



COURT MARTIAL

Citation: *R. v. Scott*, 2018 CM 2026

Date: 20180915

Docket: 201822

Standing Court Martial

Canadian Forces Base Borden
Borden, Ontario, Canada

Between:

Her Majesty the Queen

- and -

Sergeant E.R. Scott, Accused

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

REASONS FOR FINDING

(Orally)

Introduction

[1] Sergeant Scott is facing five charges, all contrary to section 129 of the *National Defence Act (NDA)* for conduct to the prejudice of good order and discipline. The charges emanate from alleged incidents involving students under his supervision, while he was an instructor on two separate Primary Leadership Qualification (PLQ) courses held at the Royal Canadian Air Force (RCAF) Academy at Canadian Forces Base (CFB) Borden, Ontario. The first course was Serial No. 1603, held from 21 October 2016 until 21 December 2016. The second course was Serial No. 1604, held from 10 January 2017 until 1 March 2017.

[2] The particulars of the five charges read as follows:

“FIRST CHARGE	CONDUCT TO THE PREJUDICE OF GOOD ORDER AND DISCIPLINE
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Section 129 *NDA*

Particulars: In that he, between 10 January and 1 March 2017, at or near Canadian Forces Base Borden, Ontario, did harass Corporal J McElroy.

SECOND CHARGE

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND DISCIPLINE

Section 129 *NDA*

Particulars: In that he, between 10 January and 1 March 2017, at or near Canadian Forces Base Borden, Ontario, did harass Corporal CHM Anderson.

THIRD CHARGE

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND DISCIPLINE

Section 129 *NDA*

Particulars: In that he, between 10 January and 1 March 2017, at or near Canadian Forces Base Borden, Ontario, did harass Master Corporal V Ross.

FOURTH CHARGE

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND DISCIPLINE

Section 129 *NDA*

Particulars: In that he, between 31 October 2016 and 21 December 2016, at or near Canadian Forces Base Borden, Ontario, did harass Corporal R Carey.

FIFTH CHARGE

CONDUCT TO THE PREJUDICE OF GOOD ORDER AND DISCIPLINE

Section 129 *NDA*

Particulars: In that he, between 31 October 2016 and 21 December 2016, at or near Canadian Forces Base Borden, Ontario, did harass Corporal AMJ Royer.”

[3] 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.

The evidence

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

- (a) in court, testimonies of the following nine prosecution witnesses, in order of appearance:
 - i. Chief Warrant Officer J.G.S. Marshall;
 - ii. Corporal J. McElroy;
 - iii. Chief Warrant Officer C.E. Todd;
 - iv. Master Corporal V. Ross;
 - v. Corporal C.H.M. Anderson;
 - vi. Corporal R. M.J. Carey;
 - vii. Master Seaman M. Ogunniya;
 - viii. Master Corporal A. Royer; and
 - ix. Master Corporal S.M. Barker.
- (b) in court, testimonies of the following seven defence witnesses, in order of appearance:
 - i. Sergeant S.J. North;
 - ii. Sergeant M. Mowbray;
 - iii. Master Corporal N. Lewis;
 - iv. Warrant Officer E. Bruce;
 - v. Sergeant T. Sararas;
 - vi. Warrant Officer D. Barsi; and
 - vii. Warrant Officer W.T. Langer.
- (c) Exhibit 1 - Convening order;
- (d) Exhibit 2 - Charge sheet;
- (e) M1-1 - Pretrial application;
- (f) Exhibit 3 - Directing Staff and flight WO pre-reading checklist;

- (g) Exhibit 4 – CAF members' acknowledgement form - Conduct involving sexual misconduct, harassment and alcohol/substance abuse;
- (h) Exhibit 5 - PLQ Master Schedule 1603 Session #0075;
- (i) Exhibit 6 - RCAF Academy Schedule;
- (j) Exhibit 7 - Personnel Development Review (PDR) Sergeant Scott – accepted only for a limited purpose of proving knowledge; and
- (k) The Court also took judicial notice of the facts and matters covered by section 15 of the *Military Rules of Evidence (MRE)*.

Background

[5] The allegations are that while in a role of an instructor, on two separate PLQ courses, at the RCAF Academy in Borden, Sergeant Scott made crude and sexualized comments to candidates in a manner that constituted harassment and was prejudicial to good order and discipline. Each charge concerns a different candidate. Charges 1, 2 and 3 flow from Serial No. 1604 and charges 4 and 5 flow from Serial No. 1603.

[6] In his testimony, Chief Warrant Officer Marshall, the Commandant of the RCAF Academy, described the Academy's role. It aims to teach skills that the RCAF commander deems relevant for all non-commissioned members (NCMs). To achieve this, it delivers professional development programs to NCMs, from the rank of aviator up to chief warrant officer in two streams. One stream of delivery involves deploying a team to wings to conduct training. The second stream involves the delivery of two in-house courses; one directed at corporals and master corporals and another directed at master warrant officers and chief warrant officers. The in-house courses are referred to as the PLQ courses and includes the initial leadership training for NCMs in the RCAF.

[7] The PLQ is intended to provide NCMs with the foundational skills and knowledge inherent for leading within the military. Chief Warrant Officer Marshall described the two themes taught on the course. One theme is to teach candidates how to deliver knowledge and skill lessons so they can become instructors. If successful on the course, the candidates receive an instructor qualification. The other theme teaches candidates to lead in an operational environment and the overall umbrella of the course is focused on leadership. Candidates are taught leadership using the 16 steps of battle, where they receive orders, prepare their missions and hand out orders. In other words, the focus of the PLQ course is to develop leadership in an operational environment and promote mission success.

Assessment of evidence

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

[8] 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.

[9] It is important to remember that the accused, Sergeant Scott, 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 the Court beyond a reasonable doubt that the accused is guilty on each of the charges.

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

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.

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

[12] 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. Therefore, in order to find Sergeant Scott 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 set out in the charge sheet. (see *R. v. Starr*, [2000] 2 S.C.R. 144, paragraph 242)

Credibility of the witnesses

[13] It was noted by counsel in closing submissions that in the whole of the testimony before the Court, many of the witnesses had different recollections of the events. This is not unusual and in assessing each of the individual witnesses, the Court has to determine what evidence it finds credible and reliable.

[14] Many factors will influence the Court’s assessment of the credibility of the testimony of a witness. For example, a Court will assess a witness’ opportunity to observe events, as well as a witness’ reasons to remember. Was there something specific that helped that witness remember certain details of the event that he or she described? Were the events noteworthy, unusual or striking, or relatively unimportant and, therefore, understandably more difficult for them to recollect? There are other factors that come into play as well. For example, does the 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?

[15] 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 a trier of fact to accept all the witness' testimony without qualification. Importantly, credibility is not coextensive with proof. (See *R. v. Clark*, 2012 CMAC 3 at paragraph 42)

[16] 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' 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)

[17] 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' testimony is consistent with itself and with the uncontradicted facts.

[18] The evidence before the Court consisted of the oral testimony of nine witnesses called by the prosecution and seven witnesses called by the defence.

Assessment of witnesses

Prosecution witnesses

[19] The Court found that all the prosecution witnesses were credible. As alluded to above, there was discrepancy in some testimony with respect to some facts, however, in most cases the discrepancies were reconcilable and the Court accepted the most reliable version based on the consistency of the facts that the candidates were able to recall, which was informed by the importance of the event to their respective situation. In other words, the complainants' views were most often given primacy in assessing the facts.

[20] With respect to the witnesses who attended the first course in the fall of 2016 (being Corporal Carey, Master Seaman Ogunniya, Master Corporal Royer and Master Corporal Barker), the Court found that they did not exaggerate the facts, and if anything since more time had passed, they may have underplayed concerns that previously existed. They all admitted when they did not remember something and their testimony reflected no animosity towards the accused. They all had different reasons to remember certain details and that was clearly articulated in the honesty of their testimony.

[21] With respect to the witnesses from the second course, which was held from January to February 2017 (being Corporal McElroy, Master Corporal Ross and Corporal Anderson), the Court also found them all to be credible. The Court notes that defence counsel challenged both the credibility and the reliability of the evidence given by Master Corporal Ross, due to her poor performance on the course, her conflict with Sergeant Scott and what he submitted was a lack of corroboration of her evidence. So the Court heeded caution and paid particular attention, more closely scrutinized her evidence. I carefully assessed whether there was improper motivation behind the allegation that related to her.

[22] Master Corporal Ross did not come across as being vindictive or argumentative. She appeared both honest and embarrassed by the incidents on the course. The Court noted that she did not try to blame Sergeant Scott for her poor performance, but rather she expressed how he made her feel and that is clearly an issue that the court must assess in deciding on the charge that relates to her. While on the stand, she became quite emotional in describing how his comments affected her, and how she slowly became alienated from her team. I found her both credible and reliable in most aspects of her testimony.

[23] As the Court needs to address five separate incidents that occurred over two separate courses, the Court will provide more detailed comments on the credibility and reliability of witnesses when addressing the individual charges.

Defence witnesses

[24] As previously mentioned, there were seven defence witnesses. The Court noted that aside from Sergeant North, who was present when the allegation in charge 2 unfolded, and Sergeant Mowbray, who was present during one of the incidents related to charge 3, the other five witnesses were not able to provide evidence relevant to the allegations before the court. The Court found both Sergeant North and Sergeant Mowbray to be credible and reliable for those matters they could testify to.

[25] The other defence witnesses testified generally on the accused's general demeanour, approach and qualities as an instructor, his overall diligence in the performance of his military duties, his previous military service and his general positive reputation. One witness, Warrant Officer Bruce, hired Sergeant Scott and worked in the Standards section when Sergeant Scott first started as an instructor. Warrant Officer Langer was Sergeant Scott's mentor, Sergeant North was Sergeant Scott's mentee and Warrant Officer Barsi was Sergeant Scott's direct supervisor while he was an instructor.

[26] Based on their testimony, the Court was mindful of the fact that the instructors as a group, including Sergeant Scott were a more closely knit "team" than the students themselves, who had spent only seven weeks together several years ago. In fact, it was noted by several of the instructors that so many students go through the school that they do not really remember many of them.

[27] Since the personal opinions of defence witnesses are not admissible to prove good character of the accused during the court martial, and much of the evidence of the defence witnesses danced around this, the Court was cautious in accepting and evaluating their evidence.

[28] The Court noted that although all the instructors testified in support of Sergeant Scott, when they were succinctly asked on cross-examination whether it was acceptable for an instructor to compare a candidate to vilified personalities in history, make insinuations of paedophilia, question someone's sexual orientation, belittle a candidate's trade and experience, they unequivocally confirmed such conduct to be unacceptable.

[29] The accused did not testify.

Assessment of the charges

[30] Having instructed myself on the presumption of innocence, reasonable doubt, the onus on the prosecution to prove their case, the required standard of proof and the essential elements of the offence, I now turn to the questions in issue and address the legal principles and the charges.

[31] All of the five charges relate to violations of section 129 of the *NDA* for conduct to the prejudice of good order and discipline. The prosecution submitted that the elements of identity, time and place for all the offences were met. Defence did not object to this submission, and on the facts before the court, I conclude that they have been met. The elements left to be proven beyond a reasonable doubt for each charge are as follows:

- (a) the conduct alleged in the charge; namely, Sergeant Scott did harass the named candidate;
- (b) the fact that the conduct is prejudicial to the good order and discipline;
and
- (c) that Sergeant Scott had the wrongful intent.

[32] The first issue for this Court to decide is whether the particulars as detailed in each charge were proven beyond a reasonable doubt. The onus is on the prosecution.

[33] Defence Administrative Orders and Directives (DAOD) 5012-0 sets out the order that applies to officers and NCMs of the Canadian Armed Forces (CAF) on harassment. As alluded to in this court's decision on the Motion by defence that no *prima facie* case was made out by the prosecution, the prosecution did not rely upon DAOD 5012-0 to avail itself of the presumption of prejudice under subsection 129(2) of the *NDA*. Nonetheless, counsel agreed that during the time period of the alleged

incidents, there were two different DAODs that were in effect. DAOD 5012-0 was updated on 27 January 2017 and is relevant for Serial No. 1604. The definition existing prior to 27 January 2017 reads as follows:

Harassment is any improper conduct by an individual that is directed at and offensive to another person or persons in the workplace and that individual knew or ought reasonably to have known would cause offence or harm. It comprises any objectionable act, comment or display that demeans, belittles or causes personal humiliation or embarrassment, any act of intimidation or threat.

[34] The current DAOD 5012-0, in effect for most of Serial No. 1604, identifies the following six criteria in section 2 of the DAOD:

- (a) improper conduct by an individual;
- (b) the individual knew or ought reasonably to have known that the conduct would cause offence or harm;
- (c) directed at another individual;
- (d) offensive to that individual;
- (e) was a series of incidents, or one severe incident which had a lasting impact on that individual; and
- (f) occurred in the workplace.

[35] The only difference between the DAODs is that the latter DAOD clarifies its predecessor. The updated DAOD clarifies that conduct that rises to the level of harassment could be a series of incidents, or it could be one severe incident which had a lasting impact on an individual. In their submissions, both counsel relied upon the criteria set out within the DAOD.

[36] The Court heard extensive evidence over the course of four days on the respective charges. All of the witnesses testified that the PLQ was a professional career course, required for promotion and as such, success on the course was of critical importance to the career of every candidate. In light of the fact that each charge relates to a different candidate, I will address each charge separately.

[37] In assessing the criteria of harassment set out in the DAOD, all evidence supported the fact that the alleged incidents occurred in the workplace. Next, under the DAOD, the Court assessed whether Sergeant Scott knew or ought reasonably to have known that the conduct he engaged in would cause offence or harm. The prosecution led and this court accepted the following evidence that Sergeant Scott had been informed of the type of conduct that is not acceptable:

- (a) CANFORGEN 130/15 CDS 041/15 222041Z JUL 15. CDS MESSAGE TO CANADIAN ARMED FORCES ON HARMFUL BEHAVIOUR;
- (b) CDS Op Order – Op HONOUR dated 14 August 2015;
- (c) Indoctrination Training - Evidence that Sergeant Scott attended two separate indoctrination sessions at the RCAF Leadership Academy, in August 2015 and 2016, where the expectations demanded of instructors were set out and staff were provided refresher training on such topics as Operation HONOUR and, at that time, the harassment policy was covered;
- (d) PDR – On consent, counsel admitted Exhibit 7. The Court permitted it, but notes that due to its potential prejudicial effect, it can only be used for the limited use of his knowledge of the standard expected and it may not be used for any other purpose. In June 2016, prior to the incidents occurring, Sergeant Scott was given a PDR which advised that he must refrain from the “unnecessary use of sexual analogies”; he was reminded that settings which perpetuate stereotypes or embarrass members are against the values and the order of the RCAF and CAF; and he was reminded that DAOD 5012-0 and that Operation HONOUR forbid the use of language that is demeaning to those in the workplace.
- (e) Pursuant to QR&O article 1.21 (which came into effect on 1 August 2015) since Sergeant Scott had ready access to the Defence Wide Area Network (DWAN) as confirmed by the testimony of the Commandant, Chief Warrant Officer Marshall, Sergeant Scott has deemed knowledge of the DAOD on harassment.

[38] As such, based on the direction set out above, the Court can conclude that Sergeant Scott knew or ought reasonably to have known that using sexual analogies, perpetuating stereotypes and embarrassing members was offensive and its use could rise to the level of harassment causing offence or harm.

The first charge

Positions of the parties

Prosecution

[39] The prosecution argued that from the first day of the PLQ course, Sergeant Scott ridiculed Corporal McElroy’s haircut and moustache by comparing him to Hitler. He submitted that Hitler is one of the most infamous and vilified individuals in history and it was slanderous to compare anyone to him. He argued that Corporal McElroy was so distraught that after being the recipient of the derogatory comments for several weeks, he shaved his moustache and cut his hair. He submitted that the conduct of Sergeant

Scott towards Corporal McElroy was improper and offensive and rose to the level of harassment as set out in the definition of “harassment” set out in DAOD 5012-0.

Defence

[40] Defence argued that Corporal McElroy had been told that his hair and moustache did not conform to CAF standards and since had shown reticence to conform, the comments were a suggestion for him to get a haircut.

Facts

[41] Corporal McElroy told the Court that on the first day of the PLQ course (Serial No. 1604, held from 10 January 2017 until 1 March 2017), while lined up with his flight for their first inspection, Sergeant Scott stood in front of him and referred to him as the “bastard child of Hitler”. He believed Sergeant Scott made the comment because, at that time, Corporal McElroy had both a comb over and a moustache. He stated that when he heard the comment he did not react; but found it offensive and distasteful. He told the Court that over several weeks, Sergeant Scott continued to ridicule him by referring to him as, “Little Hitler”, “Mein Fehr” or the “bastard son of Hitler”. Corporal McElroy did not respond to any of the comments and tried to focus on succeeding on the course. Under cross-examination, he clearly stated that he found the comments to be offensive and a slander of character given the context of who Hitler is.

[42] When asked why he did not report the inappropriate comments, he told the Court that, “It was not that I did not think it was bad, but I was too afraid to come forward.” In order to avoid the derogatory comments, Corporal McElroy stated that about four or five weeks on the course, he shaved his moustache and cut his hair shorter. Corporal McElroy testified that he hoped that if his physical appearance changed, Sergeant Scott would stop.

[43] A fellow candidate, Master Corporal Ross testified that Sergeant Scott used the derogatory Hitler references at least 10 to 20 times. She told the court that Sergeant Scott referred to Corporal McElroy using Hitler pseudonyms in lieu of using his rank and name. She said when Corporal McElroy shaved off his moustache, Sergeant Scott referred to Corporal McElroy as “Hitler’s bastard son”.

[44] Under cross-examination, counsel confirmed a statement Corporal McElroy made on 24 February 2017, where he stated that after he had shaved his moustache and cut his hair, he had no further incidents. He also acknowledged that Sergeant Scott told the class that he had been making bad comments and he would try to keep it more professional. Corporal McElroy confirmed that after Sergeant Scott made the statement to the class, there were no further incidents. The Court noted however, that based on the evidence, since Corporal McElroy did not shave his moustache until four to five weeks into the course, these comments had taken place for several weeks before Corporal McElroy shaved his moustache and cut his hair.

[45] Sergeant Mowbray stated that Corporal McElroy's hair would hang down to about his ear and when Corporal McElroy removed his beret, his hair flipped over. He stated unequivocally that Corporal McElroy was referred to as "Mustachio". He told the Court that the Standards Section had told the instructors that Corporal McElroy needed a haircut and the instructors told Corporal McElroy that his hair did not conform to regulations. However, Warrant Officer Barsi testified that the school policy was such, that if the instructor's had a concern with a candidate's haircut, the individual would be counselled and given overnight to correct it. If it was not fixed, the candidate would receive a formal written warning. Aside from the snide comments made by Sergeant Scott mocking Corporal McElroy's hair, there was no evidence before the Court that Corporal McElroy was ever formally advised to cut his hair or shave his moustache.

[46] In his testimony, another course candidate, Corporal Anderson also confirmed that Sergeant Scott had made multiple references to Corporal McElroy's moustache and hair. Under cross-examination, he confirmed that Corporal McElroy was referred to as "Mustachio". Corporal Anderson said that he believed Sergeant Scott made the comments to insult Corporal McElroy's moustache. Although he could not confirm exact phrases used, he said that Sergeant Scott made references to "Little Hitler" and "Mein Fehr". Corporal Anderson stated that in his opinion, Corporal McElroy was distraught from Sergeant Scott's comments and in efforts to avoid them, Corporal McElroy gradually trimmed his moustache. Corporal Anderson said that Corporal McElroy initially had a handlebar moustache that he trimmed to the lips and when the comments continued, he shaved his mustache off and cut his hair to a more traditional hairstyle.

The legal analysis

[47] The only remaining elements that require proof on charge 1 are a determination that Sergeant Scott's conduct was:

- (a) improper;
- (b) directed at Corporal J. McElroy; and
- (c) offensive to Corporal J. McElroy.

[48] I acknowledge the suggestion from defence counsel that perhaps Sergeant Scott's comments were a suggestion that Corporal McElroy needed a haircut, however, I am more persuaded by Warrant Officer Barsi's testimony that if a candidate required an adjustment to their grooming, he or she would be formally counselled and given a deadline to correct it. Any suggestion that repeated harassment is an acceptable means to this end is inconsistent with CAF norms.

[49] The Court concludes that Sergeant Scott ridiculed Corporal McElroy by making multiple derogatory and offensive comments to him, comparing him to Hitler. Based on the testimony of Corporal McElroy's and other witnesses and the fact that Corporal

McElroy cut his hair and shaved his moustache, in an effort to stop the comments, the court finds sufficient evidence to prove that the repeated comments were offensive and had an enduring impact on Corporal McElroy.

Determination of prejudice

[50] In defining harassment, both counsel relied upon the CAF Harassment Policy in the version of the DAOD 5012-0 in force at the time of the alleged offences.

[51] Technically, if the court finds that harassment occurred, it is an outright contravention of an order, pursuant to subsection 129(2) of the *NDA* and the prosecution is relieved of having to prove prejudice as an essential element of the offence. After the decision in *R. v. Korolyk*, 2016 CM 1002, such deemed prejudice is rebuttable, but it still exists.

[52] Without questioning why the prosecution did not choose to draft the particulars in such a way to openly rely upon the deemed prejudice that flows from subsection 129(2) of the *NDA*, the court also notes that DAOD 5012-0 clearly enounces the negative and the prejudicial effects of harassment. Given the nature of the DAOD 5012-0, and its accompanying statements, it is clear that when conduct rises to the level of harassment, there is prejudice to the workplace. Paragraph 3.2 of the DAOD reads as follows:

3.2 Harassment in certain forms is not only against the law, but also erodes mutual confidence and respect for individuals and can lead to a poisoned work environment. As a result, operational effectiveness, productivity, team cohesion and morale are placed at risk.

[53] The court is of the view that the prejudice set out within the DAOD is also buttressed by the *viva voce* evidence provided to this court by Chief Warrant Officers Marshall and Todd as well as the evidence of the candidates. It is also encapsulated by a comment made by Corporal Anderson when he said, he was surprised with the comments made by Sergeant Scott on a professional leadership course and felt right away that Sergeant Scott was not going to be a pleasant individual to work with. He testified that Sergeant Scott's comments did not lead to a productive learning environment and that the insulting and arrogant nature of his comments preoccupied the candidates.

[54] As a result, pursuant to *R. v. Golzari*, 2017 CMAC 3, even without relying upon subsection 129(2), based on the evidence before the Court, I can easily conclude that the conduct of Sergeant Scott tended to or was likely to result in prejudice to good order and discipline.

Did Sergeant Scott have the wrongful intent?

[55] The Court Martial Appeal Court (CMAC), in *R. v. Latouche*, (2000) CMAC-431, held that section 129 does not require the prosecution to prove that an accused had any intention to adopt conduct that was prejudicial to good order and discipline. Rather, it is the actual conduct (or *actus reus*) that is relevant in determining the *mens rea* required for a finding of guilt. As long as he intended to say what he did, then that is sufficient.

[56] It does not matter whether he intended to cause any harm, whether he was trying to make light of something or whether he was simply trying to be funny. The Court has found that he knew or ought to have known that his conduct would cause offence or harm. In fact, the mere uttering of the words was sufficient to meet that criteria.

Conclusion on the first charge

[57] The court is satisfied beyond a reasonable doubt that the particulars of the offence were proven and that there was prejudice to good order and discipline that flowed from the conduct at issue.

The second charge

Positions of the parties

Prosecution

[58] The prosecution submitted that on the first day of his PLQ course, Corporal Anderson was issued two white Distinctive Environmental Uniform (DEU) parade gloves of the same hand, which he brought to Sergeant Scott's attention. In response, Sergeant Scott made a derogatory comment to Corporal Anderson comparing him to Michael Jackson and referencing pedophilia. He submits that any direct association of a student to pedophilia is improper and offensive and rises to the level of harassment as set out in the definition at DAOD 5012-0.

Defence

[59] Defence submitted that there are widely different versions of what was said that day. He suggested that Sergeant North was in the room and whatever comment was made, it was not offensive. He further argued that when the student raised his concern to Sergeant North, it was dealt with and never happened again.

Facts

[60] Corporal Anderson told the Court that on the first day of his PLQ course, when he received two left-handed white DEU dress gloves, he brought this to the attention of Sergeant Scott. He stated Sergeant Scott made a comment directed to him that referenced Michael Jackson, white gloves and pedophilia. He said that at that time,

Sergeant Scott was at the front of the room, trying to joke around and he just let it fly. At first, he stated that he was surprised by the comment and laughed, but when he took a few seconds to process what had been said, he was surprised. He stated that after that incident, he developed an unfavourable impression of Sergeant Scott that lasted throughout the course. Under cross-examination, he confirmed that he raised the incident with Sergeant North the next day and that Sergeant Scott made no further derogatory statements towards him.

[61] A fellow syndicate member, Corporal McElroy confirmed that Sergeant Scott had made an inappropriate comment to Corporal Anderson. He told the Court that when Corporal Anderson told Sergeant Scott that he had received two white DEU gloves of the same hand, Sergeant Scott responded, “Calm down Michael Jackson. We do not need more children on milk cartons.” Corporal McElroy stated that he understood the comment to be an innuendo to pedophilia.

[62] Although her recollection of the Michael Jackson comment was slightly different, Master Corporal Ross also confirmed that Sergeant directed a paedophiliac reference at Corporal Anderson.

[63] Corporal Anderson testified that this was the only incident of its kind and that Sergeant Scott did not make any other derogatory comments to him personally. Although Corporal Anderson did report the inappropriate comment, he did not testify that he was offended by the comment.

The legal analysis

[64] As discussed earlier, the elements required to prove the particulars of the charge, which alleged harassment are improper conduct, conduct directed at Corporal Anderson and conduct offensive to him.

[65] Although the derogatory comment made directly by Sergeant Scott to Corporal Anderson was improper and not favourably received, the Court noted that Corporal Anderson himself was not offended and confirmed it was the only incident of its kind. Given the slightly different recollections of what was said to Corporal Anderson, the Court relies primarily upon Corporal Anderson’s version of the incident.

Conclusion on the second charge

[66] I am left with reasonable doubt that this one incident, standing alone, rises to the level of harassment and, therefore, the particulars of the second charge are not proved. There is no requirement for the Court to conduct further analysis.

The third charge

Positions of the parties

Prosecution

[67] The prosecution submitted that Sergeant Scott made multiple comments to Master Corporal Ross to the effect that clerks are not “real soldiers”, telling her during a parade practice, while she was wearing her medals that “those who served in KAF were not worthy of their medals.” In another incident, although Sergeant Scott knew that Master Corporal Ross was struggling on the course, when she passed her drill test, he said to her with surprise, “you actually passed” and then made some reference that he would “get [her] the next time.”

[68] On another occasion, while conducting the Test of Elementary Training (TOETs) with weapons, and looking directly at her, he used the phrase “cunt hair”. The prosecution argues that Sergeant Scott’s conduct towards Master Corporal Ross was improper and offensive, leading to her feeling ostracized. The Prosecution argued that the conduct rises to the level of harassment as set out in the definition of “harassment” at DAOD 5012-0 and, as such, all the essential elements are proven.

Defence

[69] Defence counsel argued that Master Seaman Ross has no credibility and, therefore, her testimony is not reliable. He argued that based on the stress she was facing, the lack of corroboration of her evidence and the conflict she had with Sergeant Scott, she should not be believed.

Facts

[70] Master Corporal Ross told the Court that at the start of her PLQ course, she got along well with Sergeant Scott. Since their tours in Afghanistan overlapped, she felt a sense of comradery with him. She served in Afghanistan from October 2009 until May 2010. However, shortly after the course started, she stated that Sergeant Scott started to express a lot of dislike and disrespect towards her and it went downhill from there. She indicated that he made degrading and disrespectful comments about her being a Resource Management Support (RMS) Clerk and not being a “real soldier” as she did not leave the Kandahar Airfield (KAF) while serving in Afghanistan. She testified that on several occasions, he said, clerks are “fucking useless” and that they were “not real soldiers”. On the day they were taking course photos, in DEUs, he emphasized to her that she had just stayed in KAF to get her General Campaign Medal and was “just a KAfer”. When they were doing lectures preparing to go to the field, she stated he also made comments suggesting clerks were not “real soldiers”.

[71] She stated that during a weapons handling session, reviewing TOETs, he yelled the word “cunt” to her face. Under cross-examination, defence suggested Sergeant Scott said, “If the bolt carrier on the rifle is off by a cunt hair, it will jam” which Master Corporal Ross confirmed, clarifying that when he said the word “cunt”, he turned and directed it towards her personally. She testified that Sergeant Scott said, “not to offend

anyone,” and said “cunt” to her. She confirmed the candidates were standing shoulder to shoulder doing their TOETs, and she estimated she was approximately one and half from him.

[72] She testified that when she heard the statement, she was shocked and looked to Sergeant Mowbray with her mouth open, but he did not say anything. There were approximately seven or eight other candidates, including Sergeant Mowbray in the room standing in TOET line. Master Corporal Ross testified that she immediately brought this incident to Sergeant Mowbray’s attention.

[73] Sergeant Mowbray confirmed this incident, but provided a different perspective. He testified that he when Sergeant Scott made the comment, he said to himself, “Wow, we can’t say that”. Sergeant Mowbray testified that after the class, he went downstairs with Sergeant Scott to discuss it. At the end of the day, in the flight room, when all the students were together, Sergeant Scott apologized. The Court credits Sergeant Mowbray for intervening when he became aware of the incident.

[74] Master Corporal Ross also testified that Sergeant Scott was responsible for correcting her lesson plans. She did not feel she was getting meaningful advice as the feedback she received seemed inconsistent with what other candidates were receiving. In one case, she was working on a Target Indication assignment and Sergeant Scott told her that since she knew little on the topic, it was wise for her to team up with others, which she did. She said she did this for several topics, but noted that the student she worked with would get an 80 for the assignment and she would receive a 30. She stated that they eventually had a meeting and decided she should continue on to the next assignment.

[75] She stated that she initially tried to work things out with Sergeant Scott herself, but then Sergeant Mowbray became the mediator. Under cross-examination, Master Corporal Ross said she had approached Sergeant Mowbray to discuss the inconsistency in the grading of her assignments and asked to move syndicates. She also spoke with the course warrant officer, but she was advised she had to stay with her syndicate where she remained until she left the course.

[76] She testified that Sergeant Scott’s comments made her feel singled out. The comments that insinuated she had not earned the General Campaign Star were made just before the field portion of the PLQ was to begin. In her view, she felt Sergeant Scott did not want her to succeed on the course. She testified that when she passed her drill test, Sergeant Scott approached her with surprise and said words to the effect that he would find a way to get her the next time. Under cross-examination, defence counsel challenged Master Corporal Ross on an email she wrote to her master warrant officer as compared to her testimony in court. In the email, she wrote that Sergeant Scott had stated, “I see you passed your drill test, Master Corporal Ross. I will get you next time.”

[77] Without being argumentative, she clearly and calmly stated that the email that she wrote would have been closer to the incident so she felt it was probably more

accurate. The Court is of the view that although the wording may have been slightly different, the meaning of the message was that of surprise that she had passed her drill followed up by some sort of warning for the future. Both versions of the statement would strike at an individual's self-confidence and neither account is expected from a sergeant teaching a leadership course.

[78] Master Corporal Ross told the Court that she felt Sergeant Scott's comments ostracized her from her team as her fellow syndicate members started to repeat similar things and expressed concern whether she would be of help when they went into the field. She felt that she had to defend herself, explaining that she had served with the service battalion during her career and was capable. She felt she had to prove that she was worthy of being there. She told the Court that, during her career, the PLQ was the only course or training attended where she did not feel part of a team. Master Corporal Ross was not successful on the PLQ course and was eventually returned to her unit before the field portion of the course.

[79] The Court noted that in her testimony Master Corporal Ross did not blame others for failing. She testified with candour about the incidents and, based on supporting corroboration, her evidence was consistent with itself, as well as the evidence as a whole, including circumstantial evidence available. The Court accepts her evidence. Aside from a slightly different version of the "cunt hair" incident provided by Sergeant Mowbray, there was no evidence that contradicted her version.

The legal analysis

[80] As discussed earlier, in order to prove the particulars of the charge in that Sergeant Scott harassed Master Corporal Ross, requires the determination that Sergeant Scott's conduct was improper, directed at Master Corporal Ross and offensive to her.

[81] I conclude that Sergeant Scott made multiple improper comments to Master Corporal Ross. It was clear from Master Corporal Ross's testimony that she was deeply affected and offended by the improper comments. Although she did not attribute her course failure to Sergeant Scott's conduct, it is reasonable to surmise that her decline in performance may have been either precipitated or likely exacerbated by these incidents.

Determination of prejudice

[82] Applying the same reasoning as provided for charge 1, Sergeant Scott's rose to the level of harassment. Sergeant Scott's various comments appear to have been focussed on undermining Master Corporal Ross's trade and her role while serving in Afghanistan. Her service in Afghanistan as an RMS clerk, during the same time that Sergeant Scott served must not be viewed as devaluing his role serving with the combat arms. One of the underlying principles to unit effectiveness in the CAF is teamwork, where every member's contribution is valued regardless of their role. From the cooks in the kitchen, the maintenance technicians in the maintenance facility, to the front line infantry soldier in a forward operating base, each has a key and valuable part to play in

any military operation. That is why everyone who served on a mission, regardless of the position they held, gets the same medal in recognition of their service. As members of the military, we serve together.

[83] It is clear that conduct or behaviour that undermines this value is unacceptable regardless of the service or environment or context, but it is particularly troublesome when it occurs in an institution whose mandate and role is to cultivate leadership qualities in the next generation of CAF NCMs; and therefore, within this context, I find the conduct of Sergeant Scott on this charge to be particularly concerning.

[84] PLQ is about instilling and developing confidence in junior leaders, not undermining it. Therefore, when inappropriate behaviour that undermines the cultivation of leadership skills manifests itself, it must be quickly and vigorously dealt with because to not do so would undermine the core of leadership effectiveness and ultimately mission success. As a result, pursuant to the CMAC decision in *Golzari*, based on evidence before the Court and the aforementioned reasons, I can easily infer that the conduct of Sergeant Scott led to prejudice to good order and discipline.

Did Sergeant Scott have wrongful intent?

[85] Further to the explanation provided at charge 1, when someone makes a comment such as the comments or conduct that forms the underpinning of the particulars, they are voluntarily offered and intended. Further, as the Court has already found that Sergeant Scott knew or ought to have known that this type of conduct would cause offence or harm then he had the wrongful intent, the required *mens rea* is met.

Conclusion on the third charge

[86] I am convinced beyond a reasonable doubt that the inappropriate conduct and improper comments made by Sergeant Scott towards Master Corporal Ross rose to the level of harassment and as a consequence, prejudice to good order and discipline flowed from the conduct.

The fourth charge

Position of the parties

Prosecution

[87] The prosecution submits that Sergeant Scott posed a question to Corporal Carey and Master Seaman Ogunniya to the effect, “Do girls check each other out in the shower the way guys do?” The prosecution submits that the conduct of Sergeant Scott directed at Corporal Carey was improper and offensive to Corporal Carey, rising to the level of harassment as set out in the definition of “harassment” at DAOD 5012-0.

[88] Further, pursuant to section 138 of the *NDA*, he invited the Court to make a special finding by substituting Master Seaman Ogunniya for Corporal Carey as the target of the harassment in the particulars.

Facts

[89] Corporal Carey testified that while a PLQ candidate on Serial No. 1603, that one afternoon, after a candidate had finished their drill test, Sergeant Scott was speaking to their syndicate and, what appeared to come out of nowhere, asked if they had “gaydar” then clarifying, “You know, do you check each other out in the shower?” She further explained to the Court that he was referring to a radar for detecting when someone is gay. She told the Court that when this was said, they were shocked. She stated that she was embarrassed and did not respond. Under cross-examination, Corporal Carey told the Court that Sergeant Scott did like to tell jokes, and often went for “shock value”.

[90] Master Seaman Ogunniya also testified that after finishing a drill practice and waiting to go for lunch, Sergeant Scott inquired whether she and Corporal Carey were room-mates and then asked something to the effect, “Whether girls shower together or whether they check each other out like the guys do?” She stated that they both looked at each other and Master Seaman Ogunniya said she laughed and then responded, “No.” She also told the Court that although Sergeant Scott directed the comment to the syndicate, it was meant for her and Corporal Carey. She stated that she felt uncomfortable and found it a very odd question.

[91] Another candidate, Corporal Royer testified that he was present when Sergeant Scott made the comment asking if girls check each other out in the shower like guys do. He stated he was shocked when he heard the comment.

The legal analysis

[92] As discussed earlier, the remaining elements that require proof that Sergeant Scott harassed Corporal Carey, require a determination that Sergeant Scott’s conduct was: improper, directed at Corporal Carey and offensive to her.

[93] Although the various witnesses have slightly different recollections with respect to this incident, there consistent reference is to the term of “Gaydar” and the inference that women check each other out in the shower. It is clear that this conduct was both offensive and improper. Although the witnesses acknowledged that this one-time comment directed to Corporal Carey was inappropriate and were shocked. Corporal Carey herself did not testify to being offended by it.

Special Finding

[94] Further, the prosecution invited the Court to consider relying upon section 138 of the *NDA* to make a special finding substituting Master Seaman Ogunniya for the

complainant instead of Corporal Carey. The Court also heard evidence of other incidents that appeared to be directed at Master Seaman Ogunniya.

[95] The Court is well aware that it has the authority to make a special finding of guilty under section 138 of the *NDA* which provides:

Where tribunal may make special finding of guilty

138 Where a service tribunal concludes that

(a) the facts proved in respect of an offence being tried by it differ materially from the facts alleged in the statement of particulars but are sufficient to establish the commission of the offence charged, and

(b) the difference between the facts proved and the facts alleged in the statement of particulars has not prejudiced the accused person in his defence,

the tribunal may, instead of making a finding of not guilty, make a special finding of guilty and, in doing so, shall state the differences between the facts proved and the facts alleged in the statement of particulars.

[96] The particulars in a charge serve to enable an accused to fully respond to the case against him, define issues and prepare his defence, including whether or not to call evidence and testify at trial. Given the nature of a harassment allegation, the test requires the prosecution to prove that the conduct was offensive to a named individual. In charge 4, the particulars relate to harassing Corporal Carey. The determination of whether a named individual finds the conduct offensive is a subjective test and the court's assessment is based on the personal testimony of the named individual. Corporal Carey provided evidence on how the statement made her feel, how she reacted and perceived the conduct. Although the statement was improper and others may have been offended by it, the particulars of charge 4 require the prosecution to prove that Corporal Carey was harassed.

[97] The prosecution has the liberty to draft the particulars for each charge presented to the Court and are bound by them. A court may make a special finding where there is a difference between the facts alleged and the facts proved and where the latter are sufficient to establish the commission of the offence charged. However, the Court cannot make a special finding when the facts differ materially from the facts alleged if it would prejudice the accused. In this case, the accused prepared his defence on the basis of the particulars before the Court and the line of questioning during the cross-examination of the prosecution witnesses and the calling of the defence witnesses reflect a defence strategy that was developed specifically to defend the accused on the charge drafted with Corporal Carey as the alleged recipient of the conduct. In this particular case, making a special finding by changing the victim, when the victim's subjective impression of the conduct is a central element of the offence before the Court, would be prejudicial to the accused.

[98] Further, I would add that although both members were present during the alleged incident and clearly stated they were shocked, and possibly embarrassed, neither

of them stated outright that they were offended by the comment. It is very possible that over the passage of time and having developed a “thicker skin”, as Master Seaman Ogunniya describes, they did not properly articulate how they felt two years ago. Nonetheless, based on the evidence before the Court, the essential elements of harassment have not been proven beyond a reasonable doubt.

Conclusion on the fourth charge

[99] As such, the Court finds the one comment directed to Corporal Carey to be unacceptable and improper. However, since Corporal Carey herself did not testify to being offended, I am left with reasonable doubt that the one comment standing alone rises to the level of harassment and, as such, the particulars of the fourth charge are not proven.

The fifth charge

Positions of the parties

Prosecution

[100] Prosecution argues that Corporal Royer was subjected to various comments by Sergeant Scott that ranged from “faggot”, “homo” to “fatso”. The prosecution submitted that Sergeant Scott’s conduct directed at Corporal Royer was improper and offensive rising to the level of harassment as set out in the definition of “harassment” at DAOD 5012-0, and as such all the essential elements of the charge are proven.

Defence

[101] Defence argued that the interaction between Sergeant Scott and Corporal Royer was nothing more than friendly banter and joking. He argued that context is important and that others testified that Corporal Royer and Sergeant Scott joked back and forth.

Facts

[102] Corporal Royer, a PLQ candidate on Serial No. 1603, testified that he had never been on a course as challenging as the PLQ. He testified that he did not feel Sergeant Scott liked him as Sergeant Scott repeatedly called him names. Within the first two weeks of the course, Sergeant Scott had referred to him as “Fatso” and Corporal Royer described an incident where Sergeant Scott came into their syndicate room to do a lecture and Sergeant Scott said to him, “Hey, Fatso, sit down and shut up.” He testified that Sergeant Scott used this term less than four times.

[103] He also told the Court about an incident that occurred approximately mid to late November when they were in the syndicate room. Sergeant Scott commented that he wasn’t going to tell them how to “suck eggs” and Corporal Royer questioned the meaning of the comment. Sergeant Scott responded, “It is how you suck a dick, you

homo.” The comment directed at Corporal Royer personally, left him stunned and he told the court that it was not a response he expected. He stated he genuinely did not know what the term meant. He said he was shocked by the response as he had never been referred to that way.

[104] Master Corporal Barker testified that he was present when Sergeant Scott made the “homo” comment and thought it was “pretty spicy”, particularly in light of Operation HONOUR. He said it was not something one would expect to hear at a leadership school. When asked to describe Corporal Royer’s reaction, Master Corporal Barker stated that by the look on his face, he was surprised. However, Master Corporal Barker also said that Sergeant Scott may have said some of these things as a tactic to lighten the mood amongst the students.

[105] Master Seaman Ogunniya and Corporal Carey both testified that Sergeant Scott made multiple references to Corporal Royer being gay. Master Seaman Ogunniya stated the two regularly engaged in what she would call locker room talk back and forth. She stated that she did not think that Corporal Royer was offended by the comments as he often laughed. She did not think that Sergeant Scott’s comments were malicious, but that in her opinion, Sergeant Scott tried more to be one of the boys than an instructor.

[106] Under cross-examination, Corporal Royer confirmed that Sergeant Scott knew that he was married and not homosexual, but in his opinion, the “homo” comment was still inappropriate. Corporal Royer admitted that Sergeant Scott did use humour a lot, but he said that his humour was different than theirs. Also under cross-examination, when questioned why he did not report the incident, Corporal Royer stated that he did not feel that making an accusation against his direct sergeant during the course was a good idea. Corporal Royer stated that he found Sergeant Scott unpredictable and when asked if he had been afraid to report, he stated that he wasn’t, but that he had no intention of doing so during the course.

[107] Corporal Royer felt that the course was stressful and was candid in saying that it was important to him that he succeed. He said the comments shocked him and he did not expect an instructor at a leadership school to call a candidate a “homo”. Rather, he expected the instructors to set an example for candidates to follow. He told the court that the specific incidents stood out because they were unusual as he had never been referred to by any of these terms at any time during his military career. He felt that he learned what not to do as a sergeant.

Analysis

[108] As discussed earlier, the elements required to prove the particulars of this fifth charge, require the determination that Sergeant Scott’s conduct was improper, directed at Corporal Royer, and offensive to him.

[109] With respect to the “sucking eggs” comment, Defence argued that there was an obvious generational divide in that the sergeant told the class that he was not going to

explain the obvious and when Corporal Royer questioned him, Sergeant Scott assumed he was joking and his reactive comment inadvertently slipped out, but was not repeated. He argued that Corporal Royer and Sergeant Scott engaged in friendly banter throughout the course and that Sergeant Scott was only joking.

[110] However, the court found there was clear evidence that the comments made by Sergeant Scott directed at Corporal Royer were intended to ridicule him. The use of the term “fatso” is effectively a direct assault on a person’s appearance and self-esteem. The court was persuaded by the testimony of three candidates who witnessed the interactions and who were all of the opinion that Sergeant Scott’s comments made to Corporal Royer were improper. Based on Corporal Royer’s testimony as well that of the other witnesses, it is also clear that Corporal Royer was personally offended.

Determination of prejudice

[111] For the same reasons this Court provided in charge 1, Sergeant Scott’s conduct met the criteria of harassment set out in DAOD 5012-0. When the facts and evidence of this charge are examined pursuant to the CMAC’s guidance in *Golzari*, the Court finds there is more than sufficient evidence upon which this Court can infer prejudice. Most particularly, both the Chief Defence Staff (CDS) message and Operation HONOUR clearly acknowledged the harm caused when anyone makes comments that among other things, mock an individual’s appearance or reference sexual orientation. As a result, I can easily infer prejudice to good order and discipline.

Did Sergeant Scott have wrongful intent?

[112] Based on the training he had received, Sergeant Scott knew or ought to have known that the language he was using was improper. Once again, for the reasons enunciated in charges 1 and 3 when words are spoken they are intended and that is sufficient mental requirement to indicate that you intend them.

Conclusion on the fifth charge

[113] I am convinced beyond reasonable doubt that Sergeant Scott’s conduct directed towards Corporal Royer was improper and offended Corporal Royer. As a result, I find that his conduct with respect to the fifth charge rises to the level of harassment and that there was prejudice to good order and discipline that flowed from the alleged conduct in question.

Closing comments

[114] Although the Court did not find the accused guilty of two of the charges, it did find clear evidence that inappropriate and sexualized comments were made. The Court does not condone the conduct exhibited in those other incidents. Sergeant Scott’s reflexive comments are examples of the sexualized culture of concern reported on by Madame Deschamps in 2015. A paragraph from the *Executive Summary from the*

External Review into Sexual Misconduct and Sexual Harassment in the Canadian Armed Forces reads as follows:

. . . the ERA's consultations revealed a sexualized environment in the CAF, particularly among recruits and non-commissioned members, characterized by the frequent use of swear words and highly degrading expressions that reference women's bodies, sexual jokes, innuendos, discriminatory comments with respect to the abilities of women, and unwelcome sexual touching. Cumulatively, such conduct creates an environment that is hostile to women and LGBTQ members, and is conducive to more serious incidents of sexual harassment and assault.

[115] The types of comments that make up the substance of the charges before the court are unacceptable and will not be tolerated in the CAF.

FOR THESE REASONS, THE COURT:

[116] **FINDS** Sergeant Scott guilty of charges 1, 3 and 5.

[117] **FINDS** Sergeant Scott not guilty of charges, 2 and 4.

Counsel:

The Director of Military Prosecutions as represented by Major G.J. Moorehead and Captain C.R. Gallant

Major A. Bolik and Captain A. Vitsentzatos, Defence Counsel Services, Counsel for Sergeant E.R. Scott