COURT MARTIAL

Citation: *R. v. Taylor*, 2018 CM 2030

Date: 20181015
Docket: 201743

Standing Court Martial

St-Jean Garrison
St-Jean-sur-Richelieu, Quebec, Canada

Between:

Her Majesty the Queen

- and -

Private B.T. Taylor, Accused

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

Restriction on Publication: By court order made under section 179 of the *National Defence Act* and section 486.5(1) of the *Criminal Code*, information that could disclose the identity of the person described during these proceedings as the complainants shall not be published in any document or broadcast or transmitted in any way.

REASONS FOR FINDING

(Orally)

The case

[1] In March 2016, at the material times, both the complainants and the accused were candidates at the Canadian Forces Leadership and Recruit School (CFLRS) in Garrison St-Jean, Quebec. They were all part of the same platoon, R0144E. The charges before the Court relate to four counts of conduct to the prejudice of good order and discipline against three complainants. The particulars of the four charges read as follows:

"First Charge CONDUCT TO THE PREJUDICE OF GOOD

Section 129 N.D.A.	ORDER AND DISCIPLINE Particulars: In that he, on or about 17 March 2016, at the Canadian Forces Leadership and Recruit School, Saint-Jean-sur-Richelieu, Québec, touched T.M. on the buttocks without her consent.
Second Charge Section 129 N.D.A	CONDUCT TO THE PREJUDICE OF GOOD ORDER AND DISCIPLINE Particulars: In that he on or about 31 March 2016, at the Canadian Forces Leadership and Recruit School, Saint-Jean-sur-Richelieu, Québec, touched T.M. on the buttocks without her consent.
Third Charge Section 129 N.D.A.	CONDUCT TO THE PREJUDICE OF GOOD ORDER AND DISCIPLINE Particulars: In that he, on or about 17 March 2016, at the Canadian Forces Leadership and Recruit School, Saint-Jean-sur-Richelieu, Québec, touched J.P. on the buttocks without her consent.
Fourth Charge Section 129 N.D.A.	CONDUCT TO THE PREJUDICE OF GOOD ORDER AND DISCIPLINE Particulars: In that he, on or about the month of March 2016, at the Canadian Forces Leadership and Recruit School, Saint-Jean-sur-Richelieu, Québec, touched E.J. on the buttocks and the breast without her consent."

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

Evidence

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

(a) In court, testimony of the prosecution witnesses, being the complainants, E.J., T.M., J.P., as well as Warrant Officer J.R.C. Côté and Leading Seaman Y.L.P. Lagueux-Picard;

(b) In court, testimony of Private Taylor, the accused, testifying in his own defence;

(c) Formal admissions made by the accused with respect to:

i. voluntary nature of the accused's statement, waiving a *voir dire*;

ii. admission of the evidence of prejudice if the alleged conduct is proved beyond a reasonable doubt; and

iii. platoon schedule, provided in two different forms; Exhibits 3 and 4.

(d) Court visit to two of the locations where most of the alleged incidents occurred, being the green room and the cubicle or a similar cubicle where candidates are housed;

(e) Exhibit 5, map of the green break room;

(f) Exhibit 6, modified map of the green break room;

(g) Application by the prosecution for the Court to admit similar fact evidence; and

(h) The Court also took judicial notice of the facts and matters covered by section 15 of the *Military Rules of Evidence* (*MRE*).

[4] At the close of the prosecution's case, the Court heard the prosecution's application to admit evidence of prior discreditable conduct, also known as similar fact evidence, and denied the application.

Background

[5] With respect to the four charges, the Court was asked to consider three separate incidents:

(a) Green break room incident: The allegations flowing from the first incident are set out in charges 1 and 3. They relate to two different complainants for similar contact that occurred on or about 17 March 2016, while the candidates were on a break in a room called the "green break room". It is alleged that, while walking past both T.M. and J.P., Private Taylor grazed their buttocks with the back and knuckles of a closed hand. Witnesses testified that the green break room was a relaxed area. T.M. witnessed the contact between Private Taylor and J.P. There was one other eyewitness to one of the two allegations, being Able Seaman Westling. The Court had the opportunity to attend and view the

green break room. This incident will be referred to as the "green break room incident";

(b) Cubicle incidents: Charge 4 involves two allegations that occurred in March 2016, while a small section of approximately ten candidates and an instructor were learning how to make a military bed and again, shortly thereafter, when the same group was learning how to prepare a closet layout for inspection. After the master corporal called for volunteers who might already know how to make a bed, Private Taylor and Able Seamen Westling volunteered. E.J. alleged that while Private Taylor was trying to air out and lay the sheet flat, he touched her breast on three separate occasions. It is alleged that shortly after this incident, while both E.J. and Private Taylor were standing in the cramped area observing how to do a closet layout, with his two hands clasped in front of him, Private Taylor touched E.J.'s buttocks. E.J. testified she told Private Taylor to stop and move, but the same touching occurred a second time. There was no eye witness to any of these incidents. The Court also had the opportunity to attend and view the cubicle. These incidents will be referred to as the "cubicle incidents".

(c) Elevator room incident: The third incident occurred at the end of March, while T.M. was waiting in what was referred to as the "elevator room". It is alleged that T.M. was standing by the door close to the stairs in the said room. She remembers wearing her combats and a day bag. She stated that Private Taylor came up from behind her and he grazed or groped her, where the leg meets the buttock in the crease. T.M. stated that this touch involved more pressure than the first incident, set out in charge 1, as she described it as a full touch. T.M. testified that Private Taylor used a closed fist and she felt his whole hand, the knuckles and the thumb touch her. This incident will be referred to as the "elevator room incident".

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

[6] Before providing an assessment of the charges before the Court, it is appropriate for the Court to deal with the presumption of innocence and the standard of proof beyond a reasonable doubt.

[7] As the Court briefly explained at the end of closing submissions, it is imperative that the chain of command and the military police (MP) believe victims when they report conduct that makes them feel uncomfortable. If they are not believed, the allegations will not be taken seriously and properly investigated. It will often take time for victims to fully open up to the police and when an investigation begins it often becomes clear that there may be other victims or similar incidents that have gone unreported. As the prosecution very eloquently submitted in closing submissions,

although many of the instances before the Court are minor, for some individuals, they are very powerful and significant harm can flow.

[8] In a military context, minor incidents of inappropriate touching are completely unacceptable and must be stopped. A failure to address even the smallest instance of inappropriate conduct is exactly what threatens and undermines the military ethos, values, norms and ethics expected of every Canadian Armed Forces (CAF) member. If left unchecked, minor conduct which can lead to heightened reprehensible conduct. Stopping inappropriate conduct as soon as it happens is pivotal, but it is not an easy task.

[9] The increased commitment to addressing inappropriate does not detract from the right of the accused to be treated fairly pursuant to the same Canadian law that we serve to protect.

[10] Based on the circumstances of this case, the continuing rise of the "#metoo" movement in general, as well as the initiation of Operation HONOUR in the CAF, the Court believes it is helpful to explain the varying evidentiary levels of proof required at various stages starting from the reporting of an incident, to the decision of the police to lay charges and then to the final criminal trial of an accused.

[11] I will begin by borrowing directly from Horkins J. who described the differing standards very succinctly in the case of *R. v. Ghomeshi*, 2016 ONCJ 155:

> [123] The law recognizes a spectrum of degrees of proof. The police lay charges on the basis of "reasonable grounds to believe" that an offence has been committed. Prosecutions only proceed to trial if the case meets the Crown's screening standard of there being "a reasonable prospect of conviction". In civil litigation, a plaintiff need only establish their case on a "balance of probabilities". However to support a conviction in a criminal case, the strength of evidence must go much farther and establish the Crown's case to a point of proof beyond a reasonable doubt. This is not a standard of absolute or scientific certainty, but it is a standard that certainly approaches that. Anything less entitles an accused to the full benefit of the presumption of innocence and a dismissal of the charge.

[12] Under the military justice system, the standards of proof are identical to those referred to in *Ghomeshi*. The strength of the evidence required to obtain a conviction in a court martial is tested to a much higher standard than that which is applied by the police or the chain of command in deciding to lay charges or by the prosecution in making its decision to prefer the charges.

[13] Hence, notwithstanding the decision made earlier in the process by the police or the prosecution, the accused enters the court martial proceedings presumed to be innocent. That presumption of innocence remains throughout the court martial until such time as the prosecution has, on evidence put before the Court, satisfied the Court beyond a reasonable doubt that the accused is guilty on one or more of the charges.

[14] Further, it is important that complainants appreciate that, during a court martial, the Court is not just presented with the prosecution's evidence, but this is the first time the prosecution's evidence is vigorously challenged and the accused puts forward his own defence. Vigorous cross-examination by the defence is not intended to harass or humiliate a complainant who comes forward. In fact, it is a necessary element of criminal proceedings as it is only through challenging of the prosecution's evidence that the prosecution's evidence is truly tested.

[15] So, what does the expression "beyond a reasonable doubt" mean? The term is anchored in our history and traditions of justice. It is so entrenched in our criminal law that some think it needs no explanation, yet its meaning bears repeating. See *R. v. Lifchus*, [1997] 3 S.C.R 320, paragraph 39: 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.

[16] In the essence, this means that even if I believe that Private Taylor is probably guilty or likely guilty, that is not sufficient. In those circumstances, I must give him the benefit of the doubt and acquit because the prosecution has failed to satisfy me of his guilt beyond a reasonable doubt.

[17] 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 is impossibly high. Therefore, in order to find Private Taylor guilty of the charges before the Court, the onus is on the prosecution to prove something less than an absolute certainty, but something more than probable guilt for the charges as set in the charge sheet (see *R. v. Starr*, [2000] 2 S.C.R. 144, paragraph 242).

Assessment of the evidence

[18] The appropriate approach to assessing the standard of proof is to weigh all the evidence with respect to each of the charges and not assess individual items of evidence separately. The evidence before the Court consisted of the oral testimony of six prosecution witnesses, three who were complainants, one who was an eye witness and two additional witnesses who were persons in authority with respect to the investigations. In addition, the accused testified in his own defence.

[19] With respect to the conduct alleged in two of the four charges, there were no eye witnesses. It is possible for the Court to make a finding on an offence based solely on the uncorroborated evidence of one witness, which is usually the complainant, however, it must stand on its own, when measured against the required standard of proof for a criminal conviction.

Credibility of the witnesses

[20] It was noted by both counsel in closing submissions that in the whole of the testimony before the Court, many of the witnesses had different recollections of the events. As the events took place over two and a half years ago, it is understandable that there will be inconsistencies. This is not unusual and in reviewing each of the individual charges, the Court has to determine what evidence it finds credible and reliable.

[21] They are many factors that influence the Court's assessment of the credibility or 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? 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?

[22] It is also important to note that the 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 the 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.

[23] The demeanour of the witness while testifying is also 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, the Court must assess whether the witness's testimony is consistent with itself, the evidence as a whole and with the uncontested facts.

Assessing conflicting versions of events

[24] With respect to the facts giving rise to the four charges before the Court, the accused and the complainants gave diametrically opposed versions of events. In assessing a case with competing versions of what happened, credibility is a central issue and where the accused has testified, the Supreme Court of Canada (SCC) recommends that the issue be considered in three steps, commonly referred to as the "*W.(D.)* instruction" found at *R. v. W.(D.)*, [1991] S.C.J. No. 26.

(a) First, if I believe the evidence of Private Taylor, I must acquit;

(b) Second, if I do not believe the testimony of Private Taylor, 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 Private Taylor, 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.

[25] In *R. v. H. (C.W.)*, [1991] 68 C.C.C. (3d) 146 (B.C. C.A.), Wood J.A. suggested an addition to the second part of the three part test set out in *W.(D.)*. At page 155 of *H.(C.W.)*, His Lordship said, "If, after a careful consideration of all of the evidence, you are unable to decide whom to believe, you must acquit."

Allegations of collusion at large

[26] One of the persistent theories of the defence throughout the proceedings was that the "girls" decided very early in the course that Private Taylor was weird and "creepy". He suggested to each of the witnesses that this rumour began almost from day one and that it started to colour their views in assessing every move Private Taylor made. In her testimony, T.M. was clear that, from the very beginning, she found Private Taylor "creepy" and did not want him around her or touching her. As such, it is highly likely that she was particularly alert to anything he did, particularly if he was around her.

[27] Defence also suggested that because they did not like Private Taylor, and wanted him gone, the "girls" concocted the various allegations. In light of these facts, in weighing the evidence, the Court has a duty to consider the possibility of collusion between the three complainants.

[28] 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 BCCA 169, 296 C.C.C. (3d) 437 (B.C. C.A.)). However, the Court did exercise increased caution in measuring the individual testimony of these witnesses. Based on the evidence, the Court found that the collaboration between the three witnesses definitely did not have the effect that they either intentionally or unintentionally concocted evidence; however, the Court was alerted to the possibility that their communication in discussing Private Taylor's "creepiness" between themselves may have had an effect, whether consciously or subconsciously, of colouring and possibly tailoring their description of two of the incidents. In fact, the Court noted that after time progressed, and other things happened, their interpretation of the earlier events changed. There may have been good reasons for this, but the Court did need to be alert to this fact. To be clear, the Court is not suggesting that the witnesses engaged in anything improper. In fact, the Court recognizes that there were very few women on the course and they needed to rely upon the support of one another as they navigated a challenging course which involved both an arduous career and life transition. This is completely natural and is not in any way to be condemned or discouraged.

[29] The Court will address the specifics on the credibility of the pivotal witnesses under each of the charges.

Analysis

[30] All of the four charges relate to violations of section 129 of the *National Defence Act* (*NDA*) for conduct to the prejudice of good order and discipline. At the opening of the Crown's case, defence counsel formally admitted that if the alleged conduct is proven beyond a reasonable doubt, the accused admits that the proven conduct is prejudicial to good order and discipline. The Court also found that identity and place were clearly established on the evidence before the Court.

[31] This Court must now decide whether the prosecution has proved beyond a reasonable doubt the remaining particulars as alleged, as well as the fact that Private Taylor had the required *mens rea* or mental element for each of the charges.

Charges 1 and 3 - Green room incidents

[32] The Court will first address the two charges, charges 1 and 3 referred to as the green break room incidents.

Testimony of complainant T.M.

[33] When T.M. testified regarding the alleged incidents that occurred in the green room, she described the room as a break area. She testified that recruits were not required to march in it, unless they were with staff or passing through. When, asked for more details on the incident, she stated emphatically several times that she could not remember dates and many other details as everything at that time was condensed and blurred together. Until her memory was refreshed, she could not even remember what she was wearing on the day of the alleged incident. She stated that when she was in the green break room, it was not back-to-back crowded, but there were quite a few people in it.

[34] Her memory of the layout and where they were located put her generally in the same area that the other witnesses testified to. She stated that she was standing in a group that included J.P. and there were a few classmates sitting in the chairs.

[35] She testified that she was just standing there, when she felt someone grazed her right buttock cheek with the back of a closed hand. She described it as being a closed hand with the thumb tucked in, as if the person was marching. In describing the force, she testified that it was not hard, but it was not light. She described it as a medium force that did not last even a second, which is why she thought it was accidental.

[36] She stated that as soon as she felt the touch she looked and saw Private Taylor walking. She testified that she figured he had accidentally brushed her, but then approximately one minute later, she saw him do the same thing to J.P. T.M. told the Court Private Taylor brushed or grazed his hand across J.P.'s buttocks in the same fashion that he had touched her. She stated that she personally did not see J.P.'s reaction due to where she was standing, but that she approached J.P. and asked if Private Taylor had just touched her.

[37] With respect to the touch she felt, T.M. originally stated that she did not know where Private Taylor had come from, but then she told the Court that Private Taylor came from behind the coffee table and that he had made a beeline towards her.

[38] T.M. said she got creeped out and then told the Court that everyone was creeped out by Private Taylor as he has "dead" eyes. She stated that he would look at them with what she described as a malicious grin and that she had a bad gut feeling and did not want to be around him. She stated that throughout the course she never talked to him and did not want anything to do with him.

[39] She stated that she did not report the incident because she was not certain whether he had done it on purpose, or whether he was just clumsy or "sucked" at marching. However, it was her testimony that, in hindsight, she believes it was not an accident.

Testimony of complainant J.P.

[40] J.P. testified that on 17 March 2016 in the afternoon, the day after they received their combats, she was in the green break room on a break between classes. She was with T.M., Ordinary Seaman Westling and other platoon mates. There were about five to ten people in their circle talking. She had known T.M. for a few days and since she was the only other female in the platoon who smoked, they became "smoking buddies" and friends. She testified that T.M. was across from her in the circle, with possibly one person to the left. She stated that there was about ten to fifteen feet between them and that there was nobody behind her. She told the Court that the green break room was crowded but she stated that it was just their platoon there and most people were by the first exit door and the area behind her leading to the chairs was empty. She testified that she was not aware of where Private Taylor was at that time.

[41] J.P. testified that she was standing in the circle and felt someone touch her backside. She said it happened suddenly, and she turned her head to the right and noted that Private Taylor was the only person in the area. She stated Private Taylor was heading toward the sandwich vending machine against the wall but she did not see him buy anything from the vending machine.

[42] She described the touch as a grazing, done with the back of his hand in a swiping motion. She said it was done with sufficient force for her to know she was touched and in terms of force, on a scale of one to ten, she assessed it as a three. She could not say what hand she was touched by. She told the Court that when it happened, she found it weird and made a facial expression to the effect of "oh, that was strange".

Testimony of the accused

[43] The accused denied the incidents in the green break room. He admitted that during the early weeks, everyone was marching around and would often touch each other either in the ankles, back or buttocks. However, under cross-examination, he

denied that he personally had any problem with drill and inadvertently hitting people as he prides himself on his drill.

Testimony of Able Seaman Westling

[44] Able Seaman Westling was a candidate in the same platoon as T.M. and J.P and Private Taylor. She stated that at the beginning of the course, there were approximately sixty-two candidates. Able Seaman Westling told the Court that the incident occurred during their second week of training, when they had just been allowed to wear their combats, but could not recall the time of day. She stated that there was only their platoon in the green room at that time. She stated that she was talking with J.P. and T.M. when she saw Private Taylor walk behind J.P. and then noticed J.P.'s shocked expression, but did not see the alleged touch. She described that she can tell when someone is shocked as their "eyes go kind of wide and their mouth opens up". She also told the Court that she saw T.M. turn to J.P. to inquire if Private Taylor had touched her. Under cross-examination, she stated that she specifically noticed Private Taylor walk behind J.P. and T.M. as it was easy to pick out a moving person.

The Court's analysis

[45] Although T.M. testified that she could not be sure of the date of the incident or what she was wearing, she was sure that the alleged touching occurred in the same location and within minutes of when J.P. was touched. J.P. testified that the incident occurred on 17 March 2016 which was consistent with other testimony that the incident occurred shortly after the candidates were issued their combats. Neither T.M., J.P. nor Able Seaman Westling could remember the time of day when the incidents unfolded.

[46] Under cross-examination, defence questioned J.P. on how she came up with the date of 17 March 2016. He reminded her that during her interview with the investigator she had no idea on what day the incident occurred and yet she testified today that her memory was more accurate two and a half years ago than it was today. However, J.P. firmly stated that she remembers the date as being the 17th of March. By referring to the schedule, Warrant Officer J.R.C. Côté confirmed for the Court that the candidates had been issued their combats on the morning of 17 March 2016 and that the schedule for kit issue never changed as they were fixed appointments. Based on all the testimony, the Court assessed that the alleged incidents occurred either on the afternoon of 17 March 2016, or possibly the morning of the 18th as it occurred shortly after they were issued their combat clothing

[47] It is a fundamental principle of criminal law that the offence, as particularized in the charge, must be proved beyond a reasonable doubt. Particulars enable an accused to fully assess the case against him, define the issues and prepare his or her defence, including whether or not to call evidence and testify at trial. It is trite law that the prosecution is bound by the essential particulars of the charge, subject to the rule of surplusage. The date is one of those particulars that falls within the category of surplusage.

[48] Provided that it would not prejudice the accused, if the Court finds that all the other elements of the charge have been proven beyond a reasonable doubt, the Court may make a special finding, under section 138 of the *NDA* with regard to the date.

Potential collusion explored between complainants J.P. and T.M.

[49] Under cross-examination, defence explored with T.M. and J.P. the prospect of collusion between themselves and other witnesses. As stated earlier, in light of the prospect of collusion, the Court did exercise increased caution in measuring their individual testimony.

[50] Under cross-examination, J.P. confirmed that there were rumours going around basic training regarding Private Taylor but denied starting the rumours or knowing who started them. However, J.P. clarified that at the time of the alleged touching in the green break room, there were no rumours circulating.

[51] J.P. did admit to personally referring to Private Taylor as "weird". She told the Court that she had also referred to Private Taylor as "creepy". T.M. stated several times that from almost the first day she found Private Taylor "creepy", "weird" and that he gave her the "heebie-jeebies".

[52] When J.P. and T.M. were questioned on whether they had discussed their testimony between themselves or with the other witnesses, they both emphatically denied it. Both T.M. and J.P. admitted that they had recently reviewed their respective statements, both audiovisual and written, on the weekend or the Monday prior to their testimony. T.M. also told the Court she understood the rule and she was not allowed to talk about what she was going to say.

[53] Both T.M. and J.P. confirmed for the Court that during their basic training, they became good friends and they remain so today. They both stated they are getting married and they talk primarily about their respective upcoming weddings. T.M. admitted that she had discussed travel logistics for the court martial with J.P. as J.P. picked her up at the airport to help her save money and that J.P. also provided her rides back and forth to the proceedings. She confirmed that she had seen J.P. the evening before her testimony, but they only spoke about their upcoming wedding and getting food and drinks. T.M. also admitted that she saw E.J. briefly during the witness preparation, as well as the evening before in the smoking area because she wanted to see E.J.'s dog, but she was insistent that they did not discuss their testimony.

[54] In closing submissions, the prosecution refuted the defence's argument arguing that the mere fact that the women shared amongst themselves negative feelings about the accused, does not amount to a plot against him. He submitted it was the natural thing to do in looking for support from their peers. The fact that they discussed what they had experienced does not make their accounts less worthy of belief. The Court agrees with the prosecution's assessment.

Credibility of Able Seaman Westling

[55] The Court found Able Seaman Westling to be unbiased, credible and reliable. The Court was confident that her perspective of the incident was not coloured by emotion, overly sensitive or influenced by that fact that she thought Private Taylor was "creepy". The Court also heard testimony regarding the bed making incident, which will be addressed later, but it was clear that Able Seaman Westling personally had no hesitation working in a small space with Private Taylor. The Court viewed her testimony as the most reliable. Her testimony was short and focused primarily on the incident that unfolded in the green break room. On cross-examination, she made it clear that she was not close with the other female members of the platoon, not because she does not get along with them, but rather she just does not bond with people.

[56] She stated emphatically that although she did not see the actual touch, she saw Private Taylor walking in the immediate vicinity behind J.P. and then noticed J.P.'s expression of shock. What was most important about Able Seaman Westling's testimony is that she corroborated significant items of the complainant's evidence which gave the Court confidence in the veracity of their testimony.

[57] In the Court's view, it is clear that someone touched both T.M. and J.P. and that Private Taylor was seen in the close vicinity.

The *mens rea* of the offences in charges 1 and 3 – Were they an accident?

[58] On the facts of the case, the prosecution needed to establish that the accused performed the particulars intentionally in the sense that the touching was not done by accident.

[59] In closing submissions, the prosecution did admit that the complainants had originally used the word "accident", but submitted that it reflected their honesty and willingness to give the accused the benefit of the doubt. She argued that their testimony makes it clear that their minds were quickly changed when they realized what was going on.

[60] Under cross-examination, T.M. did confirm that at the time of the incident she felt it was an accident, but also admitted that she did not want Private Taylor beside her or touching her. She testified that, looking back, she feels that the touching in the green break room was not accidental.

[61] After confirming for defence that her statement in 2016 was more accurate than her memory today, J.P. also admitted that, in 2016, she told the investigator that she did not want to cause a scene as, in her view, the incident may have been accidental. Under cross-examination, J.P. was challenged by defence on this fact. The Court noted that J.P. was composed and answered the questions clearly, clarifying that in her opinion it

was not an accident as she believed the touching was deliberate, in the circumstances she felt her belief was logical.

[62] With respect to the touching, defence challenged both J.P. and T.M., insisting that they were never touched by Private Taylor in the green break room and argued that with sixty people in the room, and the platoons walking through it, it would be very crowded as it is a confined space. He suggested that there were too many people moving around to say with any certainty that anyone wanted to touch them.

[63] The Court also had the opportunity to view the green break room. It made a few observations of note. Firstly, although it was an obvious break room, with vending machines, a fixed large table, chairs, coffee machines, etc., for candidates to relax, it also had a thoroughfare. During the few moments the Court was in the green break room at least two moving groups moved through, marching with arms up and eyes straight ahead. The Court also noted that with the ten or so participants or spectators of the Court, the area that did not form part of the thoroughfare was not as large as the coffee area; the fixed tables and the many chairs linked together, although moveable, took up a great deal of space. T.M. testified that there were a few people sitting in the chairs and Able Seaman Westling testified that there was no one standing behind them nor where the chairs were located. Defence counted that a maximum of eighteen persons could be seated in the chairs, which would leave approximately forty-two persons standing in the open area.

[64] With between fifty and sixty people in a relatively small room that had fixed infrastructure such as the table and coffee area, a passageway for platoons to march through, combined with the excitement of the early part of the course and the first day they were allowed to wear combats, there is no doubt that there are inconsistencies in the testimony.

[65] Although there were inconsistencies on the direction some were facing and exact location where the group was standing, the Court noted that every version of the testimonies had them standing close to the thoroughfare where people marched through. However, the Court was mindful of the fact that none of the witnesses testified that at any time, had groups moving through.

[66] The Court is aware that the candidates' memory on many of the details has faded and although the Court has not found any collusion, and found both T.M. and J.P. to be credible, it is sensitive to the fact that their recollection and assessment of the touching has undoubtedly been influenced by incidents that followed. As defence argued, and both T.M. and J.P. admitted, they originally thought the touching had been an accident.

[67] In short, the Court is being asked to decide whether a touch that occurred two and half years ago, described as a less than one second, fleeting graze with the back of a hand on the buttocks of a candidate, in crowded quarters, was in fact intentional, when the complainants T.M. and J.P. themselves originally thought it was an accident.

[68] After hearing all the evidence, the Court does believe that that T.M. and J.P. were touched on the 17th or 18th of March, 2016; however, it is unable to say with the required level of certainty that it was not an accident and, as such, the Court must provide the benefit of the doubt to Private Taylor.

Conclusion on charges 1 and 3

[69] I am not satisfied that the prosecution has proven charges 1 and 3 beyond a reasonable doubt.

Charge 4 - cubicle incident

Testimony of complainant E.J.

[70] E.J. testified that in March 2016, after the candidates had been issued their combats and gear, they were learning how to make a bed and the master corporal asked if anyone knew how to make a bed. She testified that Private Taylor and one of the women, who the Court would learn later was Able Seaman Westling, offered to make the bed. She stated that the session was being taught in a corner with a half wall, two full outside walls with a window with a desk and a locker in a corner. There were approximately ten candidates observing the making of the bed. She testified that she was standing inside the full walls at the end of the bed and there was nobody to her left, but people to her right and the bed in front of her. She testified that while making the bed, Private Taylor was lifting and airing out the sheet to spread flat on the bed, and in doing so, he hit her left breast with the back side, knuckle area of his right hand. She testified that when she felt the impact, she asked those standing beside her to move over. She testified that she originally thought it was an accident and she tried to move out of his way.

[71] She stated that the impact did not hurt but was forceful enough to make her breast move and lasted maybe a second. She testified that, after that, she was touched again with what she described as two simultaneous touches. The time between the first and second set of contacts was a couple of seconds, with the second and third contacts being simultaneous. She stated that at that time, Private Taylor did not say anything and she did not say anything to Private Taylor. She stated that she just asked the person beside her to move down so she would be out of Private Taylor's arm range. She stated that during the bed making, she did not look at Private Taylor as she was focused on learning how they were expected to make the bed. She stated she was standing close enough that he was within arm's length and his elbow was bent. She testified that, at that time, she did not think it was done on purpose but thought it was weird that he did not apologize. She told the Court that she did not report this incident to her course staff at that time as it was early in the course and she did not want to "rock the boat."

[72] She testified that the second alleged event occurred on the same day, probably within the same hour, while the same group of ten-plus candidates were learning how to

do the layout of a closet for inspections. She stated this lesson was not being conducted in a corner, but was held in what she described as a cubicle, between the regular flat layouts. She said she was standing on the outside of the half wall and the bed was on the inside of the half wall. She stated that there was only Private Taylor behind her. She stated that Private Taylor approached her from behind with his hands clasped together positioned over his crotch and pressed into her. She said she asked him to move or stop, and she moved forward away from him, but she stated that he seemed to follow behind her and then, the next time, he pressed against her for longer, approximately three seconds. She told the Court that she moved away again and that, after that, he got the message and he did not do it again.

[73] She stated in the first incident, which lasted a second, she just felt his hands, but the second time, she felt all of him, being his chest and hands clasped. She stated that he did not say anything and his expression never changed, which she described as always very stoic. She says he does not smile or have any expression; he is very blank. She stated that, in her opinion, the second incident was not an accident and when she said not to do it, he continued to do it which she felt showed intent.

[74] Under cross-examination, she agreed that they were all "squished" into the cubicle where the bed making was being done.

[75] Also under cross-examination, she confessed she often referred to Private Taylor as a "creep" and she also testified that at the time of the events there was no animosity between her and Private Taylor. She agreed that some people referred to her as a "drama queen".

[76] She stated that Private Taylor gave her "attitude" on the course and she did not like Private Taylor and that he did not have patience with her. She agreed with the defence that if Private Taylor said the sky was purple, she would say it was blue.

Testimony of the accused

[77] The accused recalled the day in which his section was learning how to make a bed. He stated he volunteered because he prided himself on being organized and keeping his workspace well-kept and he wanted to set an example. He commented on how small the cubicle pods are. He indicated that he would have been on the side closest to the pillow, facing the hallway. He told the Court that the cubicle was so small that there would have only been a few candidates inside and the remainder would be standing outside the half wall. Private Taylor indicated that anyone who could not fit inside the cubicle was standing out in the hallway, which the Court noted was separated off from the cubicle by a half wall. He does not recall where E.J. was at that time, but in his memory she was in the hallway.

[78] Private Taylor stated that at no time did he touch E.J. nor did he ever hear her say not to touch her or ask him to move. With respect to the layout and the allegation that he touched E.J.'s backside, he stated that at no time did he brush up against her.

During the bed making incident, he said he was focused on learning how to do the hospital corners. With respect to the kit layout, he stated he was focused on what the instructor was saying and what they had to learn for their inspections.

[79] Defence argued that there was no way Private Taylor, early in the course, under the supervision of the directing staff and ten other candidates, would volunteer to make a bed and then, in front of them, intentionally touch E.J. on the breast. He argued that if E.J. was touched, it would have been inadvertent given the close confines of the cubicles and accompanying hallway.

Additional testimony and evidence

[80] T.M. testified that Private Taylor and E.J. did not like each other. J.P. described her relationship with E.J. as "okay", but confirmed that E.J.'s relationship with Private Taylor was "bad". She said that E.J. has a strong personality and could come across as rude and confirmed that E.J. and Private Taylor butted heads. She stated that both E.J. and Private Taylor had different ideas and thoughts and did not get along, often yelling at each other. She stated that she did not know when the bad relations started between the two, but she personally noticed it around the end of the first week. J.P. also described E.J. as a "drama queen" because she was loud and opinionated and sometimes picked fights with other people over simple things. Able Seaman Westling stated in her testimony that E.J. was somewhat on her own within the platoon.

[81] The Court also had the opportunity to view the cubicles or pods on the 9th floor, which is the same floor where the students resided during that particular course.

The Court's analysis

[82] In cross-examining the accused, the prosecution stated that due to its size, it was impossible to have the ten-person section and the instructor in the cubicle making a bed and suggested to Private Taylor that the bed making incident actually took place in the laundry room, which is what he had said in his statement to the MPs and the National Investigation Service (NIS). Private Taylor was insistent and confidently asserted that both the bed making and kit layout took place in cubicles. When showed his statement, he clarified that his reference to the laundry room would have been to the boot polishing station. The prosecution challenged Private Taylor on why he would bring up the laundry room given that the investigator did not ask him about boot polishing. Private Taylor explained that it may have been a language issue when he was explaining himself, but he otherwise did not know. However, the Court noted that E.J. also referred in her testimony to the section having been in a room for a boot shining station around the time of the two incidents. Hence, it is plausible that either before or between the bed making and the kit layout that the section was in the laundry room to learn how to shine their boots.

[83] Further, in re-listening to the testimony of E.J., it was clear that she also described the two incidents as being in living cubicles and not in the laundry room. E.J.

described beds, closets, sinks, half walls, etc., which are consistent with the cubicle as viewed by the Court. E.J. also stated that the kit layout took place in a similar space to the bed making, but that it was not in a corner. The Court accepts the two incidents occurred in two different cubicles.

[84] Although the Court accepts that the bed making incident occurred in the cubicle, it finds that Private Taylor's version of where people were standing to be the most plausible. As the prosecution suggested in his cross-examination of Private Taylor, it would be impossible for everyone in the section to be in the cubicle while a bed making lesson was taking place. It is just too small.

[85] Private Taylor described that he, Able Seaman Westling, the instructor, and at least one other candidate were inside the cubicle while the others were standing outside. In his recollection, he does not remember E.J. being inside the cubicle. The Court is also of the view that even if there were at least four people, possibly more, inside the cubicle airing and raising sheets to make a bed, that it would be almost impossible not to touch someone.

[86] However, from the various testimonies, the Court finds that it is possible that E.J. was standing in the doorway by the half wall and not inside the cubicle where she testified to being. Standing in the doorway by the half wall would place her almost within the cubicle and within range of being touched. The Court accepts the testimony of both E.J. and Private Taylor that they were both individually focused on learning how to make a bed. The Court noted that in her testimony with respect to the bed making incident, E.J. stated that, at that time, she simply asked the person beside her to move over so she was not in the way and that she did not say anything to Private Taylor or look at him.

[87] However, having stood in a cubicle, the Court finds it doubtful that Private Taylor would volunteer to do a task in front of his section of ten candidates as well as his master corporal and, at the same time, intentionally touch E.J. on the breast. It is very possible that in raising, airing and laying the sheets, he may have touched her inadvertently, but the Court accepts his testimony that he was focused on the task for which he volunteered, trying to set an example and show others the tasks he prided himself on.

[88] When questioned with respect to the kit layout, Private Taylor stated that some candidates were inside the cubicle while the others were in the hallway looking over the half wall. He stated that there isn't really enough space for people to move around in the hallway as it is crowded and tight. Private Taylor also denied that he inappropriately touched E.J. during this time. Under cross-examination, he did agree that they would have both been in the same hallway which is consistent with the evidence given by E.J. Additionally, E.J. testified that she definitely communicated to Private Taylor that she did not want him close to her. She stated that she told him to stop and purposely moved away from him so he could not stand close to her.

[89] With respect to the second incident, when challenged by the defence that at no time did she tell Private Taylor to stop or move, she replied, "That's false, I did." When questioned by the prosecution, Private Taylor admitted that he and E.J. had exchanged glances during that time, as he admitted they did not like each other. Hence it is clear on the evidence that, at the time of the incident, there was negative ongoing communication between E.J. and Private Taylor. The Court was troubled by the fact that although both E.J. and Private Taylor testified to there being at least ten candidates and the instructor present in the small spaces where the incidents allegedly occurred, there was not one eyewitness.

[90] The Court stood in the hallway and observed how tight and small it is. It observed that barely two small-sized individuals could stand shoulder to shoulder in width in the space. As defence observed, E.J. is physically larger than Private Taylor and he challenged E.J. on whether it was possible that Private Taylor may have been trying to look around her to focus on the layout, but E.J. said "no" as there was nothing for him to look at. This is inconsistent with the evidence as a whole, including the complainant's own evidence. She testified that they were all focused and watching how to prepare for a kit layout inspection. If this was the case, and both E.J. and Private Taylor were standing outside in the hallway, they would both have wanted to see what they had to do and, arguably, trying to look over the half wall, inwards to the cubicle to where the layout was. There is a full wall closely behind where they both would have been standing. E.J.'s version that there was nothing for Private Taylor to look at defies logic. The Court accepts that E.J. may not be tall enough to look over the wall, but the Court is of the view that it is very plausible that Private Taylor could and would have wanted to look at what was happening inside the cubicle.

[91] It is very difficult to decide whether the bad relationship that existed between E.J. and Private Taylor was precipitated by the alleged bed making or kit layout incidents or whether there was a pre-existing growing conflict between the two. If there was already antecedent animosity, did it colour E.J.'s interpretation of the incidents themselves? Did the acrimony that existed between the two, coupled with E.J.'s belief that Private Taylor was "creepy", influence her view of what would otherwise have been benign contact?

[92] We did hear testimony from J.P. to the effect that at the time of the alleged bed making incident, there were no rumours circulating and E.J. testified that at the time of the bed making and kit layout incidents, there was no conflict between the two. However, T.M. also testified that from almost the first day, as a result of something Private Taylor had said to them in their bed space areas, the women thought Private Taylor was "creepy". It was evident that T.M. was consistently alert to Private Taylor's conduct and there is no doubt there would have been some discussion that flowed amongst the women, particularly after the alleged green break room incident. It is unclear whether this bed making incident occurred before or after the green break room incident, but in terms of the testimony and the schedule, it is logical to assume that they occurred within a day or two of each other. The candidates were issued their kit on the morning of 17 March 2016 and the testimony as a whole is consistent with the fact that

both incidents occurred shortly after the candidates had been issued their military kit and combat clothing.

[93] As stated earlier, in situations where there are conflicting versions of what occurred, the SCC's *W.(D.)* instruction applies. The Court believes that much of the accused's version of events is very conceivable. Even if I do not believe all the testimony of Private Taylor with respect to this incident, but I am left in reasonable doubt by it, I must acquit Secondly as refined by the Court in *H.(C.W.)*, Wood J.A. suggested an addition to the second part of the three-part test set out in *W.(D.)*. At page 155 of *H.(C.W.)*, His Lordship said, "If, after a careful consideration of all of the evidence, you are unable to decide whom to believe, you must acquit."

[94] For the many reasons I provided above, I am left in reasonable doubt and therefore I must acquit Private Taylor on this charge.

Conclusion on charge 4

[95] I am not satisfied that the prosecution has proven charge 4 beyond a reasonable doubt.

Charge 2 - elevator room incident

[96] With respect to the particulars of this charge, although the complainant could not remember the date of the incident, she stated that she reported it to Warrant Officer J.R.C. Côté immediately after her drill class that day. Leading Seaman Y.L.P. Lagueux-Picard testified and he was very precise in confirming that on 31 March 2016, at 1130 hours, Warrant Officer J.R.C. Côté reported the incident and that Leading Seaman Y.L.P. Lagueux-Picard met with T.M. immediately thereafter from 1225 until 1242 hours the same day to obtain her statement.

[97] Also, it is evident from T.M.'s testimony, T.M. did not consent to any touching by Private Taylor. Hence, the Court must determine whether Private Taylor intended to touch T.M. on that day and was aware that T.M. did not consent.

Testimony of complainant T.M.

[98] T.M. testified that while waiting in the elevator room one early morning, standing by the door close to the stairs, Private Taylor approached her and with his hand touched her where the leg meets the buttocks in the crease. She clearly remembers that she was wearing her combats and carrying a day bag and that it was clearly not an accident. She told the Court she did not see him coming as she was standing facing the door to the stairs but that he "full on" touched or groped her. She stated that she still feels like it happened yesterday. She testified that she remembers it all the time and specifically remembers how it felt. She described the touch as having more pressure

than the first incident as it was a "full touch". She stated he touched her with a closed fist, but that she felt his whole hand, including the knuckles and the thumb touch her.

[99] She described the touch as a brush, grope, slash, almost a pinch. She stated it lasted about a second but felt like it went on for an eternity. She stated that there was more than enough space for him to pass her. She stated that her instinct kicked in and she did not say anything and that the second incident occurred a few days after the first incident, which would be in the green break room. After he touched her, he went to go stand somewhere away from her. She stated that she reported the physical contact to Warrant Officer J.R.C. Côté immediately after drill class. She felt disgusted and was scared because she felt that she had been targeted by Private Taylor. She stated that, in her opinion, because of what she was wearing and the location he touched, there was no way it could have been an accident.

Testimony of the accused

[100] The accused denied the allegation of touching T.M. in the elevator room as well as engaging in any inappropriate touching of T.M. The accused confirmed that in the afternoon of 31 March 2016 he was removed from his platoon. When asked if he had an inspection on that morning, Private Taylor confirmed that they had one every morning.

Assessment of the charge

[101] During direct examination, Private Taylor was very sincere, calm, composed, well-spoken and prepared. Under cross-examination, he was forthcoming and candid and, in most cases, he responded calmly and decisively to challenges by the prosecution. However, with respect to the elevator room incident, I found that his responses to questions were evasive. In assessing his credibility, I must consider whether his testimony is consistent with itself and with the undisputed facts. This is important because a witness whose evidence on an issue is not credible, cannot give reliable evidence on the same point (see *H.(C.W.*).

[102] When responding to questions on the elevator room allegation, the prosecution asked Private Taylor why people would be in the elevator room. Private Taylor stated that sometimes the candidates were asked to wait in the elevator room and that it depended on the instructor. When asked for more clarification, he stated that at no time did he ever personally have to wait in the elevator room, and that some people had to, but he never had to.

[103] On cross-examination, when refreshed with his statement by the prosecution, he confirmed that he had waited there at times, but clarified that he had not been there for an inspection. When asked specifically about the elevator room, during his NIS interview in 2016, he explained at that time that when the recruits fail an inspection they have to wait in the elevator room and when the master corporal comes, they must follow the master corporal for the inspection.

[104] Under cross-examination, he also confirmed that he originally told Sergeant Turgeon of the NIS, that he had been in the elevator room one day with a group of people and that T.M. may have been there, too; however, he could not recall.

[105] It is clear that memories have faded in the two and a half years since this incident, so the Court expects to hear inconsistencies in testimony. However, with respect to this incident, and this line of questioning, the Court found his responses to be calculated in order to avoid ever placing himself in the elevator room, which, in the end, he confirmed he had been.

[106] When Private Taylor testified as to what he knew or understood about the allegations that were being made against him, the Court found that he was consistently vague and he consistently stated he did not really understand why he was removed from his platoon. However, the Court also noted that by the date of this alleged incident, being 31 March 2016, Private Taylor would have already received two warnings from Warrant Officer J.R.C. Côté as well as had a discussion with the course senior, so he was aware that something he was doing was making the women in the platoon uncomfortable. Warrant Officer J.R.C. Côté confirmed for the Court that he had advised Private Taylor that the next time he received a complaint about him he would face disciplinary action. After the course senior spoke to him, Private Taylor apologized to the women.

[107] When Private Taylor was questioned by the MPs as to why he apologized, he stated he did so because he was raised well and because the platoon is family and you want to fix the problem before they become "like this". When he was told about the potential allegations, he told the MPs that he was innocent and that he was "not stupid enough" to try that and he believed that common sense is a factor.

[108] As explained earlier, the Court may accept or reject some, none or all of the evidence of any witness, including the accused. Although the Court did find Private Taylor credible on most of his testimony and the issues, with respect to the elevator incident, it has concerns. In applying the SCC's *W.(D.)* test set out above, the Court finds that it is left in doubt by the evidence of Private Taylor with respect to the elevator room incident.

[109] As such, I must ask myself whether, on the basis of the evidence which I do accept, I am convinced beyond a reasonable doubt of the guilt of the accused.

[110] So, just because I do not believe the accused does not mean that the prosecution has proved its case. I must assess the strength of the prosecution's case. On this charge, with respect to this incident, the strength of the prosecution's case relies upon the credibility and reliability of T.M.

[111] Defence argued that T.M.'s testimony was tarnished by her testimony as a whole, by its inconsistencies, the animus, the immaturity, and the possibility of collusion which he submitted was very real. Defence alleged that, from the very

beginning, T.M. did not like Private Taylor, she did not want to be around him and wanted to get rid of him and, therefore, she concocted the allegations.

[112] As explained earlier, the Court did exercise caution in measuring the reliability of the complainants, but with respect to this incident, the Court found T.M. to be both credible and reliable.

[113] Despite her acknowledging that she was very nervous and suffered from anxiety, with respect to this incident, I found her testimony to be clear and unequivocal. Unlike her testimony on the green break room incident, where she could not recall what she was wearing, when she was asked about this incident, her entire demeanour on the stand changed. She sat up and was engaged. As she recounted the events, it was evident how intense her memories were.

[114] While under strenuous cross-examination, T.M. responded to tough repetitive questions. The Court found T.M. to be consistently confident as she steadfastly maintained her composure.

[115] The Court agrees with the prosecution that T.M. gave a vivid description of the incident and the Court found that her memory was not vague on the details that she would be expected to remember. It was evident that this event was particularly noteworthy and inscribed in her memory. She stressed several times that she can still see the incident vividly today. When she testified, there was no doubt in her mind that the accused was the person who did the touching and at no time did she ever suggest, either the day it occurred or in her testimony before the Court, that the touching might have been an accident. I agree with the prosecution that with respect to the elevator incident, T.M.'s resilience and consistency under cross-examination served to reinforce her credibility.

[116] As such, the Court believes T.M. that, on 31 March 2016, Private Taylor did touch her on the buttocks without her consent.

The *mens rea* of the offence at charge 2 - Was it an accident?

[117] With respect to charge 2, it is imperative that the Court assess whether the physical contact was intentional, as opposed to accidental and whether Private Taylor knew or was willfully blind to the lack of consent of T.M.

[118] As T.M. testified, the contact in the elevator room was targeted and intense leaving her no doubt that it could not have happened by accident.

[119] The Court acknowledged that by 31 March 2016 Private Taylor had been warned several times that he made the women in the platoon feel uncomfortable. The Court accepts that he may not have been advised of specific allegations before he met with the NIS or MPs. For example, it is not clear whether Warrant Officer J.R.C. Côté or the Course Senior would have told him that, in general, the women thought he was

"creepy", "weird" or that he gave them the "heebie-jeebies". However, he was warned by Warrant Officer J.R.C. Côté that the next time they received a complaint he would face disciplinary action. His apology reflects that he had been alerted and, as such, he was expected to adjust his behaviour accordingly.

[120] The prosecution's contention that an apology would normally be proffered immediately by someone who accidentally touches another is not subscribed to by the Court. However, with respect to the timing of this incident after being issued a warning, it is reasonable to assume that, in the event of accidental touching, the accused would have attempted to apologize or otherwise explain to T.M. that the contact was not intentional

[121] T.M. made it clear that on that morning she was not inviting nor consenting to any touching. In fact, she testified that she never spoke to Private Taylor and avoided him at all times.

[122] Based on the evidence as a whole and in particular, with respect to the elevator incident, I find that Private Taylor did intend to touch T.M. and that he knew that such contact would not have been consented to by T.M.

[123] As such, I am satisfied that the prosecution has proven charge 2 beyond a reasonable doubt.

FOR THESE REASONS, THE COURT:

[124] **FINDS** Private Taylor guilty of charge 2.

[125] **FINDS** Private Taylor not guilty of charges 1, 3 and 4.

Counsel:

The Director of Military Prosecutions as represented by Major M.-A. Ferron and Lieutenant (N) J.M. Besner

Mr D.M. Hodson, David Hodson Criminal Defence Law, 16 Lindsay Street North, Lindsay, Ontario, Counsel for Private B.J. Taylor