



## COURT MARTIAL

**Citation:** *R. v. Turner*, 2022 CM 4001

**Date:** 20220107

**Docket:** 202053

Standing Court Martial

Canadian Forces Base Kingston  
Kingston, Ontario, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Warrant Officer V.N.E. Turner, Accused**

**Before:** Commander J.B.M. Pelletier, M.J.

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**Restriction on publication: Pursuant to section 179 of the *National Defence Act*, the Court directs that any information obtained in relation to the proceedings of the Standing Court Martial of Warrant Officer Turner which could identify anyone as a victim or complainant, including the person referred to in the charge sheet as “C.H.”, shall not be published in any document or broadcast or transmitted in any way.**

### **REASONS FOR FINDING**

#### **Introduction**

[1] Warrant Officer Turner is facing one charge under section 130 of the *National Defence Act*, for sexual assault, contrary to section 271 of the *Criminal Code*. This alleged offence would have occurred in the early hours of a morning in August or September 2001 in Winnipeg, Manitoba. He is alleged to have intruded in the bed occupied by the complainant, identified as C.H. on the charge sheet, who had agreed to stay in his room on base following a night out in town.

[2] This Standing Court Martial was convened naming Sergeant Turner, who has been promoted since the charges were preferred. In these reasons I will refer to him as

warrant officer and other witnesses and persons by the rank or status they had at the time of the trial. Also, the identity of the complainant is protected by a restriction on publication, ordered at the outset of proceedings.

### **Overview of the evidence**

[3] The resolution of this case is dependent on the assessment of the evidence and the credibility of witnesses. It is consequently appropriate to summarize the main outline of the narrative offered by witnesses to allow a better understanding of the issues and the position of the parties. I will engage in a more detailed analysis of the evidence later in these reasons as necessary to arrive at my findings.

[4] The prosecution called two witnesses in support of its case: the complainant and another person present that evening, Mr T.J. Baker, then a friend of Warrant Officer Turner. All three were Canadian Armed Forces (CAF) members at the time of the alleged offence. C.H. was a reservist with the Royal Winnipeg Rifles while Warrant Officer Turner and Mr Baker were then in the infantry and posted with the 2nd Battalion, Princess Patricia's Canadian Light Infantry (2 PPCLI). Notably, in her civilian life, C.H. was employed at the time as a server at the Winnipeg location of the Hooters restaurant chain, an establishment whose wait staff are primarily attractive young women, and who wear a uniform composed of a white tank top and tight shorts. As it pertains to the rank of the three persons involved in the events, Mr Baker and C.H. were corporals, although C.H. would be appointed to master corporal in April 2002. For his part, Warrant Officer Turner had been appointed to master corporal a few months prior to the alleged incident. The evidence heard reveals that the rank of those involved is in no way significant to anything pertaining to this case.

[5] C.H. testified that, in August or September 2001, she met Warrant Officer Turner in a bar in Winnipeg where she had gone with a friend. Near closing time, she accepted an invitation from Warrant Officer Turner and his friend Mr Baker to go back to the Kapyong barracks at Canadian Forces Base (CFB) Winnipeg for drinks, a place she had gone before and knew well as she was a reservist and had many friends residing there at the time. Arriving at the barracks, she was expecting many people to turn out in Warrant Officer Turner's room for an after-party, but as it turned out, there were only the three of them. She said Mr Baker went to round up people in the barracks, but came back a short time later saying nobody was coming and that he was going to bed, too, leaving her alone with Warrant Officer Turner. C.H. stated that she protested, telling Mr Baker that he could not leave her alone with Warrant Officer Turner. I take it from her testimony that C.H. felt she had been set up, falling into a trap laid by Warrant Officer Turner and Mr Baker acting as a wingman. After some discussion, however, she reluctantly agreed to stay overnight in Warrant Officer Turner's room, having obtained assurances from both Warrant Officer Turner and Mr Baker that she would be fine. She also reluctantly agreed to wear a T-shirt and probably shorts given to her by Warrant Officer Turner so that she would be more comfortable. Another discussion took place about where she would be sleeping, Warrant Officer Turner insisting that she sleep in his bed. As part of this discussion, Warrant Officer Turner approached the couch on

which C.H. was by then lying. This made her feel insecure and resulted in her moving to the unoccupied bed as had been suggested. She went to sleep in the bed and Warrant Officer Turner slept on the couch.

[6] A few hours later, early in the morning, she was awakened by Warrant Officer Turner sneaking under the covers at the foot of the bed, touching her legs and pinning them down with his elbow. In a serious tone, she asked what he was doing. He replied that he was “looking for the little man in the canoe,” a turn of phrase which she found disgusting. She protested, trying to push him away and protect her vaginal area but he overpowered her, removed her underwear and shorts and started performing cunnilingus on her. She froze. C.H. testified that after a while, probably realizing that she was not playing “hard to get” and sensing that she was not into it, Warrant Officer Turner stopped and moved away from her. She immediately got up, dressed and asked to be driven back to the bar to recover her vehicle. Warrant Officer Turner obliged.

[7] C.H. said that she did not see Warrant Officer Turner again in Winnipeg or anywhere else until 2017, after she was posted to CFB Kingston to work in financial administration, including the settlement of travel and relocation claims from CAF members. Early in her tenure, she was invited by her boss to meet someone she would have to work with from time to time in relation to claims. She said she stepped into an office and was introduced to Warrant Officer Turner. She was shocked to see him, even more so that he claimed not to remember her. Every time she would cross paths with him, she became anxious and had flashbacks to their negative interaction of 2001. In 2019, she complained to police, eventually leading to this trial.

[8] The prosecution also called Mr Baker to testify. He remembers an evening spent at a bar in Winnipeg with Warrant Officer Turner and another colleague from 2 PPCLI. At the bar they met and mingled with other individuals, including C.H. He remembers C.H. coming back to the barracks with Warrant Officer Turner, the colleague and himself, most likely in a taxi, at the closing of the bar. His testimony as to the conversations and events during the time he spent with C.H. in Warrant Officer Turner’s room that night differed significantly from C.H.’s. Mr Baker testified that there were other people who showed up for an after-party in Warrant Officer Turner’s room, these people mingled and drank for a while before eventually petering off, retiring back to their respective rooms to go to bed. Throughout that time he observed C.H. getting along very well with Warrant Officer Turner, chatting and laughing as she had done previously at the bar, what he qualified as “a group within the group”. He acknowledges that at one point he was the only person remaining with the two after others had gone to bed but could not recall any reluctance that C.H. would have expressed about spending the night in Warrant Officer Turner’s room. He said that it was usual for guests to stay over, mentioning that the couch that most had in their rooms was in part for that purpose. He explained that the situation was such that C.H. would spend the night in Warrant Officer Turner’s room, and if she had expressed any reluctance he would have found other options for her. He was not privy to any conversation between them as to where she would be sleeping exactly. He added that the circumstances of the positive relationship that he had observed between the two that

night led him to feel, when alone with them after others had left, that he had become the “third wheel”, which is what led him to announce that he would retire in his room for the night. He testified that this announcement did not meet with any resistance whatsoever on the part of C.H.

[9] Mr Baker testified that the next day at supper in the mess, being curious, he asked Warrant Officer Turner if there had been some interesting developments involving C.H. after he had left his room early in the morning. He said that Warrant Officer Turner then told him that he had awakened C.H. by performing oral sex on her. This was not reciprocated at the time but would hopefully lead to more interactions of the kind in the future. At no time was Mr Baker led to believe anything untoward had occurred between C.H. and Warrant Officer Turner, adding that he believed they subsequently continued to hang around with C.H. and a friend of hers, even that C.H. and a group of friends may have visited the residence he and Warrant Officer Turner occupied starting in November 2001. He said Warrant Officer Turner had an excellent reputation as being respectful of women at the time.

[10] In addition to the evidence of witnesses, the prosecution introduced a number of exhibits, with the consent of the defence. These documents are mainly records of the employment, courses, postings and promotion of the accused, C.H. and a friend of hers referred to in her testimony, in order to assist in determining the date of the offence.

[11] Following the close of the prosecution’s case, the defence called Warrant Officer Turner to testify. The main feature of his testimony as it pertains to the charge is that he does not have any recollection of being at a bar in Winnipeg with Mr Baker and meeting C.H. He has no memory of C.H. sleeping in his room in the barracks at CFB Winnipeg. He said he would “want to believe that he would most definitely remember” if this had occurred. Moreover, Warrant Officer Turner does not remember ever meeting C.H. before 2017, when they ran into each other after he had arrived at CFB Kingston. On that occasion, she asked him if he remembered her from Winnipeg and he responded negatively, not noticing any distress or embarrassment on the part of C.H. He does not recall meeting her after that, although conceding that he may have said “hi” to her on occasions if they crossed paths between buildings, in the halls or at the hockey rink, but not any differently than salutations he would typically share with anyone else.

[12] Warrant Officer Turner was asked details about his personal, emotional and sexual life, while at CFB Winnipeg and since. Warrant Officer Turner said he did not date many women in Winnipeg and has not dated recently. He said he was raised to protect women and that he would not hurt anyone who would sleep in his room in barracks, although he could not recall if anyone had ever slept over in barracks, with the exception of a few girlfriends. He stated that if a woman told him she was uncomfortable staying over in his room, he would offer other solutions. He denied ever initiating sexual activity by performing oral sex on someone, let alone waking a woman by performing oral sex on her, as it was too brazen and not like him to do something like that, preferring to proceed more gradually. Warrant Officer Turner added that if he had performed oral sex on someone, it would have been after preliminary steps had

been taken. He mentioned that, at that time of his life, he wanted to settle down so he would be seeking a relationship with anyone he would have been intimate with.

[13] In cross-examination, Warrant Officer Turner confirmed that he was residing in a room in the barracks at CFB Winnipeg at the time of the alleged offence. His memory for names and people was tested. He remembered the names of colleagues and girlfriends but he denied remembering C.H. He testified being aware of the existence of the Hooters restaurant and bar but denied knowing there was a female reservist who worked there as a waitress, even if he acknowledged there were very few women in or working with the battalion in which he served at the time. He does not remember C.H. being present at parties that he attended or at the residence which he occupied with Mr Baker after leaving his room on base in November 2001. As it pertains to the expression “looking for the little man in the canoe”, he acknowledged telling the investigator during his interview that it is not something he would say “all the time”. However, during his testimony, he said that it was an expression he was unfamiliar with, a “naval term” which is not something he would use. He denied any memory of a conversation with Mr Baker when he would have been asked how it went with C.H. and would have said that he “woke her up by going down on her.”

[14] Following the testimony of Warrant Officer Turner, the defence called seven witnesses who gave reputational evidence pertaining to Warrant Officer Turner, to the effect that he is known for being an honest person, shy with women and who would always treat women with the utmost respect.

### **Position of the parties**

#### ***Prosecution***

[15] The main argument of the prosecution is that I should conclude that C.H. is credible, accept her version of events over any other witness with the exception of minor details and convict Warrant Officer Turner as all elements of the offence of sexual assault have been proven beyond a reasonable doubt.

[16] When challenged about the contradictions in C.H.’s testimony and the discrepancies between her version of events and the version advanced by Mr Baker as it pertains to the conversations, prior to the two being left alone in Warrant Officer Turner’s room, the prosecution submits that I should find that C.H. is more credible and reliable, especially given that this is a conversation which would not be memorable for a young Mr Baker at the time. At the same time, the prosecution submits that I should find that Mr Baker is entirely credible and reliable as it pertains to his recollection of the conversation he had with Warrant Officer Turner the next day, when he said that he woke C.H. up by performing oral sex on her and that it was not reciprocated. These two aspects confirm, for the prosecution, that a sexual assault had occurred just as described by C.H. in her testimony and that Warrant Officer Turner was responsible.

#### ***Defence***

[17] For its part, the defence suggests that I cannot rely on the testimony of C.H. as she has been proven an unreliable witness on the basis of significant discrepancies between her version and the version related by Mr Baker. The defence adds that it would be imprudent to convict in the context of a historical claim given the numerous logical gaps, inconsistencies and implausibility of several aspects of C.H.'s testimony which should leave me with a reasonable doubt, especially given the possibility that her memory of the events may have been tainted by other negative memories of past interactions with men, including a potential sexual assault.

[18] As it pertains to my appreciation of the evidence, the defence submits that Warrant Officer Turner's evidence about having no memory of C.H. is credible in the circumstances and that I should believe his affirmation to the effect that he would remember if the events related by C.H. had occurred. It is also submitted that Warrant Officer Turner is a shy man, especially with women. I should consequently be left with at least a reasonable doubt as to his evidence to the effect that he is not the kind of person to engage in the sexual conduct alleged, evidence supported by seven character witnesses who testified about his honesty and about him not being the kind of person to do the things that he is alleged to have done.

[19] Finally, the defence argues that the most likely scenario pertaining to the interaction between C.H. and Warrant Officer Turner is that they did get along very well as stated by Mr Baker, that C.H. had decided to come to the barracks that night wanting to spend the night in Warrant Officer Turner's room, that they engaged in consensual sexual activity both before going to sleep and after awakening, which led to oral sex in which C.H. was a willing participant. It is submitted that this narrative is just as credible as the narrative proposed by the prosecution and that this alone should lead me to conclude that the prosecution has not met its burden of proving the offence beyond a reasonable doubt.

### *Analysis*

#### *The issue*

[20] I must state at the outset that I have been convinced beyond a reasonable doubt that the time and place of the alleged offence have been proven as particularized in the charge. Career documents confirm that Warrant Officer Turner was indeed posted to CFB Winnipeg at the time of the offence as he confirmed in his testimony, including the fact that he lived in the Kapyong barracks at the time, a location consistent with the description offered by both C.H. and Mr Baker in their testimony. As it pertains to the time of the offence, C.H. explained in a satisfactory fashion why her initial assessments of the time of the offence were inaccurate, in relation to the timing of a course taken by a friend of hers, on which Warrant Officer Turner was instructing. The discrepancy was resolved with the service records of that individual, combined with those of C.H. showing that her memory of the events immediately following a course she had taken in

Wainwright was consistent with her friend taking a course in Winnipeg, which that friend had delayed due to maternity leave.

[21] The only issue in this case is whether I can rely on the testimony of C.H. to conclude beyond a reasonable doubt that she was sexually assaulted by Warrant Officer Turner. Specifically, I must assess whether her testimony is sufficiently reliable to prove the specific sexual act that is alleged—namely the sexual touching culminating in cunnilingus—was done by Warrant Officer Turner, and whether it was without C.H.’s consent. In light of the evidence heard in this case, these three specific aspects will be analyzed together.

[22] The resolution of this case essentially rests on whether the facts necessary for a conviction were established beyond a reasonable doubt. There was no debates between parties as to the applicable law, for good reason. Consequently, I do not feel the need to provide a recitation of the law applicable to sexual assault nor list the elements of the offence. Suffice it to say that my task is to rule on what distinguishes the position of the parties as to whether the identity of the offender has been established and whether the *actus reus* of the offence as it pertains to the acts alleged and the absence of consent was proven on the facts. As it pertains to the *mens rea*, there is no evidence on record which would allow me to doubt, if the *actus reus* is proven, that Warrant Officer Turner intentionally touched C.H. sexually and that he knew C.H. did not consent to that touching.

### ***The applicable standard of proof***

[23] Underlying the analysis of charges by any court is the constitutional requirement for the prosecution to prove its case beyond a reasonable doubt. The accused enters criminal or penal proceedings presumed to be innocent. The burden of proof rests on the prosecution throughout the trial and never shifts to the accused. The standard of proof beyond a reasonable doubt is inextricably intertwined with a principle fundamental to all criminal trials: the presumption of innocence. This means that, before an accused can be convicted of an offence, the judge must be satisfied beyond a reasonable doubt of the existence of all of the essential elements of the offence.

[24] 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. It is not sufficient for me to believe the accused is probably guilty or likely guilty. In those circumstances the accused must be given the benefit of the doubt and acquitted because the prosecution has failed to satisfy me of the guilt of the accused beyond a reasonable doubt. On the other hand, I must keep in mind that it is virtually impossible to prove anything to an absolute certainty and the prosecution is not required to do so.

[25] It is worth noting that reasonable doubt applies to issues of credibility. On any given point, I may believe a witness, disbelieve a witness, or not be able to decide. I am entitled to accept all, some or none of the testimony of any witness. If I have a

reasonable doubt about Warrant Officer Turner's guilt arising from the credibility of the witnesses, then I must find him not guilty.

### ***The assessment of credibility***

[26] I have used the generic term "credibility" as a means to refer to both credibility and reliability. Testimony has credibility problems if the witness is intentionally offering, in whole or in part, false, exaggerated, or minimized information. In effect, credibility addresses whether the witness is lying. In contrast, reliability is about honest mistakes. Evidence has reliability problems if an honest witness is inadvertently offering inaccurate information. Credibility problems can arise because the witness is not a trustworthy person but, generally, credibility problems are almost always contextual. In particular circumstances, witnesses may choose to offer a fabricated, exaggerated, or minimized account. As with credibility problems, some reliability problems arise from a witness's personal circumstances but are more commonly situational.

[27] The most dependable way to evaluate credibility is to pay heed to the specific testimony offered, rather than the source or manner of presentation. I have considered a number of factors in this evaluation, including the plausibility of the evidence, the presence of independent supporting or contradicting evidence, the external and internal consistency of the evidence and the "balance" of the evidence.

[28] Many of the factors relevant in evaluating credibility can assist in making reliability conclusions. Accounts most rationally trusted for their accuracy are plausible; consistent with what can confidently be known to be true; may even be supported by independent information; and the witness who provides that account will not have offered materially different versions on other occasions.

### ***The presence of conflicting evidence from the accused***

[29] The prosecution submitted during closing arguments that this is not a case where the accused has submitted evidence conflicting with the evidence of the prosecution because Warrant Officer Turner's evidence is that he does not remember C.H. Consequently, he has not provided conflicting evidence and the evidence of C.H. is not contradicted. With respect, this is a truncated view of Warrant Officer Turner's evidence.

[30] It is true that Warrant Officer Turner answered negatively when asked about whether he had any memory of the activities which C.H. testified about, occurring one evening and night in 2001. However, he was also asked, "If you had ever done anything sexual with her, would you have remembered her?" He answered, "I would want to believe I would, yes, most definitely." When it was suggested to him in cross-examination that he was not saying it could not have happened, Warrant Officer Turner interjected, stating that he had no reason to believe Mr Baker would lie but he insisted that he has no memory of the event in question, adding later that to his knowledge there



was never any occasion where he would have slept on the couch and offered the bed to a woman staying over in his room.

[31] In the context of his overall testimony, including the low number of sexual partners he has testified as ever having while in Winnipeg and since, I conclude that Warrant Officer Turner effectively denies that the events described by C.H. ever happened. This conclusion is consistent with other aspects of his testimony, including his mention in examination-in-chief to the effect that if he had performed oral sex on a woman, that specific sexual activity would have been accompanied by preliminary steps such as kissing, a statement incompatible with the narrative of C.H.

[32] This is therefore a case of two conflicting testimonial accounts between the prosecution and the accused's evidence where the credibility of those conflicting accounts are at issue. The Supreme Court of Canada has developed a framework to explain what "reasonable doubt" means in a context such as this one in the case of *R. v. W.(D.)*, [1991] 1 S.C.R. 742. That framework, to be applied by trial judges, was stated by Cory J. as follows:

First, if you believe the evidence of the accused, obviously you must acquit.

Second, if you do not believe the testimony of the accused but you are left in reasonable doubt by it, you must acquit.

Third, even if you are not left in doubt by the evidence of the accused, you must ask yourself whether, on the basis of the evidence which you do accept, you are convinced beyond a reasonable doubt by that evidence of the guilt of the accused.

[33] I realize that my conclusion as to the true nature of Warrant Officer Turner's testimony does not accord with the scenario offered by defence counsel in final submissions as to an entirely consensual sexual encounter. What I take from that submission is that counsel was attempting to suggest that, even if I were to believe the testimony of Mr Baker and consequently reject the conflicting testimony of Warrant Officer Turner, there could still be a reasonable doubt left as to whether what had occurred was a sexual assault, even if I did not believe Warrant Officer Turner's testimony and I was not left with a reasonable doubt by it, at stages one and two of the *W.(D.)* analysis.

[34] It is important to remember that the *W.(D.)* framework was developed to prevent trial judges from committing the error of resolving conflicting testimonial cases on the basis of whom they were going to believe: the complainant or the accused. Indeed, the apparent logic of choosing between conflicting versions breaks down when the essential nature of a criminal trial is remembered. A criminal trial, including before a service tribunal, is not an inquiry into what happened, or whose version is stronger. The ultimate function of the trial, to which the complainant is not a party, is to determine whether the prosecution can prove the specific allegations it has made beyond a reasonable doubt. The trial judge may well prefer a complainant's narrative to the one offered by an accused, but that does not resolve whether he or she has a reasonable doubt about the accused's guilt. This is because there are other options requiring

acquittal, including the legitimate possibility of the judge being unable to resolve the conflicting evidence and, accordingly, being left in reasonable doubt.

[35] This principle is particularly important to keep in mind in cases where the prosecution relies heavily on the testimony of the complainant, in this case C.H. The assessment I need to make is not and should not be seen as dismissal of her experience or of the emotional difficulties inflicted upon her.

### *The credibility and reliability of the witnesses*

#### **Mr Baker**

[36] I have decided to begin by expressing my view on the credibility of Mr Baker given that there is unanimity between the parties to the effect that he is an entirely credible witness. I agree with that assessment.

[37] I found that Mr Baker was obviously taking his task seriously, making honest efforts to recall events which occurred a long time ago. He had no reservations in acknowledging events and facts he could not remember while volunteering information explaining why a given detail would be memorable or not. It is acknowledged by all that Mr Baker is a disinterested witness. Despite his close relationship with Warrant Officer Turner in the past as they shared a house between November 2001 and 2004, he has had no in-person contact with him since 2004 and had minimal contact with C.H. back in 2001-2002, as she was simply part of the social “mix” when members of the battalion and friends met outside of work. Mr Baker’s evidence is also very neutral. Even if he testified for the prosecution, he brought forward many elements and facts that are favourable to the accused and which do not accord with the evidence of the other prosecution witness, C.H. There were no contradictions brought forward by either party as it pertains to previous statements given to investigators in 2019 and more recently, a few days before trial, although it is understood that Mr Baker’s memory of people and events improved considerably in the second interview. That is quite understandable given that he was called for a first interview out of the blue, attending without preparation. In any event, in the absence of challenge by the parties I am prepared to conclude that Mr Baker’s testimony is consistent, both internally and externally.

[38] As it pertains to discrepancies with the testimony of C.H., the prosecution invites me to conclude that at times Mr Baker’s memory may have failed him, especially as it pertains to the conversation or conversations involving C.H. when she would have expressed reticence at spending the night in Warrant Officer Turner’s room. The prosecution’s position is that the conversation may not have been memorable for a young Mr Baker and that he may have been confused as to what had been said exactly or whether it was said in his presence. Respectfully, I disagree.

[39] In my assessment, Mr Baker appeared to remember precisely the context in which he found himself at the time and I believe that if such reticence had been

expressed, he would have remembered and acted to alleviate any concerns. In reaching this conclusion, I dismiss any notion implied in C.H.'s testimony, to the effect that Mr Baker may have acted as Warrant Officer Turner's "wingman" in setting her up to come to the barracks after the evening at the bar to a non-existent after-party. The "wingman" theory was put to Mr Baker by the prosecution. His explanations were convincing in denying it, especially his explanation as to why he would not have momentarily left Warrant Officer Turner's room to gather people unsuccessfully. In fact, his explanations were so convincing that, in final submissions, the prosecution expressly abandoned the "wingman" theory, while sticking to its position that Mr Baker had not perceived C.H.'s uneasiness at staying in Warrant Officer Turner's room. Yet these events would have happened almost at the same time. Mr Baker's memory cannot, in my view, be reliable for one and unreliable for the other. I find he is entirely reliable on both.

[40] In sum, I find Mr Baker's testimony to be entirely credible and reliable. I will use it as an anchor for the findings I need to make in this case, including on the credibility and reliability of other witnesses.

### **The accused**

[41] The main feature of Warrant Officer Turner's testimony is the fact that he has no memory of ever meeting C.H. before 2017, while in Kingston. He denied any memory of the evening which would have commenced at the bar and led to C.H. coming back to the barracks and spending the night in his room until he would have driven her back the next morning. As stated earlier, Warrant Officer Turner's evidence is, in effect, that he denies that the events described by C.H. ever happened.

[42] I do not believe Warrant Officer Turner when he implies that his claimed absence of memory pertaining to C.H. means that he could not have been engaging in sexual activity with her. Otherwise, to quote his words, he would "want to believe I would remember, most definitely". I find that his choice of words and the manner in which he answered questions relating to his memory of events to be most unconvincing. When his assertion about having no memory of events is combined with his assertion that he has no memory of C.H. whatsoever before their meeting in 2017, his testimony becomes even more incredible. The testimony of Mr Baker, which I believe, makes the testimony of Warrant Officer Turner—to the effect that he does not remember C.H. from 2001—unbelievable. C.H. was hanging out with many people in the battalion, including a member of Warrant Officer Turner's platoon and several members living in barracks where Warrant Officer Turner resided. When asked about his knowledge of the Hooters restaurant where C.H. worked, Warrant Officer Turner was at first evasive, stating he vaguely remembered going there once. In cross-examination he was hesitant in acknowledging the distinguishing features of that establishment, namely primarily attractive young waitresses wearing sexy uniforms. It was clear to me at the time that Warrant Officer Turner was attempting to minimize his knowledge of Hooters in order not to concede that he should have known that C.H. was working there.

[43] Mr Baker's testimony was much more plausible. He said there were very few women in 2 PPCLI at the time of the offence, mentioning about four women in the unit and six working with the unit, an infantry battalion. Mr Baker's explanation as to why a good-looking, tall and skinny female reservist hanging around the battalion, both socially and professionally, would be noticeable makes ample sense to me. It is in line with testimony heard from C.H. It is entirely credible. In contrast, Warrant Officer Turner's testimony on this issue is unconvincing and filled with non-credible answers attempting to minimize the impact of the obvious. It is simply not credible.

[44] My doubts about the sincerity of the testimony of Warrant Officer Turner are solidified in relation to the testimony of Mr Baker, an entirely credible witness who stated unequivocally that he remembers C.H. generally and credibly explained why. He also remembers the evening and night where he had met her in a bar in company with Warrant Officer Turner, brought her back to the barracks in a taxi, socialized in Warrant Officer Turner's room with others until he was the last person present in that room and left at about 3 a.m. with the understanding that C.H. would be spending the night with Warrant Officer Turner in his room. Mr Baker also recalled a conversation the next day when Warrant Officer Turner described sexual activity which would have taken place between him and C.H. It is clear to me that these events happened and should have been memorable for Warrant Officer Turner. The fact that he denies any memory of them and implies that, as a result, they did not happen is entirely unbelievable and non-credible.

[45] This credibility finding is not incompatible with the possibility that Warrant Officer Turner's testimony stands for an absence of memory, hence not directly contradicting the prosecution's evidence on what would have occurred that evening. Let me be clear: any claim of absence of memory by Warrant Officer Turner is in my view not credible. Accepting as a starting point that the events happened, these events should have been memorable, especially in light of the evidence by Warrant Officer Turner himself and of witnesses who provided character evidence on his behalf to the effect that he had minimal sexual interaction with women, very few one-night stands as he was not prone to make the first move given that he was shy. If that is the case, he would remember a woman staying in his room for the night, even over twenty years later. The good character evidence I heard in this case was very limited and non-specific as it pertains to the reputation of Warrant Officer Turner for honesty and I am unable to give it any weight in the circumstances as it pertains to the question of the accused's credibility.

[46] In sum, I find that Warrant Officer Turner's testimony suffers significant credibility problems because he has offered intentionally, in whole or in part, false, exaggerated, or minimized information. I will not rely on his testimony unless, and to the extent that, it is supported by the testimony of other witnesses, notably Mr Baker.

### **The complainant**

[47] C.H. testified not without difficulty, which is entirely understandable given the delicate and highly personal nature of the events she had to describe for the Court, which, for the most part, occurred over twenty years ago. She came across as an honest person who has been deeply hurt in the past. I admire her courage and I believe her testimony as genuine. The prosecution qualified her testimony in these words, “She was shaking but unshaken,” an expression which was met with agreement from the defence. I do believe this is a fair assessment: C.H. did not retreat from the essence of her version of events, even when subjected to a rigorous cross-examination.

[48] That being said, my task is to assess her testimony objectively, not emotionally. I have to be aware that although C.H. left me with a positive impression, it remains that, by her own admission, her evidence has not always been consistent over time. It has also been contradicted by other independent evidence, notably from Mr Baker. As with any other witness, especially someone testifying about events which occurred over twenty years ago, it is possible that her testimony is inaccurate, whether as a result of credibility or reliability concerns which I must assess. I need to focus on the specific testimony offered by C.H., assessing its accuracy, whether in relation to other independent supporting or contradicting evidence or as it pertains to its consistency over time. I will also discuss the somewhat overlapping issue of the plausibility of her testimony and its balance in some aspects. This should allow me to conclude on how much or little I can rely on it to arrive at the findings I need to make in this case.

[49] One of the characteristics of the testimony of C.H. was that although she could have been excused for not remembering many details of events which occurred over twenty years ago, she chose to offer details of these events. It turns out that her testimony on some of these details was different from direct to cross-examination. It is the case for details such as when or on what occasion she had met Warrant Officer Turner for the first time, what bar they had gone to the night of the events and what she was wearing before going to sleep in Warrant Officer Turner’s room. On other details, her testimony in court differed from what she had previously said to police. For instance, for the first time in cross-examination, C.H. remembered that Warrant Officer Turner had a fish tank in his room, a detail she could not remember previously, when asked specifically by police. However, she apparently misidentified what Warrant Officer Turner had in a fish tank, stating it was a tarantula as opposed to fish, as evidenced by the testimonies of Mr Baker and Warrant Officer Turner. Other accuracy difficulties were revealed when she testified on the kind of car Warrant Officer Turner would have driven to take her back to her own car in the morning, testifying it was a black Jeep while in fact Warrant Officer Turner owned a very noticeable purple sport coupe with white wheels. It is understood these are all peripheral details as it pertains to the core of the alleged offence. However, they reveal weaknesses in memory which cannot be ignored when I have to assess the reliability of a witness’s testimony.

[50] C.H. also claimed that she experienced flashbacks and conceded in cross-examination that her testimony on certain details was based on flashbacks acting as memory triggers. I have not been offered any evidence which would allow me to assess the reliability of these memory triggers. As a judge, I am not permitted to conduct my

own research. What is not clear to me at this time is the extent to which the details related by C.H. are the result of flashbacks, with the exception of matters discussed specifically in cross-examination. Such is the case for the position of her underwear when assaulted, a detail insignificant in itself but on which defence made a point of outlining an inconsistency with a previous statement to police, prompting C.H. to affirm that her memory was more accurate at trial than at the time of that statement precisely because of the accuracy of her flashbacks which triggered her testimony. It is difficult for me not to be left in doubt whether some of the memories that have been demonstrated as inaccurate could be the result of flashbacks which may not be accurate or, as defence suggested in submissions, related to one or several previous traumatic events which C.H. alluded to in her testimony while answering general, unrelated questions from counsel. I will not enter into speculation in relation to previous events. In fairness, defence in closing submissions was in all likelihood attempting to demonstrate that I should be left with a reasonable doubt as to the reliability of the prosecution's evidence, a fair submission in the circumstances. As it pertains to the testimony of C.H., I am indeed left with some doubt about her reliability given discrepancies with the testimony of Mr Baker and doubts about the reliability of the flashbacks that have triggered some of her memories.

[51] This leads me to the plausibility analysis. The narrative offered by C.H. is not implausible when considered by itself. It is confirmed in part by the independent evidence of Mr Baker as it pertains to events that are alleged to form the *actus reus* of the sexual assault charge. What is not confirmed, and even contradicted by Mr Baker, are the events which took place before C.H. came to be alone with Warrant Officer Turner in his room.

[52] Although not implausible in itself, her version to the effect that there was no one present for drinks at her arrival in barracks and that she reluctantly agreed to stay in Warrant Officer Turner's room for the night only after voicing strong objections was denied very convincingly by Mr Baker, who was present according to C.H. I find that Mr Baker was not only a more independent witness but also offered a much more plausible account of the events. For instance, C.H. was unable to offer a plausible explanation of how she envisaged spending the night once she embarked in a taxi for the barracks after 2 a.m. and without cab fare to return. She was at a loss to explain what other option she had for spending the night, if and when she became uneasy with the idea of staying in Warrant Officer Turner's room. She said she reluctantly agreed despite a number of alternatives open to her, offering simultaneously that she did not want to obtain assistance from duty personnel as she did not want to get in trouble, nor disturb any of the twenty-five plus friends she had in barracks on base, including four or five in the vicinity of the room she was in and finally seemingly admitting the only logical explanation, which is that she did not really consider alternatives. Mr Baker put it eloquently in his testimony on this point: the situation was such that she was to stay in Warrant Officer Turner's room. That is the only plausible conclusion. There was nothing wrong with that: by her own testimony, she had stayed over at friends' rooms in the barracks on numerous occasions before. This in no way demonstrates any sort of licence for sexual engagement with Warrant Officer Turner.

[53] I have to conclude, therefore, that the testimony of C.H. suffers from plausibility issues, at least in part. These difficulties do not, however, make her testimony externally inconsistent in its entirety as it still fits with what is known about time, place and circumstances of the alleged offence, especially as it pertains to the specific sexual act alleged to have been committed by Warrant Officer Turner.

[54] That being said, I must ask myself whether the implausibility I observed indicates credibility or reliability concerns. Indeed, an honest witness may give what appears to be an implausible account because of a limited capacity to understand entirely what they have observed. Both contradiction by other evidence and external inconsistency are entirely consistent with reliability problems and may denote honest error.

[55] I believe it is the case here. The implausibility I find in C.H.'s testimony relates essentially to two aspects of what she recounted, indicating what appears to be her honestly held belief that the circumstances that she found herself in, in Warrant Officer Turner's bed, were the result of having fallen into "a trap" set by Warrant Officer Turner and Mr Baker acting in concert as "wingman". These two aspects are, of course, interrelated. I believe, based on the convincing explanations offered by Mr Baker, that both the "trap" and "wingman" theories are strictly that, theoretical. They are in my view largely the result of a misguided interpretation of events, rather than an outright fabrication.

[56] I find that it is entirely understandable that C.H., when reconstituting the events of August 2001 in her mind, after seeing Warrant Officer Turner again in 2017, amplified the nefarious aspects of his actions and those of any perceived associate. C.H.'s testimony was convincing to the effect that she suffered significant trauma as a result of her interaction with Warrant Officer Turner. At the same time, it is obvious from her testimony that C.H. feels guilty about having placed herself in a situation where she would end up in Warrant Officer Turner's bed, hence setting up conditions for the subsequent sexual assault to take place. This is not entirely rational: she is not responsible for anything which would have ensued. However, such feelings of guilt and consideration of what one could have done differently are not uncommon in victims of crime generally and in victims of sexual assault specifically. I believe that the nefarious aspects of the narrative relayed by C.H., both directly and indirectly by the language used to describe events, are not indicative of an intent to mislead. Looking back at events twenty years or so later, she did think she had been trapped by an invitation to attend a non-existent party at the barracks and honestly believes she objected to staying in Warrant Officer Turner's room. These aspects of her testimony, which are demonstrably unreliable, are not the product of a witness who is intentionally offering a false or exaggerated account.

[57] Although it may appear that as a result of her mistaken narrative C.H.'s testimony lacks balance, I would not agree with such characterization. I find that she was forthright yet firm, and answered questions honestly without any intent to answer

strategically. I did not detect any obvious exaggeration or minimization of evidence in her testimony. Inaccuracies are, in my view, the product of honest mistakes.

[58] However, I am ultimately left with significant concerns about the reliability of C.H.'s evidence. There are indications that her testimony may be inaccurate in some aspects. Yet I am not rejecting her evidence as a whole. The concerns with her evidence are the result of reliability issues and not intentional lies. She is mistaken in some of what she offered; hence I must approach her testimony cautiously and accept it when it is supported in substance by other reliable evidence, notably the testimony of Mr Baker.

**Has the prosecution proven its case beyond reasonable doubt?**

[59] As alluded to previously, I must be convinced that three elements have been proven beyond a reasonable doubt before I can find Warrant Officer Turner guilty of the charge laid against him. These elements are the identity of the offender, the sexual touching alleged to have been committed and the absence of consent on the part of C.H. to this touching.

[60] Referring back to the analytical framework developed in the case of *W.(D.)* and my analysis of the credibility of witnesses, my conclusion to the effect that I do not believe Warrant Officer Turner, especially when he states that he does not remember ever meeting C.H. in 2001, leads inescapably to a finding that his testimony cannot lead me to acquit at stage one of the *W.(D.)* analysis. I can also add that his testimony does not leave me with any reasonable doubt about his guilt at step two of the analysis. What is at issue here, as was implicitly recognized by counsel in their closing submissions, is whether, on the basis of the evidence which I accept, I am convinced beyond a reasonable doubt by that evidence of the guilt of Warrant Officer Turner.

[61] The answer to this question comes easily as it pertains to the first two elements I just alluded to, namely, the identity of the offender and the alleged sexual touching.

[62] As it pertains to identity, C.H. testified about the events of August or September 2001 in Winnipeg, explained why she remembers Warrant Officer Turner as the person whom she met in a bar and in whose room she spent the night, explained the circumstances of how she met him again in Kingston in 2017 and how she was able to recognize him then and in the courtroom at this trial. The substance of her testimony was confirmed by Mr Baker who remembers her, remembers the evening in question and, most importantly, remembers leaving Warrant Officer Turner's room as the party had died down and attendees had petered out, with the exception of Warrant Officer Turner and C.H. who, it was obvious to him by then, would be staying in Warrant Officer Turner's room for the night. The fact that C.H. indeed stayed over until she was driven back the next morning was confirmed by Warrant Officer Turner himself in a conversation with Mr Baker later the next day. On the basis of that evidence, I have no difficulty to conclude that the identity of Warrant Officer Turner as the offender has been proven beyond a reasonable doubt.



[63] As it pertains to the second element of the acts alleged, namely the touching of a sexual nature, C.H. testified that in the morning she was awakened by Warrant Officer Turner sneaking under the sheets of the bed she was sleeping in, touching and immobilizing her legs, removing her underwear, moving his head to her vaginal area, and performing cunnilingus for some time, until he stopped, as she said, probably because he realized that she was not “playing hard to get” and sensed that she was not into it. Her testimony was supported in substance by the reliable evidence of Mr Baker, who heard Warrant Officer Turner tell him the next day that he had awakened C.H. by going down on her, meaning by performing oral sex. On the basis of that evidence, I have no difficulty to conclude that touching of a sexual nature has been proven beyond a reasonable doubt.

[64] This leaves the issue of absence of consent. Consent is the voluntary agreement of C.H. to engage in the sexual activity which I found has occurred in this case, namely the touching of a sexual nature culminating in cunnilingus. Consent involves C.H.’s state of mind towards the sexual touching at the time it occurred. It is her voluntary agreement that Warrant Officer Turner did what he did in the way in which he did it and when he did it. Consequently, she is the only person who can provide direct evidence as to her state of mind towards the touching.

[65] In this case, there is evidence of absence of consent from C.H. in two distinct ways. First, she answered, “Never,” when she was asked by the prosecutor whether she consented to what Warrant Officer Turner did. The credibility of that assertion needs to be assessed in all the circumstances. Second, C.H. testified that she was asleep when awakened by Warrant Officer Turner sneaking under the sheets of the bed she was sleeping in, touching and immobilizing her legs, removing her underwear and moving his head to her vaginal area to perform cunnilingus. She further testified that she asked Warrant Officer Turner what he was doing and said, “No,” as she was resisting physically until a point when she just froze. Her evidence is therefore to the effect that she was asleep, hence unconscious, at the moment she was first touched in a series of events leading to cunnilingus after her underwear was removed. To the extent that this touching was a prelude to the cunnilingus that followed, it could be considered touching of a sexual nature in these circumstances. As no consent is obtained when a complainant is unconscious, the circumstances described by C.H. are entirely compatible with her assertion to the effect that she never consented.

[66] Further, as the testimony of C.H. is to the effect that she was awakened by Warrant Officer Turner sneaking under the sheets of the bed she was sleeping in and engaging in a course of events leading to cunnilingus, it is substantially supported by the testimony of Mr Baker who heard Warrant Officer Turner state that he woke C.H. up by going down on her.

[67] In final arguments, defence counsel submitted that Mr Baker did not testify about what he heard Warrant Officer Turner say verbatim over twenty years ago, adding that I should understand Mr Baker’s words about that conversation as meaning that

Warrant Officer Turner related to his friend that he and C.H. woke up and fooled around, meaning kissing, etc. and then engaged in consensual oral sex.

[68] In light of this argument, I have carefully reviewed the testimony of Mr Baker as it pertains to his following day conversation with Warrant Officer Turner.

[69] The subject came up on two occasions in the direct examination of Mr Baker. The first was a result of being asked generally about the sequence of events he had witnessed. His general comments led to a specific question by the assistant prosecutor about what Warrant Officer Turner said exactly. The second occasion was for the purpose of clarification towards the end of the examination-in-chief.

[70] This is what Mr Baker said about his next day conversation with Warrant Officer Turner, omitting repeated words and onomatopoeia:

“ . . . I was interested to know how that interaction had gone. And, that point he said it went well. You know, that they’d, that they’d fooled around in the morning and that he was. . . Long story short, looking forward to, to it going somewhere. To progressing somewhere. And that, and it, at that point, he had told me what actually had happened. And the reason why I remember this story is because I remember giving him a hard time about it because of the, the circumstances around it. Because it, it seemed ridiculous to me at the time.

Q. And just, please, don’t, don’t keep us in suspense. What did he tell you? A. Oh, that’s right. Okay. So he told me that. . . So, I don’t remember him saying what happened that night. But in the morning he said that he woke her up by going down on her. And then, and then he, then he drove her home. I’m like, well, and then what? What happened? And, so outside the context of this, of this hearing, it was funny to me that, that, that, that he went down on her and it wasn’t reciprocated or anything like that. And he had mentioned you know, like, it was more that, that he was basically, you know, he’s biding his time. That it was gonna happen. And he seemed very optimistic that, that things were going to progress between the two of them.”

[71] Later, upon finishing the examination-in-chief, the assistant prosecutor asked a clarification question which led to the following exchange:

“Q. Couple last questions, Mr Baker. This conversation the next day in the mess. You said that Vince had told you he, he woke her up by going down on her? A. Yeah.

Q. And what did you understand that to mean, going down on her?  
A. Like, oral sex.

Assistant prosecutor: Okay”

[72] The subject was covered in cross-examination as well, in the following exchange led by defence counsel:

“Q. And so you asked him . . . Did you initiate the conversation about [the complainant], or did he? A. I believe I did. ‘Cause I’m nosy. I just wanted to see how things went.

Q. Of course. And did he specifically say, “Well I went down on her”?  
A. Eventually in the conversation.

Q. Okay. So did he . . . And he gave you no indication that she wasn’t happy with what had happened, correct? A. Correct.”

[73] I conclude from these extracts that although Mr Baker initially described what had been communicated to him by Warrant Officer Turner about his private time with C.H. as “fooling around”, when he was asked specifically what Warrant Officer Turner said, the answer from Mr Baker was clear: “He said that he woke her up by going down on her.” Mr Baker also explained why this was memorable to him at the time, essentially because the oral sex was not reciprocated, Warrant Officer Turner relating having performed oral sex and then driving C.H. back. Mr Baker was balanced in his testimony, explaining that Warrant Officer Turner had signified to him that he hoped reciprocity would come over time and that there was no indication given to him that would allow concluding that what had occurred was not welcomed by C.H.

[74] Again, Mr Baker is viewed by both parties as a credible witness and I agree. His testimony goes beyond relating that he was told there was some fooling around. He said he was told about a particular sexual act being performed and the circumstances in which it was performed. What he was told is consistent with what C.H. said happened on that early morning. Mr Baker therefore significantly corroborates C.H.’s narrative as it pertains to being awakened by gestures leading to oral sex performed on her, acts that she did not reciprocate, before Warrant Officer Turner drove her back to her car. This striking similarity with what Mr Baker relayed and what C.H. related is highly probative.

[75] Although Mr Baker was not given any indication that the encounter between his friend Warrant Officer Turner and C.H. had ended badly, or that there may have been an absence of consent at any time, it remains that the statement that Mr Baker relayed, to the effect that Warrant Officer Turner said he woke C.H. up by going down on her, points to an absence of consent as one cannot consent to a sexual act initiated while asleep, hence unconscious. In any event, in the context of the overall encounter, what preceded it involving two people who barely knew each other and what followed, the end of sexual activity, C.H. being driven back and an end to the relations between the two, to the point where Warrant Officer Turner claims not remembering C.H., are all circumstances which support the assertion by C.H. to the effect that she did not consent

to the sexual touching that occurred. Her statement to the effect that she never consented, in light of the testimony of Mr Baker and the overall circumstances, is highly plausible. It is also highly credible. I do believe her when she says she did not consent.

[76] I wish to add that I still would have believed C.H.'s statement that she did not consent even if I had concluded she had tried to strengthen her case in stating erroneously that there was no after-party and that she had voiced her objection to staying in Warrant Officer Turner's room for the night. In rejecting her evidence on these points, I concluded that it was the result of a mistaken interpretation of events, rather than an outright fabrication, hence not the product of a witness who is intentionally offering a false or exaggerated account. Even if I were wrong and she had exaggerated that part of her testimony, the supporting evidence from Mr Baker as it pertains to his conversation with Warrant Officer Turner is so significant that I would still have been convinced beyond reasonable doubt of the absence of consent.

[77] I do acknowledge that the defence, through skillful cross-examination, was able to show hesitations from C.H. as it pertains to how she could have obtained help in order to avoid staying in Warrant Officer Turner's room, could have shouted to obtain help, was unsure of whether she had pushed or pulled to prevent Warrant Officer Turner's head from approaching her vagina, and whether her underwear and/or the shorts she may or may not have worn were pulled all the way down or only to her knees.

[78] These elements do not alter my conclusion on the absence of consent. Details as to the level and manner of resistance and the failure to adequately call for or obtain help are not determinative on the issue of consent. Just because C.H. could have resisted more effectively or put up a fight does not mean that she consented to what Warrant Officer Turner did. Also, C.H. was under no obligation to express her lack of consent. Hence, any alleged inadequacy of her objections or an absence of calls for help is not determinative. There is no such thing as implied consent to sexual activity in our law. Nevertheless, I find her testimony about her reaction to be plausible and the challenge to it by defence does not alter my conclusion on her credibility. My conclusion on the absence of consent is based on all of the circumstances surrounding the sexual touching which indicate that C.H. did not consent in her own mind.

[79] I also acknowledge that there was evidence received from Mr Baker to the effect that Warrant Officer Turner and C.H. got along very well and that he left them alone after the party had ended as he felt like a "third wheel". The defence's suggestion to the effect that Warrant Officer Turner and C.H. may have been getting along well, even "making out" at one point when they were left alone is not implausible. Regardless, this is not licence for Warrant Officer Turner to awaken C.H. by performing oral sex on her without consent.

[80] I finally want to acknowledge the evidence of general good character and specifically of the reputation of Warrant Officer Turner as it pertains to his relationship with women, to the effect that he is generally shy and respectful, amongst other

character traits. This evidence was heard from Warrant Officer Turner himself and from several witnesses who testified on his behalf including, to an extent, Mr Baker. Good character evidence is not a defence but it was introduced in this case to ground the inference suggested by the defence to the effect that Warrant Officer Turner's character, especially as it pertains to women, is incompatible with the character trait of a person who would commit the offence charged, in the circumstances alleged by the prosecution in its evidence. In response, the prosecution, quoting case law including the recent case of *R. v. Farmer*, 2021 NSCA 7, suggests that although character evidence is admissible, it has little probative value in cases involving sexual misconduct and should be given no weight in cases such as this.

[81] The evidence of Warrant Officer Turner's character does not cause me to doubt that he could have committed the acts which I found he has committed in this case. I believe that witnesses who took time to testify on behalf of Warrant Officer Turner did so honestly and with good intentions. Yet it is up to me to attach as much or little weight to that evidence. In this case, I believe that the acts described by C.H. in her testimony are not incompatible with the evidence I have heard about the character of Warrant Officer Turner. C.H. said that Warrant Officer Turner did not seem to take her objections seriously about his movements towards her vaginal area as he sneaked under the sheets from the foot of the bed. After she asked what he was doing, he told her to relax and joked that he was looking for the "little man in the canoe". She said that he stopped when he seemed to realize that she was not simply "playing hard to get" and was "not into it". He did not prevent her from getting up. She got dressed and asked for him to drive her back to her car, which he did, not before scanning the halls in the barracks to ensure there would be no one seeing her leaving his room.

[82] I do not want to minimize the actions of Warrant Officer Turner but what seems to have occurred is that he has grossly miscalculated how his bold actions would be received. It is a significant mistake, a mistake of law which offers him no defence, and a mistake which has had serious consequences on C.H. over many years. This gross miscalculation of what a person he barely knew would likely appreciate as a sexual act is not incompatible with the testimony I heard from Warrant Officer Turner and others as to his uneasiness with women. It is consistent with it. Once he realized this mistake, Warrant Officer Turner behaved in a fashion that is in line with the character evidence heard, both in scanning the barracks to ensure C.H. would not be seen and in driving her back where she wanted to go. I believe other men in similar situations may not have done what he did. In this context, there is nothing I have heard from the character witnesses which is incompatible with what I accept as being Warrant Officer Turner's actions in the circumstances.

[83] In short, I remain unshaken in my conclusion. The prosecution has proven beyond a reasonable doubt that C.H. did not consent to the sexual touching by Warrant Officer Turner, leading to cunnilingus.

### **Conclusion**

[84] I find that all elements of the offence of sexual assault in the charge have been proven beyond a reasonable doubt.

**FOR THESE REASONS, THE COURT:**

[85] **FINDS** the accused guilty of charge 1.

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**Counsel:**

The Director of Military Prosecutions as represented by Major A. Dhillon and Lieutenant(N) A. Keaveny

Captain D. Sommers, Defence Counsel Services, Counsel for the accused, Warrant Officer V.N.E. Turner