if the court is convinced or would have been convinced that the accused is probably or likely guilty, then the accused would be acquitted since proof of probable or likely guilt is not proof of guilt beyond a reasonable doubt.

[7] Evidence may include testimony under oath or solemn affirmation before the court by witnesses about what they observed or what they did. It could be documents, photographs, maps or other items introduced by witnesses, the testimony of expert witnesses, formal admissions of fact by either the prosecution or the defence, and matters of which the court takes judicial notice.

[8] Having instructed myself as to the onus and standard of proof, I will now turn to the questions put before the court. The evidence before this court is composed essentially of the following: judicial notice, judicial confession and exhibits. Judicial notice was taken by the court of the facts and issues under Rule 15 of the Military Rules of Evidence. A judicial confession was made by the accused under Rule 37(b) of the Military

Rules of Evidence and is found at Exhibit 3. The prosecution also presented four other exhibits.

[9] Military Rule of Evidence 37(b) reads as follows:

37. When, at his trial, the accused chooses to make a complete or partial admission of incriminating facts in respect of an offence for which he is being tried, he may make a judicial confession

...

(b) after pleading not guilty, and whether or not he also decides to testify as a witness under oath, by personally or through his counsel or defending officer admitting, for the purpose of dispensing with proof, any fact the prosecutor must prove ...

[10] Paragraph 2 of the Military Rule of Evidence 38 reads as follows:

(2) If the accused, after pleading not guilty, admits, other than in the course of his own testimony, a fact alleged against him, the court may accept that admission as conclusive proof of the fact concerned.

[11] Charge No. 1 alleges that Master Corporal Stillman discharged a firearm with intent contrary to section 244 of the *Criminal Code*. The particulars of the charge read as follows: "In that he, on or about 29 July 2012, at or near Canadian Forces Base Shilo, Manitoba, did discharge a restricted firearm with intent to wound, maim, disfigure or endanger the life of Bombardier Trimm, S.P."

[12] The prosecution had to prove the following essential elements for this offence beyond a reasonable doubt:

- (a) the identity of the accused as the offender and the date and place as alleged in the charge sheet;
- (b) that Master Corporal Stillman used a firearm;
- (c) that it was a restricted firearm;
- (d) that Master Corporal Stillman intentionally discharged a firearm at Bombardier Trimm; and
- (e) that, in discharging the firearm, Master Corporal Stillman intended to wound, maim, disfigure or endanger the life of Bombardier Trimm.

[13] Exhibit 3, the Judicial Confession, provides that at approximately 0600 hours on 29 July 2012, Master Corporal Stillman was at the residential housing unit (RHU) at 53 Kingston Avenue, CFB Shilo. Bombardiers Trimm and Cote shared that RHU, see paragraph 4 and 6 of Exhibit 3. CFB Shilo is in Manitoba, see paragraph 2 of Exhibit 3.

This evidence proves, beyond a reasonable doubt, the date and place for each offence as alleged in the charge sheet. Master Corporal Stillman has admitted that he shot Bombardier Trimm and that he shot at Bombardier Cote, see paragraph 16 of Exhibit 3. This evidence proves, beyond a reasonable doubt, that Master Corporal Stillman is the offender.

[14] Did Master Corporal Stillman use a firearm? A firearm is a weapon with a barrel from which a shot, bullet or other object can be discharged, and which is capable of killing or seriously injuring someone. Master Corporal Stillman has admitted the pistol that he used to shoot Bombardier Trimm and shoot at Bombardier Cote was a Remington model 1911R1 semi-automatic, .45 calibre pistol. It was fully and properly functioning on 29 July 2012, see paragraph 16 of Exhibit 3. This evidence proves beyond a reasonable doubt that Master Corporal Stillman used a firearm for each offence as alleged in the charge sheet.

[15] Was it a restricted firearm? A restricted firearm is defined at section 84 of the *Criminal Code* as follows:

- (a) a handgun that is not a prohibited firearm,
- (b) a firearm that
  - (i) is not a prohibited firearm,
  - (ii) has a barrel less than 470 mm in length, and
  - (iii) is capable of discharging centre-fire ammunition in a semi-automatic manner,
- (c) a firearm that is designed or adapted to be fired when reduced to a length of less than 660 mm by folding, telescoping or otherwise, or
- (d) a firearm of any other kind that is prescribed to be a restricted firearm.

[16] Master Corporal Stillman admitted that his pistol is a handgun and a restricted firearm in accordance with the definitions in section 84 of the *Criminal Code*, see paragraph 16 of Exhibit 3. The evidence before the court proves beyond a reasonable doubt that the pistol used by Master Corporal Stillman was a restricted firearm.

[17] Did Master Corporal Stillman intentionally discharge a firearm at Bombardier Trimm? A person intentionally discharges a firearm at another person when he or she deliberately, as opposed to accidentally, points it in the direction of someone and fires. The bullet fired from the gun does not have to hit or hurt anybody. A trier of fact must consider all the circumstances surrounding the use of the firearm and use common sense to decide this question.

[18] Bombardier Trimm had been drinking with Master Corporal Stillman at RHU 53 until an argument started. Bombardier Trimm told Master Corporal Stillman to leave

the house and Master Corporal Stillman refused. Bombardier Trimm hit Master Corporal Stillman numerous times to the head causing cuts to Master Corporal Stillman's head, bruising, and swelling to one of Master Corporal Stillman's eyes. Bombardier Trimm then told Master Corporal Stillman again to leave his house and Master Corporal Stillman left. After this fight, Bombardiers Trimm and Cote went down to the main floor of the RHU 53 and watched television. Just before 0600 hours, Master Corporal Stillman returned to RHU 53 and walked in the front door without knocking. Bombardiers Trimm and Cote were in the living room when Master Corporal Stillman entered. On seeing that Master Corporal Stillman's face was bloody and bruised, Bombardier Trimm apologized for what he had done. Master Corporal Stillman asked for his mobile phone, which he had left in the basement of the RHU. Bombardier Trimm went down to the basement and retrieved the cellphone. When he handed it to Master Corporal Stillman the screen was broken because Bombardier Trimm had earlier thrown it to the basement floor. Master Corporal Stillman was standing just inside the entrance to the living room, near the front door of the RHU. When Master Corporal Stillman had his phone, he turned toward the front door to leave. He then said, "Oh yeah," reached into the area of the waistband of his shorts, pulled out a pistol, turned back into the living room, and immediately fired one round at Bombardier Trimm from a range of less than a metre. Neither Bombardier Trimm nor Bombardier Cote had seen the firearm before Master Corporal Stillman pulled it out at that time, and neither had any idea that Master Corporal Stillman had a firearm or intended to shoot it at either of them. The round that Master Corporal Stillman fired at Bombardier Trimm hit Bombardier Trimm in the left thigh, just above his knee and exited from his left calf. The bullet caused both an entry and an exit wound to Bombardier Trimm's leg and significant bleeding. Bombardier Trimm was later taken by ambulance to the Brandon Regional Health Centre for emergency medical treatment, see paragraphs 4 to 9 of Exhibit 3. This evidence proves beyond a reasonable doubt that Master Corporal Stillman intentionally discharged a firearm at Bombardier Trimm.

[19] Did Master Corporal Stillman intend to wound, maim, disfigure or endanger the life of Bombardier Trimm when he discharged the firearm? The prosecution does not have to prove all of these intents; any one of them is enough. To determine Master Corporal Stillman's intent, the court must consider all of the evidence, including anything said or done in the circumstances. The court may infer, as a matter of common sense, that a person usually knows the predictable consequences of his or her actions and means to bring them about. However, the court is not required to draw that inference about Master Corporal Stillman. Indeed, the court must not do so if, on the whole of the evidence, it has a reasonable doubt whether Master Corporal Stillman had one of those intents.

[20] A person intends to wound when he or she means to injure someone in a way that breaks, cuts, pierces or tears the skin or some part of the person's body. It must be more than something trifling, fleeting or minor, such as a scratch. A person intends to maim when he or she means to cripple, mutilate or disable someone. A person intends to disfigure when he or she means to deform or deface someone. A person intends to

endanger life when he or she means to put someone in a situation or condition that could cause him or her to die.

[21] Master Corporal Stillman fired one round at Bombardier Trimm, from a range of less than a metre. That round hit Bombardier Trimm in the left thigh, just above his knee, and exited from his left calf. The evidence before the court proves beyond a reasonable doubt that Master Corporal Stillman knew the predictable consequences of his action and means to bring them about. He decided to shoot Bombardier Trimm with a .45 caliber pistol and his intent was to wound Bombardier Trimm. He also intended to endanger Bombardier Trimm's life when he put him in a situation or condition that could cause him to die.

[22] The court finds the prosecutor has proven this offence beyond a reasonable doubt.

[23] Charge No. 4 alleges that Master Corporal Stillman discharged a firearm recklessly contrary to section 244.2 of the *Criminal Code*. The particulars of the charge read as follows: "In that he, on or about 29 July 2012, at or near Canadian Forces Base Shilo, Manitoba, did discharge a restricted firearm while being reckless as to the life or safety of Bombardier Cote, G.M."

[24] The prosecution had to prove the following essential elements for this offence beyond a reasonable doubt:

- (a) the identity of the accused as the offender and the date and place as alleged in the charge sheet;
- (b) that Master Corporal Stillman used a firearm;
- (c) that it was a restricted firearm;
- (d) that Master Corporal Stillman intentionally discharged a firearm; and
- (e) that, in discharging the firearm, Master Corporal Stillman was reckless as to the life or safety of Bombardier Cote.

[25] For the reasons found at Charge No. 1, the court finds the evidence proves beyond a reasonable doubt the identity of the accused as the offender, the date and place as alleged in the charge, and that Master Corporal Stillman used a restricted firearm.

[26] Did Master Corporal Stillman intentionally discharge the firearm? After he shot Bombardier Trimm, Master Corporal Stillman left RHU 53, crossed the front yard, and started walking down the street. Bombardier Cote used his mobile phone to call 9-1-1, and at the same time followed Master Corporal Stillman outside, yelling at him. Bombardier Cote was standing at the top of the steps immediately outside the front door of RHU 53 when Master Corporal Stillman turned towards him from the street and fired

another round from his pistol at Bombardier Cote. Master Corporal Stillman was on the street, approximately 30 to 40 metres from Bombardier Cote, when he shot at him. The evidence proves beyond a reasonable doubt that Master Corporal Stillman intentionally discharged a firearm at Bombardier Cote.

[27] Was Master Corporal Stillman reckless as to the life or safety of Bombardier Cote when he discharged the firearm? The Supreme Court of Canada described recklessness as follows:

. . . recklessness involves the knowledge of a danger or risk and persistence in a course of conduct which creates a risk that the prohibited result will occur . . . The culpability in recklessness is justified by consciousness of the risk and by proceeding in the face of it . . .

See *Sansregret v. The Queen*, [1985] 1 SCR 570, page 584.

[28] The bullet that Master Corporal Stillman shot towards Bombardier Cote narrowly missed Bombardier Cote. It passed through the front door of the RHU. The bullet was later found by investigators in the closet in the interior entry room of the RHU. The evidence proves beyond a reasonable doubt that Master Corporal Stillman was reckless as to the life or safety of Bombardier Cote when he discharged the firearm.

[29] The court finds the prosecutor has proven this offence beyond a reasonable doubt.

[30] Charge No. 5 alleges that Master Corporal Stillman committed aggravated assault contrary to section 268 of the *Criminal Code*. The particulars of the charge read as follows: "In that he, on or about 29 July 2012, at or near Canadian Forces Base Shilo, Manitoba, did wound Bombardier Trimm, S.P., by shooting him, thereby committing an aggravated assault."

[31] The prosecution had to prove the following essential elements for this offence beyond a reasonable doubt:

- (a) the identity of the accused as the offender and the date and place as alleged in the charge sheet;
- (b) that Master Corporal Stillman applied force to Bombardier Trimm;
- (c) that Master Corporal Stillman intentionally applied the force;
- (d) that Bombardier Trimm did not consent to the force that Master Corporal Stillman applied;
- (e) that Master Corporal Stillman knew that Bombardier Trimm did not consent to the force that Master Corporal Stillman applied; and

- (f) that the force that Master Corporal Stillman applied to Bombardier Trimm wounded Bombardier Trimm.

[32] For the reasons found at Charge No. 1, the court finds the evidence proves beyond a reasonable doubt the identity of the accused as the offender and the date and place as alleged in the charge.

[33] Did Master Corporal Stillman apply force to Bombardier Trimm? Force includes any physical contact with another person, even a gentle touch. The contact may be direct, for example, touching a person with a hand or other part of the body, or indirect, for example, touching a person with an object.

[34] Master Corporal Stillman shot Bombardier Trimm and he hit him with the bullet in the thigh and calf. Master Corporal Stillman touched Bombardier Trimm with the bullet from his pistol. The evidence proves beyond a reasonable doubt that Master Corporal Stillman applied force to Bombardier Trimm.

[35] Did Master Corporal Stillman intentionally apply the force? The physical contact must be intentional, as opposed to accidental. The court has already found that the evidence proves beyond a reasonable doubt that Master Corporal Stillman intentionally discharged a firearm at Bombardier Trimm. The court finds that Master Corporal Stillman intentionally applied the force.

[36] Did Bombardier Trimm consent to the force that Master Corporal Stillman applied? To decide whether Bombardier Trimm consented to the physical contact, the court must consider Bombardier Trimm's state of mind. It must consider all the evidence, including the circumstances surrounding Master Corporal Stillman's physical contact with Bombardier Trimm, to decide whether by Bombardier Trimm consented to it. The court must take into account any words or gestures, whether by Master Corporal Stillman or Bombardier Trimm, and any other indication of Bombardier Trimm's state of mind at the time. Just because Bombardier Trimm did not resist does not mean that Bombardier Trimm consented to what Master Corporal Stillman did. Consent requires Bombardier Trimm's voluntary agreement, without influence of force, threats, fear, fraud or abuse of authority, to let the physical contact occur.

[37] Master Corporal Stillman had turned toward the front door to leave. He then said, "Oh yeah," reached into the area of the waistband of his shorts, pulled out a pistol, turned back into the living room, and immediately fired one round at Bombardier Trimm, from a range of less than one metre. Neither Bombardier Trimm nor Bombardier Cote had seen the firearm before Master Corporal Stillman pulled it out at that time, and neither had any idea that Master Corporal Stillman had a firearm or intended to shoot it at either of them, see paragraph 9. The evidence proves beyond a reasonable doubt that Bombardier Trimm did not consent to the force that Master Corporal Stillman applied.



[38] Did Master Corporal Stillman know that Bombardier Trimm did not consent to the force that Master Corporal Stillman applied? To prove that Master Corporal Stillman was aware of Bombardier Trimm's lack of consent, the prosecutor must prove any one of the following:

- (a) that Master Corporal Stillman actually knew that Bombardier Trimm did not consent;
- (b) that Master Corporal Stillman knew there was a risk that Bombardier Trimm did not consent and that Master Corporal Stillman proceeded in the face of that risk; and
- (c) that Master Corporal Stillman was aware of indications that Bombardier Trimm did not consent, but deliberately chose to ignore them because Master Corporal Stillman did not want to know the truth.

Any one of these is sufficient to establish Master Corporal Stillman's awareness of Bombardier Trimm's lack of consent.

[39] Any reasonable person would know there is a risk that a person would not consent to being shot. Master Corporal Stillman did not ask Bombardier Trimm for his consent; he just pointed his pistol and shot Bombardier Trimm. The evidence proves beyond a reasonable doubt that Master Corporal Stillman knew that Bombardier Trimm did not consent to the force that Master Corporal Stillman applied.

[40] Did the force that Master Corporal Stillman applied to Bombardier Trimm wound Bombardier Trimm? To "wound" means to injure someone in a way that breaks, cuts, pierces or tears the skin or some part of the person's body. It must be more than something trifling, fleeting or minor, such as a scratch.

[41] The prosecutor must prove beyond a reasonable doubt that Master Corporal Stillman's conduct contributed significantly to the wounding of Bombardier Trimm. The prosecutor does not have to prove beyond a reasonable doubt that Master Corporal Stillman meant to wound Bombardier Trimm when he made physical contact with Bombardier Trimm. However, the prosecutor must prove that any reasonable person, in the circumstances, would realize that the physical contact Master Corporal Stillman made would likely put Bombardier Trimm at risk of suffering some kind of bodily harm, not necessarily the precise kind of harm that Bombardier Trimm suffered here. "Bodily harm" is any kind of hurt or injury that interferes with another person's health or comfort. It has to involve something that is more than just brief or fleeting, or minor in nature.

[42] The round that Master Corporal Stillman fired at Bombardier Trimm hit him in the left thigh, just above his knee, and exited from his left calf. The bullet caused both an entry and an exit wound to Bombardier Trimm's leg and significant bleeding. Bombardier Trimm was later taken by ambulance to the Brandon Regional Health Centre for

emergency medical treatment. The evidence proves beyond a reasonable doubt that the force applied to Bombardier Trimm by Master Corporal Stillman did wound Bombardier Trimm.

[43] The court finds the prosecutor has proven this offence beyond a reasonable doubt.

[44] Charge No. 6 alleges that Master Corporal Stillman used a firearm in the commission of an offence contrary to subsection 85(1) of the *Criminal Code*. The particulars of the charge read as follows:

"In that he, on or about 29 July 2012, at or near Canadian Forces Base Shilo, Manitoba, did use a firearm, to wit, a handgun, while committing the indictable offence of aggravated assault."

[45] The prosecution had to prove the following essential elements for this offence beyond a reasonable doubt:

- (a) the identity of the accused as the offender and the date and place as alleged in the charge sheet;
- (b) that Master Corporal Stillman committed the indictable offence of aggravated assault;
- (c) that Master Corporal Stillman used a firearm; and
- (d) that Master Corporal Stillman used the firearm while committing the offence of aggravated assault.

[46] For the reasons found at Charge No. 1, the court finds the evidence proves beyond a reasonable doubt the identity of the accused as the offender and the date and place as alleged in the charge.

[47] Did Master Corporal Stillman commit the indictable offence of aggravated assault? The court has already found that the prosecutor has proven the offence of aggravated assault beyond a reasonable doubt.

[48] Did Master Corporal Stillman use a firearm? The court has already found that the prosecutor has proven beyond a reasonable doubt that Master Corporal Stillman used a firearm.

[49] Did Master Corporal Stillman use the firearm while committing the offence of aggravated assault? The court has already found that Master Corporal Stillman shot Bombardier Trimm in the leg when he assaulted Bombardier Trimm. The evidence proves beyond a reasonable doubt that Master Corporal Stillman used the firearm while committing the offence of aggravated assault.

[50] The court finds the prosecutor has proven this offence beyond a reasonable doubt.

[51] Charge No. 9 alleges that Master Corporal Stillman was in possession of a loaded restricted firearm contrary to section 95 of the *Criminal Code*. The particulars of the charge read as follows:

"In that he, on or about 29 July 2012, at or near Canadian Forces Base Shilo, Manitoba, did possess a loaded restricted firearm, to wit, a handgun, while he was not the holder of an authorization under which he may possess it in that place."

[52] The prosecution had to prove the following essential elements for this offence beyond a reasonable doubt:

- (a) the identity of the accused as the offender and the date and place as alleged in the charge sheet;
- (b) that Master Corporal Stillman was in possession of a loaded firearm;
- (c) that it was a restricted firearm; and
- (d) that Master Corporal Stillman did not have an authorization or a licence under which he could possess the firearm in that place and the registration certificate for the firearm.

[53] For the reasons found at Charge No. 1, the court finds the evidence proves beyond a reasonable doubt the identity of the accused as the offender and the date and place as alleged in the charge.

[54] Was Master Corporal Stillman in possession of a loaded firearm? Master Corporal Stillman fired two shots from his pistol. One bullet hit Bombardier Trimm in the leg and one bullet hit the door which was immediately behind Bombardier Cote. The evidence proves beyond a reasonable doubt that Master Corporal Stillman was in possession of a loaded firearm.

[55] Was it a restricted firearm? For the reasons found at Charge No. 1, the court finds the evidence proves beyond a reasonable doubt that Master Corporal Stillman was in possession of a restricted firearm.

[56] Did Master Corporal Stillman have an authorization or a licence under which he could possess the firearm in that place and the registration certificate for the firearm? Master Corporal Stillman is the registered owner of the pistol and possesses a Firearm Registration Certificate for it. Master Corporal Stillman holds a Possession and Acquisition Licence (PAL) which allows him, pursuant to the *Firearms Act*, to possess and ac-

quire non-restricted and restricted firearms only. Master Corporal Stillman also has an Authorization to Transport (ATT), which permits him to legally transport his restricted firearm, the pistol, to approved ranges, licensed gunsmiths and border crossings in the Province of Alberta. He has no lawful authorization permitting him to transport his pistol outside of the Province of Alberta or to other places.

[57] Master Corporal Stillman does not possess an Authorization to Carry (ATC) pursuant to the *Firearms Act*, which is required in order for a person to lawfully carry a particular restricted firearm or prohibited handgun on their person. Master Corporal Stillman had no lawful authorization or licence to carry the pistol concealed or to carry it loaded with ammunition, as he did when he arrived at Bombardiers Trimm and Cote's RHU at Canadian Forces Base Shilo on 29 July 2012, see paragraphs 17 and 18 of Exhibit 3.

[58] The court finds the evidence proves beyond a reasonable doubt that Master Corporal Stillman did not have an authorization or a licence under which he could possess the firearm in Shilo, Manitoba.

[59] The court finds the prosecutor has proven this offence beyond a reasonable doubt.

**FOR THESE REASONS, THE COURT:**

[60] **FINDS** Master Corporal Stillman guilty of charges Nos. 1, 4, 5, 6, and 9.

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**Counsel:**

Lieutenant-Colonel S. Richards, Canadian Military Prosecution Services  
Counsel for Her Majesty the Queen

Major J.L.P.L. Boutin, Directorate of Defence Counsel Services  
Counsel for Master Corporal C.J. Stillman