



COURT MARTIAL

Citation: *R. v. Tuckett*, 2019 CM 3007

Date : 20190722

Docket : 201845

Standing Court Martial

Canadian Forces Base Borden
Borden, Ontario, Canada

Between :

Her Majesty the Queen

- and -

Master Corporal W.A. Tuckett, Accused

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

REASONS FOR FINDING

(Orally)

[1] Master Corporal Tuckett is charged with two offences for conduct to the prejudice of good order and discipline contrary to section 129 of *National Defence Act* (*NDA*).

[2] The first offence involves a number of incidents between Master Corporal Tuckett and Master Corporal Chedore that allegedly occurred between 1 January and 28 February 2017 at Canadian Forces Base (CFB) Borden, Borden, Ontario, and for which it is claimed that it resulted in the accused harassing her.

[3] The second offence is related to some words of a sexual nature regarding Master Corporal Chedore that were allegedly said by Master Corporal Tuckett to Master Corporal Laramée on or about 20 February 2017 at CFB Borden, Borden, Ontario.

[4] The alleged incidents would have occurred while Master Corporal Chedore and Master Corporal Tuckett were both incremental staff instructors on a Qualification

Level (QL) 3 cook course taking place at the Canadian Forces Logistics Training Centre (CFLTC) at CFB Borden, from January to June 2017.

[5] The evidence at trial consisted of the following documents:

- (a) a copy of the version of the Defence Administrative Orders and Directives (DAOD) 5012-0, Harassment Prevention and Resolution, in force at the time of the alleged offences;
- (b) a copy of the Chief of Defence Staff (CDS) Operational (Op) Order Operation HONOUR dated 14 August 2015, and four related Fragmental Orders (Frag O) issued in March 2016, twice in December 2016, and finally in March 2018; and
- (c) a copy of Annex A to Chapter 1 of CFLTC Unit Standing Order and a copy of Canadian Armed Forces (CAF) members' acknowledgement form, both signed by the accused and dated 5 January 2017.

[6] The prosecution called four witnesses: the alleged victim, Master Corporal Chedore, Master Corporal Laramee, Sergeant Mootrey and Master Warrant Officer Osztian.

[7] Four witnesses also testified in the context of the case presented by defence counsel: Sergeant Lassonde, Leading Seaman Bonneau-Fortier, Master Corporal (retired) Buck and the accused in these proceedings, Master Corporal Tuckett.

[8] It must be noted that Master Corporal Chedore, Sergeant Lassonde and Leading Seaman Bonneau-Fortier testified in French, while the language of the trial chosen by the accused is English. These witnesses testified in this way with the agreement of both parties and in accordance with an order I previously made regarding the provision of simultaneous interpretation to Master Corporal Tuckett. All other witnesses, including the accused, provided their testimony in the English language.

[9] Finally, the Court took judicial notice of facts and matters contained and listed in the Military Rule of Evidence (MRE) 15, and more specifically of the content of DAOD 5012-0, Harassment Prevention and Resolution, which was the version in force at the time of the alleged offences, and of the CDS' Op Order – Op HONOUR and the four related Frag O.

[10] In January 2017, CFLTC conducted a QL3 cook course, which is the basic trade course for cooks during which they learn the basics of cooking for a period of six months. In addition to some permanent staff instructors that were identified to run the course, incremental staff instructors were needed.

[11] The course was conducted with two separate classes: one in French, the other in English. The theory part of the course was provided in the French class by two instructors: Master Corporal Laramee who was permanent staff, and Master Corporal

Chedore who was identified as incremental staff. The English class had at least three instructors: Master Seaman Williamson, Master Corporal (retired) Buck, and Master Corporal Tuckett, the latter being considered as incremental staff.

[12] The practical part, which took place during the last three months of the course, more or less, would see all students and instructors joined in one class.

[13] The alleged incidents that formed the basis of both charges, took place during the first part of the course, while the two classes were separated.

[14] Despite being separated in accordance with the language requirement, instructors often interacted outside of the teaching environment. It could have been where they were residing, at the kitchen for meals, at the gym or simply because they agreed to socialize elsewhere within or outside the base's limits.

[15] Four instances were identified by Master Corporal Chedore as being evidence to be considered for the first charge.

[16] First, she referred to something that would have taken place at the base kitchen during the third week of the course, with Master Corporal Tuckett, in the presence of Master Seaman Williamson.

[17] While she was exiting the kitchen after dinner, she was intercepted by Master Corporal Tuckett. He asked what she intended to do that night. She responded that she was going to the gym, to which he would have replied that going to do physical training (PT) with her in her bed would be better. She took it as a clear invitation to have sex with him. She was wondering if he was joking or not because it was the very first time that such thing occurred. She felt uncomfortable, sad and found it inappropriate. She replied to him that she was not interested. He did not say anything else but giggled. She left. She was not feeling well. Master Seaman Williamson was neutral and said nothing.

[18] According to Master Corporal Tuckett, he intercepted her because he wanted to discuss with her when he would be able to pass her the pace stick for marching students for PT to the gym the next day. He said that he received a reply referring to the fact of going to a room, which he did not quite understand. He perceived that she did not understand him and he decided to make fun of it by replying, as a question to her, "PT in your room?" The comment was not made in trying to flirt with her or make her believe that he wanted to have sex with her.

[19] Master Corporal Chedore said that Master Corporal Tuckett made to her, at three other times, such invitations to have sex with her in her room, while they were alone. The latter denied that it happened, but recognized that he invited her to hang out with other instructors on the course.

[20] Master Corporal Chedore described another incident with Master Corporal Tuckett that took place at the gym on the morning of 24 February 2017. Instructors and students were present in the hall and they were stretching, when the accused kneeled

down behind her. Then he said to her that she had “a nice ass” and asked her why she would not marry him. She felt bad and like an object.

[21] She noticed that one of her students, Leading Seaman Bonneau-Fortier, was close by. She asked him if he had heard all the words said by the accused. He confirmed to her that he did.

[22] Further to that incident, she said that she isolated herself more and she clearly entered into a state of avoidance, fearing to meet Master Corporal Tuckett anywhere.

[23] Leading Seaman Bonneau-Fortier said that he recalled being at the gym in the circumstances described by Master Corporal Chedore but that he did not recall Master Corporal Tuckett saying anything to the latter. He said that it is possible that something was said but he did not hear anything as he was not really paying attention.

[24] Master Corporal Tuckett confirmed that he was there on that morning with other instructors and students. He explained that while he was doing lunges as a warmup, he decided to put some fun into a boring situation. When he was kneeling on one knee, he pretended that he was proposing marriage to the person he faced. He did this with Master Corporal (retired) Buck, who confirmed that he did such thing, Master Seaman Williamson and Master Corporal Chedore, as far he can recall.

[25] When he did such thing with Master Corporal Chedore, she seemed to be cut by what he was doing and she turned around. She giggled, which confirmed his impression that she did not look upset or offended, but a little amused by what he did. He did not want to offend anybody and be taken seriously.

[26] Finally, she described a last incident that occurred on 16 March 2017, at the kitchen during lunch time. She sat at a table, and was later joined by Master Corporal Tuckett and Master Seaman Williamson. She said that they started to talk about movies. She mentioned that the accused invited her to go watch a “horny” movie and have a beer in his room. She understood that the movie would go beyond what it is reflected in the movie “Notebook”, which meant for her that it was suggested by the accused to go watch a pornographic movie. She said “no” to the invitation and decided to see Master Corporal Lassonde to know what to do for stopping Master Corporal Tuckett from having such behaviour with her.

[27] She was then referred to Warrant Officer Hosztian to whom she made a complaint about the accused’s behaviour.

[28] Master Corporal Tuckett was returned to unit, despite the course being far from over. He was not replaced, but other incremental staff at CFLTC managed to fill the gap left by his absence. He was told that he would be tasked as an instructor on a future QL5 course that would take place later in the year.

[29] Master Corporal Chedore said that she had emotional difficulties after he left, that she was often crying and that she met a psychologist for help. She said that for the remainder of the course, she was less focused and motivated.

[30] Master Corporal Tuckett confirmed that the discussion with Master Corporal Chedore took place at the time, location and with the persons she described. However, he said that he made an invitation for watching a movie, to which Master Corporal Chedore replied by asking if it was to be in his room. He said no because he was thinking watching a movie in the common area where all the rooms are and not his personal room. He may have made fun of the situation by referring to watching the movie in the laundry room. He suggested watching the movie "Notebook". She answered, "No."

[31] He affirmed that he was not flirting or inviting her to have sex with him. He said that he never asked her to watch a "horny" movie. He also commented that in the English language, the use of such word appears to him as odd because the usual way to describe a movie with sexually explicit subject matter is to use the term "porno" in reference to a pornographic movie.

[32] Master Corporal Laramee's testimony is mainly related to the second charge. Master Corporal Laramee was posted in August 2016 at CFLTC as a cook instructor on courses in both official languages. He was an instructor on the QL3 course, which took place from January to June 2017. He was instructing the French class with Master Corporal Chedore. He described her as being good with students, even if at the beginning of the course she seemed easy-going and a bit loose. He witnessed that over the course, Master Corporal Chedore's mood changed. She became sad and more depressed.

[33] He said that on a Friday, he ran into Master Corporal Tuckett and Master Seaman Williamson at the entrance of the building where Master Corporal Chedore resided on the base. He was on his way to give her the pace stick when he met both instructors.

[34] He affirmed that the accused took this opportunity to see him by asking if Master Corporal Chedore was "fucking" with one of the students on the course, to which he replied that he did not think so. He also said that he did not know if they had an affair but that he was aware that the student had kids. Master Corporal Tuckett then started to say, "I want to fuck her. I want to fuck her." He added, "Tell her I want to fuck her." Master Corporal Laramee said that he was surprised by the topic raised by Master Corporal Tuckett. He did not expect such subject would come out of a conversation in that context.

[35] Master Corporal Laramee then started to walk away. He was not under the impression that the accused really wanted him to report any of the words he said concerning Master Corporal Chedore.

[36] About a week later, while he talked to Master Corporal Chedore, he decided to report to her what was said by Master Corporal Tuckett. She did not know what to do to stop that. Master Corporal Laramee suggested she goes see Master Corporal Lassonde to discuss the situation. This is what she did. Master Corporal Lassonde referred her to Warrant Officer Hosztian, which resulted in her filing a complaint and the accused being returned to unit.

[37] Master Corporal Tuckett confirmed circumstances that led to meeting Master Corporal Laramee in the entrance of a building. However, he denied that he said to the latter that he wanted to “fuck” Master Corporal Chedore. He confirmed that he was displeased and upset with Master Corporal Chedore’s lack of respect for fraternization rules and he raised the matter with Master Corporal Laramee.

[38] This fraternization question was something of concern for some instructors on this course. Master Corporal (retired) Buck was reprimanded at the beginning of the course, and a warning was later given to all instructors to the effect that if such thing happens again, then the offender would be returned to unit.

[39] Master Corporal Chedore saw two complaints made against her for fraternizing with a student on the course by having meals at the kitchen and drinks at the mess with him. She was reprimanded accordingly without any other consequences. Some instructors and students were at the origin of the complaints, including Master Corporal Tuckett.

[40] From the accused’s perspective, it would explain the reasons why he decided to discuss this specific question with Master Corporal Laramee on that day, the latter being the co-worker of Master Corporal Chedore.

[41] Further to Master Corporal Tuckett being returned to unit, with the understanding that he would instruct later on the QL5 cook course, a police and a unit investigation were conducted, and charges were laid.

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

[43] The first and most important principle of law applicable to every Code of Service Discipline and criminal cases is the presumption of innocence. Master Corporal Tuckett entered these proceedings presumed to be innocent and the presumption of innocence remains throughout the case unless the prosecution, on the evidence put before the Court, satisfies it beyond a reasonable doubt that he is guilty.

[44] Two rules flow from the presumption of innocence: one is that the prosecution bears the burden of proving guilt, and the other is that guilt must be proven beyond a

reasonable doubt. These rules are linked with the presumption of innocence to ensure that no innocent person is convicted.

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

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

[47] It is virtually impossible to prove anything to an absolute certainty, and the prosecution is not required to do so. Such a standard would be impossibly high. However, the standard of proof beyond a reasonable doubt falls much closer to absolute certainty than to probable guilt. The Court must not find Master Corporal Tuckett guilty unless it is sure he is guilty. Even if the Court believes that he is probably guilty or likely guilty, that is not sufficient. In those circumstances, the Court must give the benefit of the doubt to Master Corporal Tuckett and find him not guilty because the prosecution has failed to satisfy the Court of his guilt beyond a reasonable doubt.

[48] The important point for the Court is that the requirement of proof beyond a reasonable doubt applies to each of those essential elements. It does not apply to individual items of evidence. The Court must decide, looking at the evidence as a whole, whether the prosecution has proven Master Corporal Tuckett’s guilt beyond a reasonable doubt.

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

[50] The Court heard Master Corporal Tuckett’s testimony. When a person charged with an offence testifies, the Court must assess that evidence as it would assess the testimony of any other witness, keeping in mind what the Court mentioned previously about the credibility of witnesses. The Court may accept all, part, or none of Master Corporal Tuckett’s evidence.

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

[52] The pitfall that this Court must avoid is to be in a situation appearing or in reality as it chose between two versions in its analysis. As established by the SCC in its decision of *R. v. Vuradin*, 2013 SCC 38, at paragraph 21:

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

[53] Of course, if the Court believes the testimony of Master Corporal Tuckett that he did not commit any offence as charged, the Court must find him not guilty of it.

[54] However, even if the Court does not believe the testimony of Master Corporal Tuckett, if it leaves it with a reasonable doubt about an essential element of the offence as charged, the Court must find him not guilty of that offence.

[55] Even if the testimony of Master Corporal Tuckett does not raise a reasonable doubt about an essential element of the offence as charged, if after considering all the evidence the Court is not satisfied beyond a reasonable doubt of his guilt, it must acquit.

[56] If the Court does not know whom to believe, it means that it has a reasonable doubt and it must find Master Corporal Tuckett not guilty.

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

[58] If the Court has a reasonable doubt about Master Corporal Tuckett's guilt arising from the evidence, the absence of evidence, or the credibility or the reliability of one or more of the witnesses, then it must find him not guilty.

[59] Master Corporal Tuckett is charged with conduct prejudicial to good order and discipline. This specific offence is enunciated at section 129 of the *NDA* and reads in part as follows:

(1) Any act, conduct, disorder or neglect to the prejudice of good order and discipline is an offence and every person convicted thereof is liable to dismissal with disgrace from Her Majesty's service or to less punishment.

(2) An act or omission constituting an offence under section 72 or a contravention by any person of

- (a) any of the provisions of this Act,
- (b) any regulations, orders or instructions published for the general information and guidance of the Canadian Forces or any part thereof, or
- (c) any general, garrison, unit, station, standing, local or other orders,

is an act, conduct, disorder or neglect to the prejudice of good order and discipline.

[60] Section 129 of the *NDA* does not create two offences, namely, one under subsection 129(1) and another under subsection 129(2). Subsection 129(1) of the *NDA* simply tells us that any act, conduct, disorder or neglect to the prejudice of good order and discipline is an offence. Generally speaking, proof of prejudice to good order and discipline beyond a reasonable doubt is required, although this proof of prejudice can sometimes be inferred from the circumstances if the evidence clearly points out to prejudice as a natural consequence of the proven act.

[61] Subsection 129(2) of the same Act, tells us that, in specific conditions, prejudice to good order and discipline is deemed to have occurred. A deeming provision is a statutory fiction. The particulars of the charges do not engage this presumption and the Court will not consider it.

[62] The prosecution must prove beyond a reasonable doubt that Master Corporal Tuckett is the author of the alleged offences on the date and at the place described in the particulars of each charge. The prosecution must also prove each of the following additional essential elements beyond a reasonable doubt: that Master Corporal Tuckett conducted himself as it is alleged in the charges; that the consequence of the proven conduct is prejudicial to good order and discipline; and the blameworthy state of mind of Master Corporal Tuckett.

[63] Now, what is the meaning of something being prejudicial to good order and discipline?

[64] Good order, as used in section 129 of the *NDA*, is wide enough to include good order in the sense in which the words are understood in civil life as applicable to civilians, and in the sense in which they would be understood in military life and applicable to members of a military force. Military discipline is a concept which entails the application of control in order to harness energy and motivation to a collective end.

[65] Military discipline is the cornerstone to an effective and efficient standing armed force in a democracy. If the requirement for military discipline is not met, military authority can be undermined and this can only bring discredit to the service by diminishing the authority of those concerned. It may well be considered as being prejudicial to the concept of military discipline.

[66] Now, conduct which is to the prejudice of good order is not necessarily to the prejudice of military discipline, depending on the circumstances. On the other hand, , conduct which is prejudicial to military discipline is also held to be prejudicial to good order. It is not sufficient to prove that the conduct was prejudicial to good order, it must also be proven that the conduct was prejudicial to discipline.

[67] Let me deal now with the word "prejudice". It is not defined in the Act or *Queen's Regulations and Orders for the Canadian Forces (QR&O)*. In accordance with article 1.04 of the QR&O, words and phrases in English shall be construed according to the common approved meaning given in the Concise Oxford English Dictionary (COED). The COED defines the word "prejudice" when used in the expression "to the prejudice of" as meaning "harm or injury that results or may result from some action or judgement". In the way in which it is used in these charges, and as indicated by the Court Martial Appeal Court decision in *R. v. Golzari*, 2017 CMAC 3, at paragraph 78, it means that the conduct tends to or is likely to adversely affect discipline. As clearly stated by the court in the same paragraph:

Military discipline requires that conduct be punished if it carries a real risk of adverse effects on good order within the unit; this is more than a mere possibility of harm.

[68] Concerning the proof of the identity of the accused as the author of the offence, and the location as particularized on both charges, there is not much controversy about them, and the Court considers that these elements were proven beyond a reasonable doubt by the prosecution.

[69] I also come to the conclusion that on the first charge, the Court cannot consider the incident for which the prosecution's evidence demonstrated that it was outside of the specific period claimed in the particulars of the charge.

[70] By particularizing the offence for a specific period of time when it is alleged that harassment incidents occurred, then the prosecution made the dates an essential element of the offence to be considered by the Court, and for which the accused would also consider that he has to defend himself on everything revealed by the disclosure that allegedly occurred during that specific period of time. Reasoning otherwise would be prejudicial to the accused because he was entitled to presume in the situation that he did not have to defend himself for alleged incidents that occurred outside that period of time. Indeed, the accused was entitled to presume that by having in its possession and having disclosed all evidence relevant to his case, the prosecution considered that any alleged event occurring outside the period specified in the particulars of the charge did not deserve any consideration for proving it.

[71] For the second charge, however, I would agree with the prosecution that even the evidence proven beyond a reasonable doubt that the alleged words were said by the accused on 16 March 2017 instead of 20 February 2017, this situation is not fatal to the charge. The date is not material to this charge because it does not play a role in determining if the alleged offence occurred or not. In short the accused was not misled

or prejudiced by the fact that the date revealed by the evidence adduced before this Court is different from the one on the particulars of the charge.

[72] Now, what about the *actus reus* on the first charge? The prosecution had to prove beyond a reasonable doubt that Master Corporal Chedore was harassed by Master Corporal Tuckett. On this issue, the prosecution relied mainly on the testimony of Master Corporal Chedore.

[73] Master Corporal Chedore showed discomfort in testifying by the manner she answered. She was sometimes evasive and seemed to answer some questions with difficulty.

[74] Her testimony had some inconsistencies, such as the fact that she claimed that Leading Seaman Bonneau-Fortier heard comments made by the accused, while it was established that was not the case.

[75] She also tried to minimize the impact of complaints made against her in relation to fraternization as being nothing really serious, while the evidence demonstrated that it caused some disturbance among the instructors and some students on the course.

[76] She did not comment much on her ability to speak and understand English at the time of the commission of the charge, while the evidence revealed that she had difficulty to make herself understood in that language by others and that misunderstandings consistently occurred on and outside the course.

[77] Finally, despite the fact that she said that she started to avoid the accused at some point, the evidence adduced before the Court is to the effect that it was not the case at all. She had some distance from other instructors and some students because of the language barrier and nobody, including Master Corporal Laramee, had noticed any change on that issue.

[78] The Court is aware that testifying before the Court is still quite an experience and the way to act or react to questions cannot constitute, by itself, a valid assessment of the credibility and reliability of a witness. However, here the Court is not relying on the manner in which she answers questions but on the answers themselves and some inconsistencies to conclude that the reliability of her testimony appears as being an issue for the Court.

[79] Master Corporal Tuckett testified in an honest and straightforward manner. Being examined or cross-examined, he took his time to clearly answer questions and did not hesitate to ask to repeat them if need be. He appeared to the Court as being credible and reliable.

[80] His testimony did not appear as being rehearsed. He provided information on examination and cross-examination without being prompted. In fact, his manner in answering questions was the same on examination and cross-examination. In such

context, it makes it difficult to conclude that he also rehearsed answers he provided on cross-examination.

[81] When looking at the evidence as a whole, it appears clear to the Court that Master Corporal Chedore had difficulties speaking and understanding the English language to the point that sometimes, misunderstandings created unfortunate situations.

[82] In that context, the testimony of the accused regarding all the incidents forming the basis for claiming that sexual harassment occurred must be qualified as sufficient to raise a reasonable doubt on what really happened. The reality is that these misunderstandings led the accused to sometimes make fun of them, which probably made Master Corporal Chedore more suspicious about the exact meaning of what he wanted to say.

[83] Regarding the incident that I excluded from my analysis because of being outside the timeframe specified in the particulars of the charge, I would say, in the case I would have been wrong regarding my decision on the date, that I would have reached the exact same conclusion for this incident and it does not leave me in one way or another to come to a different conclusion.

[84] Master Warrant Officer Hosztian, Sergeant Lassonde, Master Corporal Laramee and Master Corporal (retired) Buck confirmed that it was with difficulty that Master Corporal Chedore could communicate in English. It was often by repeating the same thing or by the means of somebody directly translating that she found ways to communicate with unilingual Anglophones, on and outside the course instructed.

[85] Far from blaming her for that, the Court thinks that it belongs to the unit to properly deal with such situation and not the member's responsibility. It makes it difficult for the Court to come to any other conclusion on this situation that language had an impact and made impossible that some language misunderstandings have led situations to turn out as described by the accused but with the impression described by Master Corporal Chedore.

[86] It appears to the Court that she felt a bit misunderstood and isolated from the group of instructors because of the language barrier and it could have been challenging for her self-esteem in some ways.

[87] The way the accused described these events appeared logical and consistent with the overall evidence adduced in this case.

[88] As such, the Court concludes that the prosecution has not proven, beyond a reasonable doubt, that Master Corporal Tuckett conducted himself as it is alleged in the first charge.

[89] Regarding the second charge, it appears that the language barrier was not the only concern for the group of instructors toward Master Corporal Chedore. Fraternalization involving her was also a question of debate among instructors and some students, which led to the incident forming the basis of the second charge.

[90] Master Corporal Laramee had an exchange on that issue with the accused. Master Corporal Tuckett took the time to briefly address that question with him and expressed his dissatisfaction and disapproval of Master Corporal Chedore's behaviour regarding fraternization. His denial to saying the words mentioned in the particulars of the charge is supported by the overall situation revealed by the evidence.

[91] Looking at the evidence as a whole on this very issue, it is a reasonable inference to make based on the evidence that, in the context, Master Corporal Tuckett was reasonably concerned by the extent of fraternization Master Corporal Chedore engaged in, considering that she was twice reprimanded by the chain of command and it did not seem to stop. It is possible that he expected Master Corporal Laramee would send a message to Master Corporal Chedore about how far the concept of fraternization could be stretched.

[92] On this specific issue, the Court is of the opinion that Master Corporal Tuckett's testimony, to the effect that he did not say the words alleged in the particulars of the second charge, appears plausible. The veracity and the accuracy of his testimony are reasons for the Court to conclude in this way. The way he observed, recalled and recounted this situation, and also other situations related to the first charge, is enough for the Court to come to such conclusion. His testimony is also reliable as he had a good recollection of events.

[93] That being said, it is also possible that the words were said by Master Corporal Tuckett as reported by Master Corporal Laramee. This situation described by the witness appears to the Court as also plausible, because Master Corporal Laramee's testimony appears to the Court as credible and reliable. He was straightforward and clear and the Court has not found any reason to disbelieve him.

[94] The evidence indicated that Master Seaman Williamson was present during that exchange. Even if corroboration is not required to prove such thing, the absence of such evidence does not help the Court to decide in one way or another.

[95] Accordingly, the Court has no reason to disbelieve neither Master Corporal Tuckett, nor Master Corporal Laramee.

[96] The Court then must conclude that it has a reasonable doubt concerning the proof of the *actus reus* on the second charge, because the Court does not know whom to believe on the essential element of the offence related to the *actus reus* to be proven.

[97] Consequently, the Court concludes that the prosecution has not proven, beyond a reasonable doubt, that Master Corporal Tuckett conducted himself as it is alleged in the second charge. Then it is the Court's conclusion that, looking at the evidence as a whole, the prosecution has not proven all essential elements for each offences beyond a reasonable doubt.

FOR ALL THESE REASONS, THE COURT

[98] **FINDS** Master Corporal Tuckett not guilty of the first and second charges on the charge sheet of conduct to the prejudice to good order and discipline contrary to section 129 of the *NDA*.

Counsel:

The Director of Military Prosecutions as represented by Lieutenant(N) J. Besner and Commander S. Torani

Major A. G  linas-Proulx, Defence Counsel Services, Counsel for Master Corporal W.A. Tuckett