



COURT MARTIAL

Citation: *R. v. Young*, 2017 CM 2006

Date: 20170915

Docket: 201653

Standing Court Martial

1st Battalion, The Royal Newfoundland Regiment
St. John's, Newfoundland, Canada

Between:

Her Majesty the Queen

- and -

Master Corporal G.P.J. Young, Accused

Before: Commander S.M. Sukstorf, M.J.

NOTE: Personal data identifiers have been redacted in accordance with the Canadian Judicial Council's " <i>Use of Personal Information in Judgments and Recommended Protocol</i> ".

REASONS FOR FINDING

(Orally)

The case

[1] Master Corporal Young is charged with two offences, both contrary to section 95 of the *National Defence Act (NDA)*. The charges read as follows:

First charge: *Particulars:* In that he, on or about 10 August 2015, at or near Canadian Forces Station St. John's, St. John's, Newfoundland and Labrador, did ill-treat Private Baggs by ordering him to consume vegetables until he did vomit.

Second charge: *Particulars:* In that he, on or about 10 August 2015, at or near Canadian Forces Station St. John's, St. John's, Newfoundland and Labrador, did ill-treat Private MacPhail by ordering her to consume excessive amounts of water.

[2] In reaching the Court's decision, I summarized the facts emerging from the evidence, reviewed the applicable law and made findings on the credibility of the witnesses. I then applied the law to the facts, conducting my analysis before I came to a determination on each of the charges.

The evidence

[3] The following evidence was adduced at the court martial:

- (a) In-court testimonies of the following seven prosecution witnesses, in order of appearance:
 - i. Mr T.A. Fiander (former Private);
 - ii. Bombardier J.B. Lorimer-Carlin;
 - iii. Bombardier A.C. Rembowski;
 - iv. Private S.A. MacPhail;
 - v. Private J.S. Baggs;
 - vi. Corporal W.A. Taylor; and
 - vii. Bombardier A.C. Dolomount.
- (b) In-court testimonies of the following four defence witnesses, in order of appearance:
 - i. Master Corporal G. Young (accused);
 - ii. Private G. Jenkins;
 - iii. Private J. Williams; and
 - iv. Corporal I.P. Hawco.
- (c) The Court also took judicial notice of the facts and matters covered by section 15 of the *Military Rules of Evidence (MRE)*.

- (d) Admissions. The defence made a number of admissions at the outset of the trial. He admitted the elements of identity and place of the two charges. In addition, he admitted that both Privates Baggs and MacPhail were subordinate to Master Corporal Young by reason of his rank and position.

The facts

[4] The two incidents that form the basis of the charges before the Court occurred on or about August 10, 2015 during a Basic Military Qualification (BMQ) Land course held at Canadian Forces Station (CFS) St. John's, St. John's, Newfoundland and Labrador. The course, which was approximately two weeks in duration, immediately followed the five-week BMQ Common course. Most of the students attended both courses, which included a combined training period of seven weeks. Master Corporal Young was an instructor on the two-week BMQ Land course only, joining the students and staff upon completion of his Primary Leadership Qualification (PLQ) in July 2015.

[5] Most of the course candidates were young, ranging in age from 16 to 18 years. The alleged victims at the time of the incidents: Private Baggs was 16 years old, while Private MacPhail was 28 and the accused, Master Corporal Young was 21 years of age. I will address the incidents in the order that they unfolded on the 10th of August rather than by the specific charge number.

First incident - excessive amounts of water

[6] Based on the testimony before the Court, August 10th, 2015 started out with a morning jog of approximately 3.5 kilometres. Private MacPhail testified that during the morning run, she got a kink in her side. Corporal Hawco told the Court that several of the candidates fell back and were running behind the group. After the run, Master Corporal Young spoke to the candidates and determined that their problems were caused by dehydration. He testified that he asked the candidates whether they had hydrated the night before or prior to the run, which they said they had not. He told the Court that he explained to the candidates the importance of staying hydrated, given the warm temperatures and their busy activity level.

[7] Master Corporal Young testified that, as instructors, they were ordered to make sure that nobody went down due to dehydration so he had to make sure everyone was hydrating properly. On the 10th of August, Master Corporal Young stated that it was at least 76 degrees Fahrenheit and with humidity, roughly 32 degrees Celsius, or as the Court determined, approximately 90 degrees Fahrenheit. He stated that the classrooms were hot and everyone was sweating.

[8] In an effort to address problems associated with the candidates' dehydration, Master Corporal Young told the candidates to keep their canteens on them and to hydrate regularly throughout the day while attending classes. He told them to meet him

for three breaks over the course of the day, where they would consume the remaining water in their canteens. Private MacPhail and Corporal Hawco both confirmed they were told to drink the remaining water in their canteen while Private Williams did not recall any order to drink water during the breaks. Private MacPhail and Corporal Hawco also both stated that after finishing their water, the candidates would file up to refill their canteens before returning to class. The canteens held a maximum of one litre of water. Most witnesses (Corporal Hawco, Privates Williams and Jenkins) stated that they did not feel pressured to drink nor did they feel uncomfortable. Corporal Hawco did not recall anyone confirming whether they drank all the water in their canteen or not. Both Corporal Hawco and Private MacPhail told the Court they were able to drink the remaining water in their canteens. Private Jenkins said the water breaks were relaxed and Corporal Hawco said she personally found the breaks enjoyable as they were longer, not rushed and they could mingle. Private MacPhail testified that she felt “sickly” and “pretty crappy” from drinking so much water.

Second Incident – the vegetables

[9] Later the same day, at supper, the candidates were in the Dirty Work Area, which was also referred to by the witnesses as the “multi-purpose area” or the “modular (mod) tent area,” where the candidates slept and ate their meals. During the first five-week course, BMQ Common, Private Baggs gained a reputation for not eating properly. Some candidates stated that Private Baggs exclusively drank soda pop and ate candy while Private Williams testified that Private Baggs survived off of eating approximately three Pop-Tarts a day.

[10] Corporal Hawco testified that she was Private Baggs’ fire team partner on the BMQ Land course and that Private Baggs was not eating most of his meals and was starting to feel lightheaded on the course. She said that she had personally encouraged Private Baggs to eat his food and vegetables telling him he would feel better if he did.

[11] All the witnesses testified that Private Baggs did not like vegetables and refused to eat them. Private MacPhail, who joined the course for the two-week BMQ Land, stated that it was a running joke from the previous course that Private Baggs needed to eat his vegetables. Master Corporal Young, who only joined the group for the two-week course, told the Court that about a week prior to the incident, he noticed that Private Baggs was tired all the time, lazy, could not focus on his tasks and was dizzy during drill; so he started to worry about him. He learned that Private Baggs was eating a lot of candy, drinking pop and most of the time, he was only eating potatoes. There was consensus amongst the students and staff that Private Baggs was not getting the nutritional intake he needed.

[12] On the evening in question (10 August, 2015), Master Corporal Young testified that he was serving vegetables in the serving line when Private Baggs went to get his supper. Private Jenkins testified that he was behind Private Baggs in the lineup. Private Jenkins stated that Private Baggs and Master Corporal Young were joking around and talking. He noticed that Master Corporal Young gave Private Baggs a serving of

vegetables. He stated that both he and Private Baggs continued through the food line and then went to the male mod tent to eat their supper.

[13] Master Corporal Young testified that when Private Baggs was in the food line, he asked him to try his best to eat the vegetables, but Private Baggs said he did not like vegetables and could not eat them. Master Corporal Young testified that he asked Private Baggs again to try his best to eat them and that Private Baggs agreed. Master Corporal Young testified that he placed one scoop of vegetables on Private Baggs' plate. Jokingly, Master Corporal Young told Private Baggs, "If you don't eat them, you will have to do a 10-minute plank." Master Corporal Young stated that Private Baggs laughed and said, "Okay, Master Corporal." Although Private Baggs told the Court that he could not remember if it was Master Corporal Young who gave him vegetables while in the food line, he did confirm that he was served vegetables.

[14] Private Jenkins stated that while in the male mod tent, he noticed that Private Baggs finished half of his meal, but had vegetables left on his plate. Private Jenkins testified that after all the candidates had been served, Master Corporal Young came to where they were eating and asked Private Baggs to eat his "veggies". Several witnesses, including Private Baggs, testified that Master Corporal Young brought Private Baggs another plate of vegetables. From the various witnesses' testimony, there was some disagreement as to the amount of vegetables on Private Baggs' plate and whether or not he received additional vegetables. However, there was general consensus on the approximate number of mouthfuls Private Baggs attempted to eat.

[15] Private Baggs stated that Master Corporal Young asked him to eat the vegetables in a joking, calm and non-aggressive manner and that Master Corporal Young never yelled at him. This was confirmed by Private Jenkins, who was with Private Baggs both in the food line and in the male mod tent. Private Jenkins stated that when Private Baggs said he would try to eat them, the rest of the candidates started to cheer. Corporal Hawco told the Court that she was in agreement with Master Corporal Young's effort to encourage Private Baggs to eat his vegetables because he was not eating his food and that she encouraged it as well. Corporal Hawco is a military cook. She told the Court, she previously told Private Baggs that if he did not get his nutrients, he would not feel 100 per cent performing exercises and activities as they were on the go all day.

[16] Private Baggs told the Court that Master Corporal Young told him that if he did not eat the vegetables, the entire course would have to do planks. He stated he was willing to give it a try because he did not want the course to suffer.

[17] It was also clear from the witnesses' testimony, including that of Private Baggs, that Private Baggs more or less agreed to try to eat the vegetables; however, the Court noted that Bombardier Rembowski also testified that due to the nature of their BMQ, the candidates were somewhat terrified to disappoint the instructors so they always tried 100 per cent to do what the instructors wanted.

[18] Most witnesses stated, and the Court accepts, that the vegetable incident began as a fun, positive and encouraging challenge. Private Williams testified that most of them gathered around to see if Private Baggs could do it because it was a big deal at the time. Several of the witnesses (Bombardiers Lorimer-Carlin and Rembowski, Corporal Hawco, Ex-Private Fiander, Privates Williams and Jenkins) were with Private Baggs or in the close vicinity of him when he attempted to eat the vegetables. They stood around him cheering, trying to motivate and encourage him. Bombardier Rembowski told the Court the atmosphere was similar to cheering on a sports team. He testified that the candidates around him were encouraging him: "Come on, Baggs, just one pea." Corporal Hawco testified that she was sitting two cots down from Private Baggs. She stated that the atmosphere was humorous, relaxed and comfortable. Private Williams stated it did not take long; Private Baggs only tried one spoonful and that was it. Private Williams said Private Baggs took a spoonful and spit it out into a garbage can in front of him. He testified that when Private Baggs tried to put the fork in his mouth he made a disgusted face and spit the "veggies" out saying, "Nah, I can't do that; I hate veggies." He also told the Court that there was a fair bit of build-up to Private Baggs' first attempt to eat the vegetables.

[19] The Court satisfied itself that the witnesses (Private MacPhail, Bombardier Dolomount, Corporal Taylor) were not in close vicinity when the vegetable eating challenge started. Both Bombardier Dolomount and Private MacPhail told the Court they were sitting on the women's side eating their supper. Private MacPhail stated that upon seeing what was going on, she walked over. Under cross-examination, she stated that she did not stay for the entire time. Although both Bombardier Dolomount and Private MacPhail stated that they saw Private Baggs leaning over the garbage can, when tested under cross-examination, they were unable to provide additional reliable evidence on the incident.

[20] Ex-Private Fiander testified that at first they thought it was a joke and that Private Baggs was kidding about not being able to eat vegetables. He stated the atmosphere was positive and the candidates were laughing, but when it became obvious that Private Baggs could not eat the vegetables, they all became quiet and uneasy. Bombardier Lorimer-Carlin said he did not think that the vegetables hurt Private Baggs, but he made it seem like they "really, really" bothered him. He stated that Private Baggs just could not put the vegetables into his mouth. Bombardier Rembowski told the Court that Private Baggs gagged just having the vegetables near his face.

[21] Private Baggs admitted to the Court that on that particular day, he was not feeling well. He stated that he attempted to eat his vegetables as his course mates cheered and encouraged him. Unfortunately, he could not eat the vegetables and he told the Court that he spit them into a garbage bin. He confirmed that he did not vomit but spit out the vegetables that he had put in his mouth. He said that he gave it a couple of attempts and the entire incident took roughly two minutes.

[22] Witnesses (Bombardiers Lorimer-Carlin and Rembowski, Private Williams and Corporal Hawco) testified that Private Baggs was only able to get between one to three

spoonful of vegetables to his mouth before he gagged or spit them out into a garbage can. Bombardier Lorimer-Carlin, a prosecution witness, told the Court that Private Baggs did not consume any vegetables at all. Bombardier Rembowski, who was also a prosecution witness, told the Court that although Private Baggs put some vegetables in his mouth, he just could not swallow them and he spit them out. Bombardier Rembowski further told the Court that Private Baggs failed to eat one single piece of vegetable.

[23] Multiple witnesses (Corporal Hawco, Ex-Private Fiander, Privates Baggs, Williams and Jenkins, Bombardiers Lorimer-Carlin and Rembowski) all confirmed that when it was evident that Private Baggs could not eat the vegetables, Master Corporal Young took the plate of vegetables from Private Baggs and threw them in the garbage.

[24] Regarding the threat that the group would need to do planks, Private Williams testified that, based on the way Master Corporal Young said it, he thought everyone knew it was a joke. Private Williams stated he certainly knew it was a joke and that, in his opinion, his fellow candidates were not concerned about having to do planks. Private Jenkins also told the Court that although he knew they had to follow orders, it was clear to him that this one was a joke. Under cross-examination, he stated that in his experience on the course, he could tell the difference between a real and a joke order.

[25] Some witnesses could not remember doing a plank (Bombardier Lorimer-Carlin, Private MacPhail and Corporal Hawco). The majority of the witnesses (Bombardiers Lorimer-Carlin, Rembowski, Privates Williams and Jenkins) stated that they did go into a plank position, but it lasted a maximum of 30 seconds. Master Corporal Young told the Court that when they got into the plank position, he told them he was only joking as even he could not do a plank for ten minutes.

Assessment of the evidence

Credibility of the witnesses

[26] In proving the allegations set out in the particulars in the charges before the Court, the prosecution must prove all elements of the offences to a standard beyond a reasonable doubt.

[27] It is not unusual that evidence presented before the Court is contradictory. Witnesses may have different recollections of events and the Court has to determine what evidence it finds credible and reliable.

[28] Many factors influence the Court's assessment of the credibility of the testimony of a witness. For example, a court will assess a witness's opportunity to observe events, as well as a witness's reasons to remember. Was there something specific that helped the witness remember the details of the event that he or she described? Were the events noteworthy, unusual and striking, or relatively unimportant and, therefore, understandably more difficult to recollect?

[29] A court may accept or reject, some, none or all of the evidence of any witness who testifies in the proceedings. In other words credibility is not an all or nothing proposition. A finding that a witness is credible does not require a trier of fact to accept all the witness's testimony without qualification. Importantly, credibility is not coextensive with proof (see *R. v. Clark*, 2012 CMAC 3 at paragraph 42).

[30] Another factor in determining credibility is the apparent capacity of the witness to remember. The demeanour of the witness while testifying is a factor which can be used in assessing credibility; that is, was the witness responsive to questions, straightforward in his or her answers or evasive, hesitant or argumentative? Finally, was the witness's testimony consistent with itself and with the uncontradicted facts?

[31] It does not follow that because there is a finding that a witness is credible, that his or her testimony is reliable. In fact, a witness may be completely sincere and speaking to the truth as the witness believes it to be; however, due to a number of reasons, including but not limited to the passage of time or memory, the actual accuracy of the witness's account may not be reliable. So in effect, the testimony of a credible or an honest witness may nonetheless be unreliable (see *R. v. Clark*, 2012 CMAC 3 at paragraph 48 quoting *R. v. Morrissey* (1995), 97 CCC (3d) 193 (Ont CA), at page 205).

[32] There are other factors that come into play as well. For example, does a witness have an interest in the outcome of the trial; that is, a reason to favour the position of the prosecution or the defence, or is the witness impartial? The last factor applies in a somewhat different way to the accused. Even though it is reasonable to assume that the accused is interested in securing his acquittal, the presumption of innocence does not permit a conclusion that an accused will lie where the accused chooses to testify. To be clear, the onus is not on the accused to prove that he is not guilty. The onus is on the prosecution and remains on the prosecution to prove the elements of each of the alleged offences.

[33] The evidence before the Court consisted of the oral testimony of seven witnesses called by the prosecution, three witnesses called by the defence as well as the testimony of Master Corporal Young.

[34] In assessing and balancing the relationship between the reasonable doubt standard and the credibility (or lack of credibility) of the witnesses, in the context of the facts before the Court, the analysis set out in *R. v. W. (D)*, [1991] 1 S.C.R. 742 provides guidance. In short, I must assess the charges as follows:

- (a) First, if I believe the evidence of Master Corporal Young, I must acquit;
- (b) Second, if I do not believe the testimony of Master Corporal Young, but I am left in reasonable doubt by it, I must acquit;

- (c) Third, even if I am left in doubt by the evidence of Master Corporal Young, I must ask myself whether, on the basis of the evidence which I do accept, I am convinced beyond a reasonable doubt by that evidence of the guilt of the accused;
- (d) Fourth, if, after careful consideration of all the evidence, I am unable to decide whom to believe, I must acquit (see *R. v. H. (C.W.)*, (1991) 68 C.C.C. (3d) 146 (BCCA)).

[35] In summary, it is possible to not believe some of what Master Corporal Young has testified to, but still be left in doubt about whether the prosecution has established each of the elements of the offence beyond a reasonable doubt. By the same token, the prosecution's case is not made out simply because the testimony of a witness or an alleged victim is preferred to the testimony of Master Corporal Young.

Prosecution witnesses

Private MacPhail, Corporal Taylor and Bombardier Dolomount

[36] It appeared from the evidence that the local summer courses in 2015 (which included the five-week BMQ Common and the two-week BMQ Land) were plagued with problems and some students were concerned. After speaking with their home unit, Corporal Taylor and Bombardier Dolomount started to document their concerns. After the course was over, they continued recording concerns from the courses. They both contributed to a document, editing it online. Corporal Taylor told the Court it took several weeks to populate the data. The document was later shared with Private MacPhail and all three individually told the Court that they relied upon the document in giving their statements to the military police. Both prosecution and defence counsel brought this collaborative sharing effort to the Court's attention. Defence was understandably alarmed. In light of these facts, in weighing the evidence, the Court had a duty to consider the possibility of collusion between these three witnesses.

[37] The appropriate approach in assessing the standard of proof is to weigh all the evidence and not assess individual items of evidence separately. It is therefore essential to assess the credibility and reliability of individual testimony in light of the evidence as a whole.

[38] In short, there is no absolute bar that prohibits the admission of evidence when the Court learns of collaboration or possible collusion between witnesses (*R. v. Illes* (2013), 296 C.C.C. (3d) 437 (B.C. C.A.)). However, the Court did exercise increased caution in measuring the individual testimony of these three witnesses. Based on the evidence, the Court found that the collaboration between the three witnesses was not of the effect to concoct evidence; however, it did find that their communication and collaboration in recording the events had an effect, at least for Corporal Taylor, whether consciously or unconsciously, of colouring and tailoring his description of the two incidents. In short, I found that some of the evidence from the three witnesses could be

relied upon, with adjusted weight, while other parts of their testimony caused the Court serious concern and were completely disregarded.

Corporal Taylor

[39] In the case of Corporal Taylor, the Court found that his testimony was inconsistent with the totality of evidence provided by the other witnesses. He appeared to be recounting hearsay. In some instances, he made inflammatory comments that lacked substance and veracity. Under cross-examination, it was evident he had little first-hand knowledge to share on the incidents before the Court.

[40] For example, regarding the vegetable incident, Corporal Taylor stated that when Master Corporal Young saw that Private Baggs was not eating his full meal, he instructed him to eat all of his “veggies” or else there would be consequences for the rest of the course. The tone in his testimony implied that the candidates were all frightened. He further stated that the rest of the course mates took it upon themselves to coach Private Baggs because they did not want to get into trouble themselves. Corporal Taylor told the Court that the candidates were afraid of what would happen if Private Baggs did not eat his vegetables, so they encouraged him to help him get it done. In his testimony, he provided no specifics of what “consequence” would actually flow if Private Baggs did not succeed. By comparison, all the other witnesses quickly described it as a challenge for Private Baggs to eat his vegetables or they would all have to do the plank. Corporal Taylor’s inflammatory projection of fear of the consequences that would follow suggested that they would be required to do something completely unpalatable. To be clear, the requirement to do a plank as a group physical punishment is not an activity inconsistent with normal military physical training. Arguably, the requirement to do a plank for ten minutes would be challenging, but the execution of such a punishment is no different than the requirement to do push-ups or to run laps around a track.

[41] His account of what unfolded in the vegetable incident was not reconcilable with the evidence as a whole, but most noticeably it was inconsistent with the testimony of the alleged victims in the two charges before the Court.

[42] Corporal Taylor stated that Private Baggs said that he would have an issue with Master Corporal Young’s order and requested a garbage bag so he could throw up. Under cross-examination, when asked whether Private Baggs asked for a garbage bag, Corporal Taylor admitted that he may not have requested one and then said he did not remember. Corporal Taylor also told the Court that the incident lasted from 10 to 15 minutes and when cross-examined on this point, he quickly stated that it was probably about five minutes. There were serious discrepancies on most of what Corporal Taylor testified to as compared to the testimony of the other witnesses.

[43] Counsel never confirmed exactly where Corporal Taylor was physically located in relation to Private Baggs during the vegetable incident. Although Corporal Taylor stated that Master Corporal Young was threatening or hounding the area to pressure

Private Baggs to eat the vegetables, he could not recount anything that Master Corporal Young said. Under cross-examination, Corporal Taylor quickly changed his story and said he was not sure what Master Corporal Young was doing. He then stated that he was not sure that Master Corporal Young had said anything at all, but stated that his mere presence would have been a pressuring force.

[44] Not only did the Court question his credibility in claiming to have more knowledge than he did, the reliability of his testimony was lacking. For example, although he confidently testified that both incidents occurred on August 10th, 2015, he was also confident that the vegetable incident occurred in the field when they were on the C-9 range. He made this assertion after he had just told the Court they were in class, in garrison when the water incident occurred, on the same day. Upon the Court questioning him to seek clarification, he stated that they most likely were in class in the morning and then on the range in the afternoon. However, the Court noted that if this was the case, then much of the evidence the Court heard with respect to the water breaks unfolding during an entire day of classes was inconsistent with his version of events.

[45] When questioned on why the incident was described more positively by other witnesses, and that other witnesses had stated that no real consequence followed, he emphatically stated it was only because Bombardier Dolomount had gotten Master Corporal Eady to stop the incident. Corporal Taylor also told the Court that Bombardier Dolomount approached Master Corporal Eady, near the trucks in the field and asked her to take action. However, none of the other ten witnesses, including the alleged victim, Private Baggs, testified that the incident took place in the field nor did they make any mention of a C-9 shoot.

[46] When cross-examined on this point, he was evasive and then said he was not sure. He further stated that Bombardier Dolomount approached Master Corporal Eady privately on the side. He explained to the court where they were located on the grass with respect to the road and vehicles, where Master Corporal Eady was observing with other staff. When questioned on this, he could not explain how Master Corporal Eady, who was so far away, could have intervened so quickly.

[47] The only other witnesses to refer to the presence of a Master Corporal Eady were Bombardier Dolomount and Private MacPhail who were also the same three witnesses who closely collaborated with Corporal Taylor in preparing the document. This fact did not seem plausible in the circumstances in which it was said to have occurred. In light of the fact that this account regarding Bombardier Dolomount consulting Master Corporal Eady was inconsistent with the evidence as a whole provided by all the other witnesses, the Court accorded it no weight.

[48] When asked by the prosecution about the reaction of Private Baggs, Corporal Taylor could not say whether Private Baggs actually vomited but he did say that there was mashed food expelled from his mouth. Later under cross-examination, he stated, "To be honest, [he] wasn't watching what was coming out of Private Baggs' mouth."

[49] Regarding the water incident, Corporal Taylor told the Court that they were required to drink whatever was left in their canteen and then testified that they were told to pour the empty contents of the container over their heads. Private MacPhail, who also reviewed the same shared document to refresh her memory, stated the same thing; however, none of the other witnesses who testified on the water incident provided any evidence of this and when asked specifically about this fact, they all stated it never happened. As such, the Court disregarded and accorded this account no weight.

[50] When asked several times why Master Corporal Young wanted them to drink the water, Corporal Taylor told the Court that Master Corporal Young said he wanted them to drink water until they vomited. This statement was in direct contrast and completely inconsistent with what all the other witnesses stated, including the alleged victim, Private MacPhail. Under cross-examination, Corporal Taylor was challenged on this. When asked if he was confusing it with another water incident with another member, Corporal Taylor said he did not know. Corporal Taylor was evasive in answering questions on the water incident from both prosecution and defence and at no time did he refer to the run that morning, the stitch that Private MacPhail experienced, or what the other witnesses expressed regarding Master Corporal Young's concern that the candidates avoid dehydration. Corporal Taylor also told the Court that other course mates complained to him in confidence about having to drink the water, but when asked for specifics and names, he could not recall any.

[51] The Court was gravely concerned with the veracity of his testimony and was forced to question the reason and/or his motivation for his generic inflammatory statements which were in stark contrast to the testimony as a whole. At one point in his testimony, Corporal Taylor suggested that his account of the events was more reliable because he recorded the events shortly after the course. However, it was clear that his testimony on the two incidents lacked the relevant and noteworthy detail that eye witnesses could distinctly remember, such as the plank and the morning run where Private MacPhail got the stitch in her side and others fell behind.

[52] Corporal Taylor told the Court that he used the document to make a complaint to the military police. He also indicated that when he was scheduled to be a witness at a summary trial, he expressed to Bombardier Dolomount his pleasure in seeing that something was finally being done regarding their course. The Court was sensitive to the fact that Corporal Taylor was displeased with the course and this may have clouded his judgement and accounted for his depiction of the incidents.

[53] It may also be that the collaboration of Corporal Taylor and Bombardier Dolomount in preparing the shared document led to a blurring of Corporal Taylor's memory. In any event, it appeared evident that Corporal Taylor could not distinguish between what he actually observed and other facts or details that he might have heard or were recorded in his document. Under cross-examination, he was unable to provide details of the incidents that he claimed to remember. For all the above reasons, the

Court found the testimony of Corporal Taylor had no credibility, was unreliable, and it did not accord it any weight.

Bombardier Dolomount

[54] In her testimony, Bombardier Dolomount stated that when the vegetable incident unfolded, she was on the other side of the modular tent area eating her own supper and admitted that she could not see everything. Given her physical distance from Private Baggs and the fact that she was unable to recall specific details on relevant and noteworthy events, the Court relied very little on what she could add as a witness to the two incidents. With respect to the vegetable incident, she stated that she saw Private Baggs trying to eat vegetables and leaning over a garbage bin, not keeping the vegetables down. However, under cross-examination, she could not provide sufficient specifics on the incidents to provide the court with the necessary confidence needed to rely upon her version of the events. I did find Bombardier Dolomount credible in her testimony regarding the events that she personally witnessed, but on some aspects of her testimony I felt that it suffered from the same reliability concerns that surfaced in the testimony of Corporal Taylor. She may have blurred what she witnessed with what she read in the documents and drew inaccurate conclusions. It was notable that, under cross-examination, she was honest and forthright and when challenged, she was not defensive and actually apologized for making assumptions on facts she assumed had occurred.

[55] Under cross-examination, she confirmed that they had recorded many incidents from the course in their document but that very few actually related to Master Corporal Young. She stated that she relied upon the document when she spoke with the military police and had the document with her when she made her statement. It appeared to the Court that she may have confused the incidents of the 10th of August with other incidents unrelated to Master Corporal Young or she conflated her own personal memories with details that were recorded on other incidents. Nonetheless, the Court did find some of her testimony reliable as is reflected in the summary of the facts.

Private MacPhail

[56] Private MacPhail testified in a calm and direct manner. She was honest and credible when describing what she personally witnessed. Her testimony on the vegetable incident was limited by where she was located. She did say that she did hear course mates encouraging Private Baggs and testified that she did see him leaning over a garbage bin and saw pieces of vegetable come out of his mouth; however, she stated that she he did not see him vomit.

[57] Although she was the alleged victim in the water incident, she told the Court that she was very surprised to learn she was listed as the victim and that charges emanated from the incident. However, since she was present for the water incident, she could describe it with sufficient detail to give the Court confidence that she was testifying as to what she recalled. It was notable that her testimony on this incident brought out the requisite detail that was lacking in Corporal Taylor's testimony.

[58] She told the Court that several of the candidates had expressed concern regarding events on the course which is why they started to take notes. She told the Court that when preparing for her military police statement, she did ask Bombardier Dolomount to send her the document, primarily to refresh her memory on the various names of people involved. She had not kept her own notes during the course because Bombardier Dolomount was doing it.

Ex-Private Fiander, Bombardiers Lorimer-Carlin and Rembowski

[59] Defence also brought to the Court's attention concern regarding a second potential collusion, relating to the prosecution witnesses Ex-Private Fiander and Bombardiers Lorimer-Carlin and Rembowski who were also candidates on the course in question. They also admitted that for a limited time period after the course they communicated regularly on a Facebook site, but as time passed, their use of the Facebook site faded and although it still exists, there has not been any activity for a long time. They admitted that they shared with each other their respective version of the incident regarding Private Baggs and confirmed that they got together to discuss the incident before they individually met with the military police. Bombardier Lorimer-Carlin told the Court that one of the reasons they met was because they were speculating on what was going on, as they really did not know who was being charged.

[60] In assessing the testimony of witnesses Ex-Private Fiander, Bombardiers Lorimer-Carlin and Rembowski, the Court conducted a similar detailed and individualized assessment as it did for witnesses Corporal Taylor, Bombardier Dolomount and Private MacPhail.

[61] Firstly, the Court appreciated the age and experience of these three witnesses and accepted their explanation that there was nothing malicious or untoward behind their meeting to discuss their upcoming statements to the military police. They are young and the Court sensed that they purposely met up in an effort to do the right thing.

[62] In listening and re-listening to their individual testimony, the Court was satisfied that there was no concocting of evidence and the Court found that their individual testimony was appropriately limited to what they personally witnessed. As I stated earlier, it is not unusual that evidence presented before the Court is contradictory. Witnesses may have different recollections of events and the Court has to determine what evidence it finds credible and reliable. Here are my observations:

- (a) Ex-Private Fiander: Ex-Private Fiander was not as forthright as he could have been in terms of explaining how he shared information with others and he did not remember a great deal of the details related to the incident. He stated a few things which were not corroborated by any other witness, but these inconsistencies were mostly quantitative in nature. For example, he was the only witness who stated that they held the plank position for five minutes, whereas all the other witnesses

testified it lasted a maximum of 30 seconds. In testifying on those matters he witnessed, I found Ex-Private Fiander to be credible and mostly reliable as is reflected in the summary of the facts.

- (b) Bombardier Lorimer-Carlin: I found the testimony of Bombardier Lorimer-Carlin both credible and reliable. He was precise in recounting what he witnessed and it was clear that he was physically close to Private Baggs when he witnessed the vegetable incident. I sensed a strong willingness in him to tell the truth and his version of the events was very consistent with that of the defence witnesses. Although he was close to the vegetable-eating challenge, contrary to the testimony of Ex-Private Fiander, he actually could not recall doing the plank at all.
- (c) Bombardier Rembowski: Bombardier Rembowski told the Court that when he met with the military police, he gave them the notes he had taken from his meeting with Bombardier Lorimer-Carlin and Ex-Private Fiander. He told the Court that when they met, they were more focussed on what to ask the military police in terms of process, such as why they were there. He stated that they discussed what they were going to say, but not about the story. He specifically stated that they recognized that they would have different versions of what they saw. With this in mind, I reviewed his testimony with increased caution; however, Bombardier Rembowski's testimony left me with the impression that his note-taking was actually reflective of his commitment to tell the truth. In his particular case, his desire to take notes and cooperate with the military police appeared to be for an honest and practical purpose of ensuring that he could accurately recount what he saw. He was being meticulous in his duty. In his testimony, he provided sufficient detail to the Court that proved he was both credible and reliable and he did not tailor his evidence to either the prosecution or the defence. For example, even though he admitted that most of the students were terrified to let their instructors down, he was also candid and stated that the vegetable-eating challenge was akin to the positive atmosphere and cheering at a sports championship. He also could not remember doing a plank.

Private Baggs – the alleged victim of the first charge

[63] Private Baggs is the alleged victim in the vegetable incident, but it is important to note that he was never a complainant in this case. Eighteen years old at the date of this trial, he is a part-time combat engineer with 37 Combat Engineer Regiment, a squash coach, he works part-time at XXXX, and he will be returning to Memorial University of Newfoundland this winter to continue his university studies.

[64] Private Baggs testified in an honest, forthright and confident manner. He did not minimize the incident, but he also left the Court with the distinct impression that he was not overly bothered, nor consumed by it. He also resisted the urging of defence counsel

to confirm specific words that he said. It was clear that he is easy-going, but his actions and testimony left me with the distinct impression that he is not easily persuaded. He confirmed for the Court that he did not eat much of the food that was served during the course. He does not appear to be a young man easily influenced by anyone, which explains his odd, but very steadfast resistance to eating vegetables and may also explain why he never made a complaint to either his chain of command or the military police and later resisted specific requests for him to provide a statement.

[65] He stated that the incident lasted about two minutes and he confirmed to the Court that he did not feel abused or ill-treated. He also agreed with defence counsel's suggestion that it was not a big deal and that he holds no resentment. He confirmed several times that he did not throw up or vomit. Private Baggs impressed me as an honest, forthright witness who was both credible and, in the opinion of the Court, the most reliable witness on what unfolded in the vegetable incident.

Defence witnesses

[66] Defence witnesses Privates Williams and Jenkins and Corporal Hawco all testified with clarity and a good recollection of events. There was no evidence or suggestion that they had prepared their testimony before the trial. I found their testimony credible and reliable.

Master Corporal Young

[67] Master Corporal Young testified in a forthright and confident manner. On the critical issues related to the allegations before the Court, his testimony was consistent with the evidence as a whole and is reflected in the facts as determined by the Court. He was firm in his recollection of the events and was precise in describing why he did the things he did. At one point under cross-examination, he did become defensive with the prosecution, denying that he should have known better. He also denied that it was a game for him and that he knew that Private Baggs would not be able to eat his vegetables. I found him credible and reliable and viewed his testimony as genuine.

Presumption of innocence and the standard of proof beyond a reasonable doubt

[68] Before the trier of fact provides its assessment of the charges before the Court, it is appropriate to deal with the presumption of innocence and the standard of proof beyond a reasonable doubt. 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 two rules are linked to the presumption of innocence to ensure that no innocent person is convicted.

[69] The accused enters these proceedings presumed to be innocent. That presumption of innocence remains throughout the case until such time as the prosecution has, on the evidence put before the Court, satisfied me beyond a reasonable doubt that the accused is guilty on each of the charges.

[70] So, what does the expression “beyond a reasonable doubt” mean? The term has been used for a very long time and is part of our history and traditions of justice. It is so engrained in our criminal law that some think it needs no explanation, yet something must be said regarding its meaning. A reasonable doubt is not an imaginary or frivolous doubt. It must not be based upon sympathy or prejudice. Rather, it is based on reason and common sense. It is logically derived from the evidence or absence of evidence (see *R. v. Lifchus*, [1997] 3 S.C.R. 320).

[71] Even if I believe that Master Corporal Young is probably guilty or likely guilty, that is not sufficient. In those circumstances, I must give the benefit of the doubt to the accused and acquit because the prosecution has failed to satisfy me of the guilt of the accused beyond a reasonable doubt.

[72] On the other hand, it is virtually impossible to prove anything to an absolute certainty and the prosecution is not required to do so. Such a standard of proof is impossibly high. So, in short, in order to find Master Corporal Young guilty of any of the charges, the onus is on the prosecution to prove something less than an absolute certainty but something more than probable guilt for each charge set out in the charge sheet (see *R. v. Starr*, [2000] 2 S.C.R. 144, at paragraph 242).

Charges – section 95 of National Defence Act

[73] As stated earlier, the accused is facing two charges under section 95 of the *National Defence Act*. The first charge alleges that Master Corporal Young ill-treated a person who by reason of rank was subordinate to him. It is particularized as follows:

In that he, on or about 10 August 2015, at or near Canadian Forces Station St. John’s, St John’s, Newfoundland and Labrador, did ill-treat Private Baggs by ordering him to consume vegetables until he did vomit.

The law

[74] Section 95 is a section of particular importance. In our hierarchical system of rank and command, subordinates are required to comply with the directions of their superiors. Insubordination offences and disobedience of lawful command offences support this goal. In return, superiors are persons in positions of trust and required to meet the highest standards of conduct. As my colleague d’Auteuil M.J. stated at paragraph 45 of his decision in *R. v. Murphy*, 2014 CM 3021:

It appears to the Court that Parliament enacted such provision in order to prevent any abusive behaviour by Canadian Forces members in positions of authority which would result in striking or using any other kind of violence toward any subordinate by reason of the existence of a ranking system in a military context.

[75] Further, the same judicial colleague, d’Auteuil M.J. emphasized its importance at paragraph 55 in *R. v. Laferrière*, 2016 CM 3016:

[TRANSLATION]

Every Canadian Forces member must respect the dignity of all persons, including those who by reason of rank are subordinate. The essence of this offence is to avoid situations of abuse of authority within the organization, which could undermine the trust, confidence and morale that must exist among soldiers so that they can carry out their mission.

Essential elements of the offence

[76] The findings on Charges 1 and 2 depend not only on my assessment of the credibility of the witnesses described earlier, but also on whether the acts particularized in the charge sheets meet the definition of ill-treatment adopted in the past by courts martial.

[77] Section 95 of the *National Defence Act* provides:

Abuse of subordinates

95. Every person who strikes or otherwise ill-treats any person who by reason of rank or appointment is subordinate to him is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

[78] In addition to identity, the date and place of the offence, the fact that by reason of rank, the alleged victim was a subordinate to the accused by rank or appointment were all admitted by Master Corporal Young's defence counsel. The remaining elements that the prosecution had to prove beyond a reasonable doubt were:

- (a) proof of the acts as particularized in the charges;
- (b) proof that the particularized acts meet the definition of ill-treatment; and
- (c) the accused had a blameworthy state of mind.

The particulars

[79] With respect to charge number 1, the prosecution is obliged to prove the particulars as set out, which in this case requires that an order was given to Private Baggs to consume vegetables until he did vomit.

Ill-treatment

[80] Once the particularized acts are proven beyond a reasonable doubt, then an assessment must be made as to whether, in the context in which the incident occurred, the act amounted to ill-treatment. The context is important in making a determination of whether the alleged conduct constitutes ill-treatment.

[81] The word “ill-treatment” is not defined in the *National Defence Act*; however, on a strict reading of the section, there is no limitation imposed as to the nature or manner of ill-treatment envisaged. The words in the section are “strike or otherwise ill-treats” includes treating badly or maltreating a subordinate in a different manner other than by striking. It is not limited to physical violence or physical harm or injuries. It could be psychological, emotional or any harm or injuries of that nature.

[82] With respect to what constitutes ill-treatment, my colleague Pelletier M.J. set out the following in *R. v. Duhart*, 2015 CM 4022:

[48] The test that has been developed over time by various courts martial appears to be based on dictionary definitions, specifically as it relates to the expression “ill-treat”, which translates as *maltraiter* in French. The relevant terms are defined as follows in the *Concise Oxford English Dictionary*, 11th edition and *Le Nouveau Petit Robert*.

“ill-treat” verb: act cruelly towards. DERIVATIVES: ill-treatment, noun.

“cruel” adjective: disregarding or taking pleasure in the pain or suffering of others. Causing pain or suffering. DERIVATIVES: cruelly, adverb.

“maltraiter” 1. *Traiter avec brutalité.* 2. *Traiter avec rigueur, inhumanité.* 3. *Traiter sévèrement en paroles (une personne à qui l'on parle, ou dont on parle).*

[83] In the view of this Court, once the particulars in the allegations are proven, the determination of whether something amounts to ill-treatment is determined objectively by assessing the above definitions with regard to all the circumstances.

Blameworthy state of mind

[84] Once the particulars are proven and it has been determined that the conduct rises to the level of ill-treatment, the Court must then assess whether the accused had the requisite intent.

Issue for the Court on first charge

[85] After having assessed the evidence, the credibility of the witnesses and reviewing the law, the first issue for this Court is whether the particulars as detailed are proven beyond a reasonable doubt. The onus is on the prosecution to prove beyond a reasonable doubt the particulars as alleged.

Analysis of first charge

[86] At the end of counsel’s submissions, I expressed concern with the particulars as set out in the allegations to the first charge and requested both clarification and submissions on what they meant. The charges before the Court are serious and hold the potential for penal consequences. It is a fundamental principle of criminal law that the offence, as particularized in the charge, must be proved beyond a reasonable doubt. The allegations of the first charge are particularized to read that Master Corporal Young

“did ill-treat Private Baggs by ordering him to consume vegetables until he did vomit”, which upon a strict reading, suggests that Private Baggs was ordered to consume vegetables until he vomited, with the act of “vomiting” being the intended end state of the order given.

[87] In response to my inquiries on the particulars, counsel suggested that there were two different interpretations: the first one being that the act of “vomiting” was the intended end state of the order; and the second one being that he was ordered to consume the vegetables, and upon eating them, he ended up vomiting. The Court considered both interpretations.

First possible interpretation: Order given to “consume vegetables until he did vomit”

[88] Under this strict reading of the particulars, there is no requirement for Private Baggs to actually have vomited, but rather it requires proof that he was given an order to consume vegetables continuously until he did vomit. There is absolutely no evidence that any order of this type was ever given by Master Corporal Young. If such an order had been given by Master Corporal Young, the Court would have absolutely no hesitation finding that such an order amounted to ill-treatment or abuse of a subordinate.

[89] Prosecution vigorously argued throughout the trial that vomiting was anticipated because there was a garbage can readily available for Private Baggs. The Court was not persuaded. There was no reliable evidence to suggest how the garbage can got there, or, alternatively, whether Private Baggs moved to the garbage can. The mere presence of a garbage can close to Private Baggs is not sufficient for this Court to draw an inference that vomiting was either anticipated or intended by the alleged order. The consistent evidence before the Court was that the candidates were fed their meals on paper plates with disposable cutlery and when this occurs in mass feeding situations, there are always large garbage bins placed close to the diners to permit them to dispose of their plates.

Second possible interpretation: Order given to him to consume vegetables which caused him to vomit

[90] The second interpretation is that Private Baggs did vomit as a consequence of being ordered to consume vegetables. If the particulars are interpreted with this meaning, then there is a requirement that vomiting did occur. In other words: did the order to consume vegetables cause Private Baggs to vomit? And, specifically by the definition of vomit, “eject matter from the stomach through the mouth.” (as defined in *Concise Oxford Dictionary*, Ninth Edition, Clarendon Press, Oxford at page 1571)

[91] The consistent evidence before the Court was that Private Baggs never ate or consumed the vegetables. Prosecution suggested that Private Baggs was not required to swallow the vegetables in order to vomit or have the contents of his stomach leave through his mouth. This is a creative argument worthy of the Court’s consideration. The prosecution argued that the testimony of some of the witnesses was that Private Baggs

did more than spit out the vegetables. After referring to a number of witnesses who used such terms as: retching, making a motion of vomiting, gag, choke, retch, urging, he submitted that Private Baggs did vomit and that matter did leave his stomach during the course of it and, as such, the term “vomit” is made out. He further argued that prosecution is not required to prove a certainty that he did vomit.

[92] As alluded to earlier, the Court extensively reviewed the testimony of all witnesses and assessed the credibility in every case. Based on the majority of the testimony, but most importantly, the testimony of Private Baggs, I cannot agree. Private Baggs, the alleged victim, emphatically told the Court that he did not vomit. His testimony was clear and, in the view of the Court, he provided the most reliable evidence on this incident.

[93] The prosecution chose to particularize the offence with the wording that it did. Having done so, it had the obligation to prove the offence as particularized and must bear the consequences where the evidence presented to the Court does not correspond to the specificity of the particulars as drafted. Effectively, the prosecution was obliged to prove, beyond a reasonable doubt, that Master Corporal Young did ill-treat Private Baggs by ordering him to consume vegetables until he did vomit. In the opinion of this Court, no matter what interpretation is given to the allegations as particularized, the prosecution has not succeeded in proving its particulars beyond a reasonable doubt.

Special finding of ill-treatment

[94] Under section 138 of the *National Defence Act*, the Court may make a special finding of guilty should it choose to. However, in this case, the Court will not consider the evidence because to do so would place Master Corporal Young in the unfair position of not knowing the legal case he had to meet before this court martial. It would undermine the purpose of providing particulars to reasonably inform Master Corporal Young of the allegations against him and to give him the opportunity of a full defence and a fair trial.

[95] Given the broad and flexible nature of a section 95 offence, in order for an accused to properly defend himself against an allegation, the particulars of the charges and the case that he would need to meet must have specificity and be clear. Further, all the legal evidence in support of the specificity in the allegations must be adduced before him to ensure that he is given the opportunity to meet, explain or contradict this evidence and to determine on what grounds he should argue his defence.

[96] Although the Court does not have to answer the question as to whether there was sufficient evidence to establish that Private Baggs was ill-treated in a manner that fell short of vomiting, it does feel compelled to make the following observations. Given the age of the candidates and the apparent uncomfortable atmosphere that emanated from the first five-week course, the candidates were highly vulnerable. As Bombardier Rembowski testified, they were somewhat terrified not to disappoint their instructors. It is not clear on the evidence before the Court that Master Corporal Young, who was not an instructor on the first course, appreciated the vulnerability of the students or that he

could have predicted that Private Baggs could not physically eat the vegetables. Even Private Baggs' peers, Bombardiers Rembowski and Lorimer-Carlin, who were with Private Baggs on the BMQ Common phase for the previous five weeks, admitted to the Court that they were personally surprised that Private Baggs could not eat the vegetables and had to spit them out. The Court found no evidence that Master Corporal Young knew, appreciated or could foresee that Private Baggs could not eat the vegetables or that they would make him sick.

[97] However, the crux of the matter for the Court lies in the fact that Private Baggs tried to eat his vegetables because he did not want to let his fellow candidates down. Effectively, it appeared from the evidence that on this occasion, Private Baggs succumbed to peer pressure as he clearly did not want to eat the vegetables, which he had steadfastly refused to do for over six weeks.

[98] To be clear, forcing a subordinate to ingest or consume anything against their will, either through excessive peer pressure or by placing threats or negative consequences on their noncompliance, is completely unacceptable. As I suggested to counsel during closing submissions, if Master Corporal Young had pressured Private Baggs to consume alcohol or another toxic substance, we would all be in agreement that such an act would likely rise to the level of ill-treatment. It is important to the Court that this principle not be lost and if anything is learned from this trial, this message must be clearly understood.

[99] In his closing submissions, defence counsel submitted that the vegetables were non-toxic, and Private Baggs admitted he was not allergic to them. He argued that most of us are able to consume food without vomiting, even if we do not like the taste. He reminded the Court that, worldwide, parents tell their children to eat their vegetables if they want dessert; a common practice in parenting. Vegetables are supposed to be good for us. He suggested that it was not unreasonable for Master Corporal Young to want to encourage this young recruit in this situation where it was well known he was not eating properly.

[100] According to this Court's assessment of the facts, Master Corporal Young had good intentions. I accept the evidence that he was concerned about Private Baggs' personal welfare and health and felt that the challenge was harmless, friendly and would be a morale booster for the other candidates. At the beginning, there was laughter and positive energy flowing from the challenge and, as Bombardier Rembowski stated, it was akin to cheering on a sports competition. Private Williams stated that the entire incident was a good time, it was funny and a nice break from the course; everyone was having a good time; and he stated that Private Baggs was also laughing. He told the Court, "We were all cheering him on. We wanted to see him eat his vegetables and found it exciting that it was happening, because he was not eating properly all course and we all knew it."

[101] However, when it was clear that Private Baggs could not eat the vegetables and he spit them out, Master Corporal Young, himself, took away the plate of vegetables. In

my opinion Master Corporal Young's decision to challenge Private Baggs to eat his vegetables amounted to a serious lapse of judgement, but based on the facts as presented to the Court and the context under which it was done, his conduct does not rise to the level of a criminal standard as set out within a section 95 offence.

Conclusion on the first charge

[102] I find that the facts fail to support what is alleged in the particulars of charge number 1, and, furthermore, the facts that were proven in evidence do not disclose evidence beyond a reasonable doubt that Master Corporal Young ill-treated Private Baggs in any way.

Second charge

[103] The second charge reads as follows:

In that he, on or about 10 August, 2015, at or near Canadian Forces Station St. John's, St. John's, Newfoundland and Labrador, did ill-treat Private MacPhail by ordering her to consume excessive amounts of water.

Position of the prosecution

[104] Prosecution made no direct submission on the individual elements of the second charge, and later told the Court that after hearing the testimony, in his view, the particulars as alleged do not rise to the level of ill-treatment and he recommended an acquittal.

Conclusion on the second charge

[105] The Court agrees with the prosecution's recommendation and has also determined that the facts as alleged in charge number 2 do not disclose evidence beyond a reasonable doubt that Master Corporal Young ill-treated Private MacPhail.

FOR THESE REASONS, THE COURT:

[106] **FINDS** you not guilty of the two charges on the charge sheet.

Counsel:

The Director of Military Prosecutions as represented by Major G. J. Moorehead

Major B.L.J. Tremblay, Defence Counsel Services, Counsel for Master Corporal G.P.J. Young