



COURT MARTIAL

Citation: *R. v. Radewych*, 2022 CM 2006

Date: 20220301

Docket: 202133

Standing Court Martial

Moss Park Armoury
Toronto, Ontario, Canada

Between:

Her Majesty the Queen

-and-

Master Corporal L.E. Radewych, Accused

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

REASONS FOR FINDING

(Orally)

The case

[1] The allegations before the Court relate to two different alleged incidents that occurred on 21 August 2020, during a Basic Military Qualification-Land (BMQ-L) course held in Trenton, Ontario.

[2] The relevant charges read as follows:

“FIRST CHARGE
NDA Section 129

CONDUCT TO THE PREJUDICE OF
GOOD ORDER AND DISCIPLINE

Particulars: In that she, on or about 21 August 2020, at Trenton, Ontario, did say to the students of the BMQ-L Course 0778, to wit: “There is no reason why

you should all be bitching about females being in your shack while changing your clothes. I have been on course where both males and females were naked in the same room and we did our work naked. Just because women enter the shacks while you are changing is not the issue. The issue is when you make it a problem. Stop being bitches about it and deal with them seeing you naked”, or words to that effect.

SECOND CHARGE
NDA Section 95

ILL-TREATED A PERSON WHO BY
REASON OF RANK WAS
SUBORDINATE TO HER

Particulars: In that she, on or about 21 August 2020, at Trenton, Ontario, did enter and remain present in the living quarters of the male students of the BMQ-L Course 778, without regard to their states of undress”.

Background facts

[3] The BMQ-L course set out in the particulars was described as basic infantry training for candidates enrolled in Army support trades. It is an entry level course that follows the Basic Military Qualification (BMQ) course and seeks to familiarize candidates with basic ground warfare skills such as weapons handling, basic offensive and defensive operations and other tactical warfare used by the Army. The candidates had completed their BMQ and were attending BMQ-L prior to advancing to their trade training as vehicle technicians at the Royal Canadian Electrical and Mechanical Engineering School (RCEME) in Borden, Ontario. The course was held in August 2020 after the lockdown due to COVID-19.

[4] Based on the consistency of the evidence before the Court, there were approximately forty candidates attending the BMQ-L being held that summer in Trenton, Ontario, which was not the normal location where this training would be held. However, additional training courses were held to ensure that candidates who had already completed their BMQ could complete the BMQ-L in the summer of 2020 prior to advancing to their trade training.

[5] The candidates on this BMQ-L were distributed over four different sections. There were originally only three females on the course, but by the time of the alleged incidents, there were only two remaining.

[6] The evidence suggested that Trenton did not offer appropriate unisex barracks, with separate washroom and shower facilities to permit the course to reside together. Consequently, it was decided that the male candidates be housed in a building that features two long open barracks connected in the centre by a common ablution and washroom area, forming an "H" (H-hut) originally designed for cadets. The female candidates were housed in a different nearby building

[7] The men's barracks, being the H-hut, had two different wings that were joined by a long common area that also functioned as a "hallway" as it was the only internal route for the candidates to get from one side of the building to the other. In each of the wings, the males resided in an open communal area in bunk beds appropriately distanced in compliance with the COVID restrictions.

[8] On one side of the H-hut barracks, the bunks for candidates from 1 and 2 Section were located and on the other side, candidates from 3 Section and 4 Section were housed. Private Sylvestre-Ravary was a member of 4 Section and the only female in that section. Exhibit 4 includes a diagram of the H-hut barracks that was drawn by a candidate witness and entered into evidence.

[9] In the wings, between each of the sections, there were common areas used for course activities which would include all the candidates and instructors. For example, the men's barracks were used for briefings and/or instructions on such topics as how to pack and fill their ruck sacs and what goes into what pockets, watching movies, camouflaging techniques, and on the day of the alleged offences, providing instruction on map lamination technique. As well, the evidence suggested that the other instructors entered regularly for inspections and the Marching Non-Commissioned Member (NCO) came into the men's barracks daily to either collect or distribute the weapon bolts for the weapons, which were controlled items.

[10] Since activities were regularly scheduled for the common areas, the evidence also suggested that candidates had been told by their course captain that they should not be naked in these common spaces. In short, the common hallway area intersected the common areas in the wings situated between the two sections and there were double fire doors before it merged into the common areas. Witnesses confirmed that these doors were always left open, permitting the space to function as a hallway.

[11] On one side of that hallway and communal area there were urinals and a set of six enclosed private toilet stalls. On the other side of the hallway or communal area, there were sinks lined up and in behind an inside wall, there were approximately five private shower stalls. Given the design of the H-hut and the existence of this common area, I can draw the inference that if privacy was needed in the washroom area, it would be appropriate to close these outer fire doors.

[12] Based on the totality of the evidence before the Court, it was clear that each individual shower stall had its own curtain for privacy. Further, there was a separate

changing area before entering the shower area itself. The entry into and out of the individual shower and changing area was private and a person exiting the shower would be further protected by a solid wall. In other words, based on the totality of the evidence, it was impossible for anyone walking through the hallway to see into a shower. It was likewise impossible for someone standing in one of the common areas or in the sections. One would have to enter a walled off area and open a curtain.

[13] The Court noted that Master Corporal Radewych was the lone female instructor and on the day of the alleged offences, she was the Marching NCO. She only held that duty once.

[14] Based on all of the evidence before the Court, there appear to be no rule or order that excluded women candidates of the BLQ-L from entering and being present in the male barracks. Importantly, the scheduling of course activities in the common areas of the male barracks reinforces the fact that women were not to be excluded.

[15] It was in the men's' barracks where candidates cleaned their weapons and interacted in their down time. Reflecting back on my own military experience on such entry level courses, it is during this free time that the majority of the section bonding and morale building occurs as candidates collaboratively work together preparing for their upcoming day or evaluations. This would not only be expected, but encouraged by military leadership and considered the norm. Further, this was an entry level military course where attendance in the barracks was a necessary part of the curriculum. It is also a well-accepted principle of military service that you do not leave a section member alone or effectively ostracized from these types of activities.

[16] It is important to note that Private Sylvestre-Ravary was one of two females on a course with thirty-eight men. She was the lone francophone female and part of 4 Section, a francophone section. As a member of 4 Section, she had every right to be present in the barracks in order to mingle with her section peers. The fact that women slept in a different accommodation building was not to isolate or alienate these female candidates. As mentioned earlier, the female candidates were placed in their own accommodations only because there were no unisex bathroom facilities in the male barracks. In his testimony, Corporal Ciafaloni, a course instructor, made it clear that they viewed the male barracks very differently than the female barracks because other than for inspections, there was no reason for anyone to enter the female barracks as there were no joint course activities ever held there. Course activities were centered in the men's barracks, which housed ninety-five per cent of the candidates.

[17] Private Sylvestre-Ravary confirmed that she regularly joined her section when they cleaned their weapons or in order to collect section information with respect to their upcoming training, etc. She explained how she also assisted her fellow section members in understanding course material and often helped them complete their homework. There was no evidence before this Court that the course candidates from her section, being 4 Section, were ever opposed her presence. Private Sylvestre-Ravary testified that she would always announce herself or knock on the door before she entered. She explained

that on most evenings, the doors were wide open because of the heat, but she would still announce herself to ensure that everyone was decent.

The Thursday evening incident

[18] On the Thursday evening before the alleged incidents, which I will refer to as the Thursday evening incident, Private Sylvestre-Ravary testified that she knocked on the door of 4 Section and entered the barracks, joining her fellow 4 Section members. Nobody testified to witnessing her enter improperly. There is also no evidence before the Court that anybody in 4 Section was opposed to her presence that evening. Private Yang, who was a witness from her section and whose bed was located right beside the door, testified for the prosecution. He was not asked whether Private Sylvestre-Ravary entered their section that Thursday evening or at any time in disregard to their privacy, nor did he volunteer anything that suggested that she ever entered the male barracks in a manner that was disrespectful to their privacy.

[19] The consistency of the evidence suggests that on the Thursday evening, while they were on free time, a very heated argument broke out between Private Sylvestre-Ravary and Private Mariadas. He testified that he does not know what the argument was about, but he heard lots about it the next morning. I permitted some hearsay on this to help provide the Court with context as to how the story evolved from the original facts. An understanding of what unfolded in that argument, and why, is important, because it explains the narrative that followed and demonstrates just how quickly misinformation evolves. The Thursday evening incident set the context of the events that unfolded the next day. Corporal Crump was the course senior on Thursday evening when the argument broke out in the barracks.

[20] On that Thursday evening, Master Corporal Francoeur was the Marching NCO. As mentioned previously, Corporal Crump who was the course senior that evening advised Master Corporal Francoeur about the argument that had taken place. Master Corporal Radewych testified that when she arrived that morning at 0630 hours, Master Corporal Francoeur advised her about the argument that had occurred the evening before between Privates Mariadas and Sylvestre-Ravary.

[21] The consistency of the evidence suggested that the course daily routine began with a wake up, physical training (PT), inspection, then breakfast, courses, lunch, courses, then potential remedial training and then dismissal.

[22] Master Corporal Radewych told the Court that since she was the Marching NCO, she brought the bolt box with the weapon bolts over to the male barracks and dropped it off at the regular time. She said she made a point of getting her duties of Marching NCO completed before she inquired into what had occurred the previous evening. She stayed with the bolt box so the candidates could collect their bolts in order to prepare for their inspection. She explained that she knocked on the 4 Section door first and she remembers hearing “decent” and she entered yelling ”staff”, the term vocally used by instructors when they enter the building. She explained that after she entered, she walked to the

common area between 3 Section and 4 Section, where she yelled “bolts”, where she distributed the bolts. She stayed with the bolt box until all the bolts were collected.

[23] Then-Master Corporal Ciafaloni confirmed for the Court that when he went in to drop off or collect the bolts, he simply entered, without knocking, and he would similarly drop the box of bolts off in the same common area between 3 and 4 Section. The students knew the routine and should have expected this to happen. Master Corporal Radewych told the Court that she was in the male barracks no longer than ten minutes and no less than five, as she knew that the students had to prepare for their inspection.

[24] The majority of the evidence was that these weapons bolts were regularly collected and distributed in the common area between 3 and 4 Section. Only two candidates, being Privates Mariadas and Monk, testified that they were distributed between 1 and 2 Section and Private Monk even suggested that often the box was left outside, which does not make sense given that the bolts were controlled items requiring security and close supervision at all times.

[25] Master Corporal Radewych stated that after distributing the bolts, she then returned the empty bolt box to their office and went to see Private Sylvestre-Ravary to get her perspective on what had happened the evening prior. She explained she was concerned because she understood from Master Corporal Francoeur that Private Sylvestre-Ravary had been verbally berated and threatened with physical assault. Master Corporal Radewych testified that Private Sylvestre-Ravary confirmed that Private Mariadas had been abusive to her and that he threatened to take her outside for a fight, calling her a “fucking dumbass”. She explained that Private Sylvestre-Ravary did not want to put in a complaint as she wanted it dealt with at the lowest level.

[26] Master Corporal Radewych told the Court that she then went to the male barracks and called for Corporal Crump to come outside to speak with her. She later called her own section candidates outside to speak with them, as the alleged incident had occurred in their area. She told the Court that she called them all outside because she knew that the candidates would be showering and getting ready for their inspection. Her evidence on this fact is supported by the testimony of Corporal Crump and Privates Yang and Sylvestre-Ravary, who were members of 4 Section.

[27] There was no evidence before the Court to explain what was discussed during that meeting with 4 Section outside. However, Master Corporal Radewych did tell the Court that one of the candidates in her section advised her that he understood that the reason some of the male candidates were concerned with females in their barracks was based on a fear that if one of them was walking around in their underwear, the female candidate might pursue a sexual misconduct complaint against them. Master Corporal Radewych was clear in her testimony that the issue as described to her by her section and Private Sylvestre-Ravary was not to the effect that the female candidates were violating the privacy of the males, but more that they objected to their presence and that a male had violently threatened one of the female candidates.

[28] Master Corporal Radewych testified that she then spoke with the other NCOs being then-Master Corporal Ciafaloni and Master Corporal Black about how to address the problem. She testified that collectively, as members in the infantry, they saw it as a learning opportunity. Since she was the only female instructor and the Marching NCO that day, it was decided between the instructors that she would address the platoon. While the platoon was formed up waiting to enter the canteen, Master Corporal Radewych addressed them. It is what was said during this address that is the subject of the allegations of the first charge.

Second charge

[29] The evidence was unrefuted that Master Corporal Radewych was only the Marching NCO once, a Duty that she fulfilled on 21 August 2020. It was also unrefuted that part of the duties of the Marching NCO involved the dropping off and picking up of the weapons bolts in the H-hut male accommodations and assisting the candidates with any required remedial training. What happened when Master Corporal Radewych entered the male barracks on the evening 21 August 2020 is the subject of the allegations on the second charge.

[30] The particulars of the second charge allege that Master Corporal Radewych did enter and remain present in the living quarters of the male students of the BMQ-L Course 778, without regard to their states of undress. The evidence of the candidates with respect to this charge was so inconsistent and problematic, I had to ask the prosecution to narrow down what exactly their particulars referred to. In her submissions, the prosecution stated that based on the consistency of their evidence, it was Master Corporal Radewych's entry into the barracks in the evening that was the focus of the charge. This made sense, as all but one of the prosecution's witnesses testified that the incident occurred in the evening.

[31] Although there were several candidates who testified in court that they witnessed Master Corporal Radewych enter the barracks and remain there when several were in a state of undress, under cross-examination, it became evident that they had not observed what they claimed, and they were in fact simply repeating rumours or, to put it kindly, hearsay. As their testimony progressed, I found that they were neither in a position where they could accurately observe her enter, nor did they. Further, although several candidates testified to others being in various states of undress, none of the candidates, other than one who claimed to be shirtless, testified that they were indecent. This seriously affected my assessment of the credibility of several witnesses as their reliance on hearsay permeated all aspects of their testimony and consequently, I found that their evidence was not reliable.

[32] There was only one witness, being Private Yang, who stated that when Master Corporal Radewych knocked on the door, he told her he was not decent but she entered despite him saying that he was shirtless. His bed was located within a metre of the 4 Section door. However, he was adamant that the incident occurred in the morning and not in the evening.

Presumption of innocence

[33] That presumption of innocence remains throughout the Court martial until such time as the prosecution has, on the evidence put before the Court, satisfied the Court beyond a reasonable doubt that the accused is guilty of the charges before it.

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

A reasonable doubt is not an imaginary or frivolous doubt. It must not be based upon sympathy or prejudice. Rather, it is based on reason and common sense. It is logically derived from the evidence or absence of evidence.

[35] In essence, this means that even if I believe that Master Corporal Radewych is probably guilty or likely guilty, that is not sufficient. If the prosecution fails to satisfy me of her guilt beyond a reasonable doubt, I must give her the benefit of the doubt and acquit her.

[36] On the other hand, it is virtually impossible to prove anything to an absolute certainty and the prosecution is not required to do so. Such a standard of proof is impossibly high. Therefore, in order to find Master Corporal Radewych guilty of the charges before the Court, the onus is on the prosecution to prove something less than an absolute certainty, but more than probable guilt for the charges set out in the charge sheet (see *R. v. Starr*, 2000 SCC 40, [2000] 2 S.C.R. 144, paragraph 242).

The law

Section 129 of the National Defence Act (NDA)– conduct to the prejudice of good order and discipline

[37] With respect to the first charge, the prosecution must prove beyond a reasonable doubt the conduct alleged in the particulars, as well as proving that the proven conduct, is prejudicial to good order and discipline.

[38] In order to prove that the alleged conduct is prejudicial to good order and discipline, there are a number of paths for the prosecution to do so:

- (a) firstly, the prosecution could prove the accused violated an established policy or order that the accused had actual or deemed knowledge of;
- (b) secondly, the prosecution can prove the offence was committed if there is actual or direct evidence of prejudice to good order and discipline based on objective criteria of prejudice or likelihood of prejudice; or

- (c) thirdly, absent evidence of actual prejudice, the prosecution can prove prejudice by inference. As part of an inferential reasoning process, a military judge must, based on his or her experience and general service knowledge, ask whether the proven conduct in this case can be considered conduct to the prejudice of good order and discipline. The military judge using his or her knowledge and experience must ask whether, on the totality of the evidence, in the circumstances of the case, prejudice to good order and discipline could be inferred from the facts as proven. This reasoning process would take into account all the contextual circumstances of the case.

[39] The Court Martial Appeal Court (CMAC), in *R. v. Latouche*, [2000] 6 CMAR 173, held that section 129 does not require the prosecution to prove that Master Corporal Radewych had any intention to adopt conduct that was prejudicial to good order and discipline. Rather, it is the actual particularized conduct (or *actus reus*) that is relevant in determining the *mens rea* required for a finding of guilt.

Section 95 of the NDA – ill-treated a person who by reason of rank was subordinate to her

[40] Section 95 of the *NDA* provides:

Abuse of subordinates

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

[41] Based on the evidence, I find that in addition to identity, the date and place of the offence, and the fact that by reason of rank, the alleged complainants were subordinate to the accused were all proven by the prosecution. The remaining elements that the prosecution had to prove beyond a reasonable doubt were:

- (a) The particulars. With respect to the second charge, the prosecution is obliged to prove beyond a reasonable doubt that Master Corporal Radewych engaged in the conduct set out in the particulars;
- (b) Ill-treatment. Once the particularized acts are proven beyond a reasonable doubt, then an assessment must be made as to whether, in the context in which the incident occurred, the act amounted to ill-treatment. Context is important in making a determination of whether the alleged conduct constitutes ill-treatment. The determination of whether something amounts to ill-treatment is determined objectively by assessing the above definitions with regard to all the circumstances.
- (c) The word “ill-treatment” is not defined in the *NDA*; however, on a strict reading of the section, there is no limitation imposed as to the nature or

manner of ill-treatment envisaged. The words in the section are “strike or otherwise ill-treat” and includes treating badly or maltreating a subordinate in a different manner than by striking. It is not limited to physical violence or physical harm or injuries. It could be psychological, emotional or any harm or injuries of that nature.

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

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

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

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

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

- (e) Blameworthy state of mind. Once the particulars are proven and it has been determined that the conduct rises to the level of ill-treatment, the Court must then assess whether the accused had the requisite mental intent.

Analysis

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

Credibility of the witnesses

[43] Given that the event in question took place about one and a half years ago, it is not unusual that the evidence presented before the Court is contradictory. In this case, the witnesses have different recollections of the events that occurred and I needed to assess the evidence from all the witnesses in order to make a determination of what evidence as a whole was credible and reliable and should be believed.

[44] A court may accept or reject some, none or all of the evidence of any witness who testifies in the proceedings.

[45] Many factors influence the Court's assessment of the credibility of a witness. For example, a court will assess a witness's opportunity to observe events, as well as their reasons to remember. Was there something specific that helped the witness remember the details of the event that he or she described? Were the events noteworthy, unusual and striking, or relatively unimportant and, therefore, understandably more difficult to recollect? There are other factors that come into play as well. For example, does a witness have an interest in the outcome of the trial; that is, a reason to favour the prosecution or the defence, or is the witness impartial?

[46] The witnesses for the prosecution admitted to working together to draft a letter of complaint almost immediately after the alleged incident and were interviewed by the Military Police (MP) on or about 3 September 2020, which would have been within two weeks of the alleged incidents and their memories would have been fresh. They were all given an opportunity to read their police statements prior to testifying. While on the stand, they were also given an opportunity to have their memories refreshed with their statements, which occurred many times.

[47] Despite not having been requested by the military police to provide statements, counsel for Master Corporal Radewych argued that the defence witnesses still have their own independent reasons to remember. For example, the two instructors, Master Corporal Black and then-Master Corporal Ciafaloni both have an independent recollection of the events that unfolded that day because they specifically recalled there being a change parade and they only had one such parade during that course. Similarly, Corporal Crump was the Course Senior on that particular day and had specific recollection of the issues he had to deal with and the activities he had to coordinate, which included forming up the platoon for the address by Master Corporal Radewych where the allegations to the first charge relate. Similarly, Private Sylvestre-Ravary specifically recalls the incident where Private Mariadas approached her yelling at her and she recalls specifically speaking to Master Corporal Radewych the next morning. Master Corporal Radewych was removed from the course almost immediately and she was advised by her course officer to record what happened and make lots of notes while things were still fresh in her mind.

Assessing conflicting versions

[48] Generally, the outcome of a trial where there are diametrically opposed positions will depend on the reliability and credibility of the evidence given by the witnesses. The appropriate approach to assessing the standard of proof is to weigh all the evidence and not assess individual items of evidence separately.

[49] A court martial is not an inquiry to determine what happened. We may never know. It serves only to determine whether the prosecution has proven the elements of the offence beyond a reasonable doubt.

[50] In assessing a case with competing versions of what happened, where credibility is a central issue and the accused has testified, the Supreme Court of Canada (SCC) has

provided guidance to trial judges in *R. v. W.(D.)*, [1991] 1 S.C.R. 742 commonly referred to as the *W.(D.)* test. It aims to prevent a conviction where reasonable doubt exists.

[51] Since the *W.(D.)* test was first enunciated by the SCC, the test has been found to apply not just to the testimony of an accused, but it also applies to any defence witnesses (see *R. v. Haroun*, [1997] 1 S.C.R. 593, Sopinka J., writing in dissent) as well as in any circumstance where a conflicting exculpatory account emerges through the Crown witnesses or is found in any other evidence (see *R. v. B.D.*, 2011 ONCA 51, Blair J.A., at paragraph 114).

[52] To assist judges in identifying reasonable doubt in the context of conflicting testimonies, the SCC recommends that a trial judge consider the exculpatory evidence of the accused in three steps. The three steps are:

- (a) first, if I believe the testimony of Master Corporal Radewych, obviously, I must acquit;
- (b) second, if I do not believe the testimony of Master Corporal Radewych but I am left in reasonable doubt by it, I must acquit; and
- (c) third, even if I am not left in doubt by the exculpatory account advanced by the defence, I must ask myself whether, on the basis of the evidence which I do accept, I am convinced beyond a reasonable doubt by that evidence of the guilt of the accused.

[53] Further, in *Regina v. C.W.H.*, 7 WAC 205, [1991] BCWLD 2371, 68 CCC (3d) 146, 3 BCAC 205, 14 WCB (2d) 89, [1991] BCJ No 2753 (QL). Wood J.A. suggested an addition to the second part of the three-part test set out in *R. v. W.(D.)*. At paragraph 50 of *C.W.H.*, his Lordship said: “If, after a careful consideration of all of the evidence, you are unable to decide whom to believe, you must acquit.”

[54] Of course, the above tests on their own are oversimplifications of the analysis that a trial judge must undertake. And quite often the judge has to apply the *W.(D.)* test at various stages, with respect to the critical elements or vital points of the decision-making process such as the elements of the offence or the “elements of a defence”.

[55] Before I analyze the credibility of the witnesses, it is important that I address concerns that flow from the joint letter of complaint.

Joint letter of complaint

[56] In his testimony, Private Mariadas described how he led the drafting of a letter of complaint and engaged the involvement of his fellow candidates. He stated: “I drafted up that entire letter and I went up to everybody and said hey do you want to sign this, you can read it, and it was within nine hours of everybody coming by and reading it, seeing what they want, seeing what they wanted to happen or not happen. We had the draft done

and it was like near midnight by the time I was finished with everybody having their opinions put in and seeing what how they felt, and then sent it to Private Dumais (“phonetic”) at the RCEME school because it was zero dark thirty.”

[57] After hearing all the evidence, it became apparent that some of the candidates signing the letter of complaint adopted what was within it despite not having witnessed the allegations within it. As an example, Private Monk told the Court that the letter of complaint began with a description of the heated argument that occurred on the Thursday evening between Privates Mariadas and Sylvestre-Ravary. However, many of the prosecution’s witnesses who testified as having signed this letter of complaint also told the Court that they did not witness the argument between Privates Mariadas and Sylvestre-Ravary, nor did they witness Master Corporal Radewych allegedly enter the male barracks in disregard to their states of undress.

[58] It is quite perplexing how candidates would be willing to endorse a letter of complaint regarding alleged conduct that they did not actually witness, but this fact provided a very strong warning for the Court to be particularly attentive to their testimony.

[59] The candidates described why they sent their letter of complaint outside of their own chain of command to be resolved. Several witnesses testified that based on what Private Mariadas had told them, that their course staff could not be trusted. Private Fahselt believed that they had gotten ignored or said they did not want to deal with the situation. Private Yang testified that the general consensus was that despite the fact that someone spoke to their staff, there was nothing being done, which is why they reached out to Sergeant Poulin in Borden. Private Monk told the Court that they sent it to Borden because they wanted to ensure that it was passed outside of their chain of command.

[60] However, Private Mariadas testified a Sergeant on the course told him that they would deal with the complaint, and also stated that if Master Corporal Radewych “did those things, she would be punished.” Yet, they still intentionally sent the letter outside of their chain of command to the RCEME School. Private Mariadas also told the Court that he told the students that he expected the letter of complaint to go higher than the colonel level and the purpose of the letter was to get rid of Master Corporal Radewych.

[61] The allegations which make up the charges before the Court, unfolded on a Friday before a weekend. Private Monk told the Court that they wrote the letter of complaint either the evening of the incident or the next evening. Based on the evidence, it was clear that the letter was sent within a day or two of the alleged incidents. This suggests that the candidates did not even give their own chain of command an opportunity to review the complaint, resolve the conflict or address their concerns. It left me wondering – why would they do this? This alerted me to the potential danger of collusion or other motivations.

[62] There is no absolute bar that prohibits the admission of evidence when the Court learns of collaboration or possible collusion between witnesses (*R. v. Illes*, 2013 BCCA

169.). However, the Court exercised increased caution in measuring the individual testimony of those witnesses who told the Court that they helped with/or signed this letter of complaint. Privates Mariadas, Monk, Yang, Fahselt and Corporal Pinsent testified to having participated in the drafting and signing of the letter.

[63] Based on the evidence, I did not assume that the collaboration between the candidates in writing this combined letter of complaint was to the effect that they concocted evidence; however, I could not rule this out as a possibility either. I was mostly alert to whether their collaborative effort in writing this combined letter of complaint had an effect, whether consciously or unconsciously, of colouring and tailoring their individual description of the two incidents.

[64] I did find that their post-incident discussion of the events distorted their perception and blurred their individual recall of what really happened. Under cross-examination, on several occasions, despite trying to be honest, it became apparent that many of the witnesses did not actually witness the events they claimed to have seen, but rather, they were recounting anecdotes based on what others had told them. This is at best hearsay and at its worse dangerous.

[65] In light of these facts, in weighing the evidence, I was particularly mindful of whether the evidence being provided by these witnesses was based on their individual observations. When I examined much of the individual witness testimony against the evidence as a whole that I found to be reliable, I found that there were grave concerns, particularly as exhibited by those witnesses who adamantly asserted something happened, while also admitting that they did not actually witness the alleged conduct.

[66] I also noted that one witness, Private Monk who co-authored the complaint and provided some of the most damning evidence against Master Corporal Radewych, was not able to identify her while she was sitting beside her defence counsel, in uniform, wearing her jump wings, master corporal rank and a nametag. Further, a second witness, being Private Yang, only recognized her after she signalled herself from the defence table.

[67] In short, I found that some of the evidence from the candidates who signed this letter could be relied upon, with adjusted weight, while other parts of their testimony caused the Court such serious concern it had to be completely disregarded. I will explain my reasons below.

Private Mariadas

The Thursday evening incident

[68] Private Mariadas' testimony of the Thursday evening incident caused the Court the greatest concern and was problematic on multiple levels.

[69] Although the Thursday evening incident is not included in the charges before the Court, I find it important to begin with the evidence at this point for a number of reasons. Firstly, the letter of complaint against Master Corporal Radewych began by referencing this incident and based on the testimony of the witnesses, what happened in this incident was relied upon by other witnesses in the forming of their beliefs. Additionally, the Thursday evening incident provides important context and provided me insight into whether the candidates might have had a motive to fabricate.

[70] As the charges specifically rely on the context of the situation, I had to do a limited assessment of the veracity of the supposed Thursday evening incident in order to determine whether certain witnesses were credible. I am aware that the prosecution was not under any evidentiary requirement to prove anything regarding the Thursday evening incident, but my analysis was simply conducted to understand why Master Corporal Radewych addressed the platoon the way she did on Friday morning. Private Mariadas described the Thursday incident as follows:

“PROSECUTOR: So just take me through what precipitated this argument.

WITNESS: We were cleaning guns, me, Monk, Mills, those are really the only ones I remember, but we were cleaning our weapons and we had our music playing pretty loudly. I don't remember what started the conversation between us and the French but the Francos were also cleaning their guns across the room from us. I'm assuming they told us to turn our music down but we responded back with okay we'll turn it down. Unbeknownst to me, another one of the guys is actually friends with one of the Francos on the course, so they started bickering back and forth. I didn't know that, and I kind of went in aggravated because we did have problems before that we never worked out, so I called them out and said you cannot talk to them like that, what's going on?

Then he stated to me in a heated discussion between both of us that three section versus four section, we were just kind of yelling back and forth. Sylvestre brought up my concussion, saying that I was being crazy because of that. We got all pissed off on three section side. Four section side, I believe the Francos, were actually saying that that was wrong on her part, but we still continued arguing anyways. I think the argument ended when I got up saying if you're really going to bring that up let's bring up the fact that you're walking in on us indecent and you're just playing around with us to just get us charged and you are playing the whole we're innocent we don't know what we're doing.”

[My emphasis.]

[71] Firstly, in his testimony, Private Mariadas admits that he went to 4 Section aggravated, to engage the “Francos” in a dispute that was about 3 Section versus 4 Section. However, he then states that the argument between himself and Private Sylvestre-Ravary broke out when she told him he was acting crazy due to his concussion.

He then proceeded to tell the Court that he told her that the female soldiers were “playing around with them” in an effort to get them charged. This comment expressed in court is concerning and provided important insight.

[72] Throughout the entire court martial, there was absolutely no evidence to suggest that any one of the two female soldiers ever entered the barracks for the purpose of entrapping the men, enticing them or trying to get the guys charged, which was what he asserted. However, I noted that this fear of the female candidates became a theme reflected in the testimony of the other candidates, particularly those in 3 Section. In short, Private Mariadas’ comment suggested that the mere presence of the female candidates compromises the men. As an example, when he was asked to describe the situation that Master Corporal Radewych was trying to address, his response implied that the women were coming into their shacks because they wanted to see them naked. The exchange went as follows:

“PROSECUTOR: I’m sorry what situation, not dealing with what?”

WITNESS: With the fact that we had women in our shacks that wanted to see us naked.”

[73] In describing how the conflict erupted between himself and Private Sylvestre-Ravary, Private Mariadas told the Court that it began when Private Sylvestre-Ravary suggested that his concussion was making him crazy. In the court martial, it was noted that despite Private Mariadas authoring a formal letter of complaint that began with his description of the Thursday evening incident, the Court learned that this detail of Private Mariadas suffering from a concussion was not included, let alone described as a trigger for the argument that occurred between himself and Private Sylvestre-Ravary. The Court also learned that this detail was also absent in his earlier MP statement. As a result, defence counsel raised concern that this new rationale being provided by Private Mariadas was being raised for the first time ever in court. The most bizarre part of Private Mariadas’ explanation is that Private Sylvestre-Ravary was very clear in her testimony that no discussion of his concussion happened between them on the Thursday evening.

[74] When Private Mariadas was asked to describe why there was a concern for their privacy, he stated the following:

“WITNESS: So for the past two to three weeks, when we were waking up in the morning at like five, five-ten, she would walk in while we were either changing. Some guys would be showering, and she would just walk in no care in the world and we were just like, if this was reversed we would be getting the shit kicked out of us, pardon my language. But that would be the truth of it, so we were like please don’t because no matter how we want to approach it, it’s spun against us that we’re indecent in front of you. You may be one person one female coming into our shack but we know for a fact that if anybody looks at this another way we’re all getting our heads cut off

and we're just trying to get out of bed, so that was how this argument really kind of like, fueled up."

[75] I found Private Mariadas's purported rationale contradictory with his own earlier evidence that he went over to 4 Section to confront the "francos" in what he described as a 3 versus 4 Section dispute. His own evidence suggests he did not go over to 4 Section aggravated because Private Sylvestre-Ravary had entered their barracks.

[76] With respect to his assertion that Private Sylvestre-Ravary was walking into their barracks at 0500 hours, it does not make sense and is also inconsistent with his evidence. He earlier testified that reveille was at 0500 hours, and then they would do PT. The consistency of the evidence was that the candidates would do PT at that time, so if he was suggesting that Private Sylvestre-Ravary entered their barracks to join her section for the morning PT session, there was a purpose for her entry and since it was for PT, then nobody would be showering.

[77] More importantly, if they were not doing PT and were in fact showering, there is absolutely no way that Private Sylvestre-Ravary, who would have been in 4 Section, could see any of the candidates while they were in the showers; 4 Section was located at the top right-hand side of the H-hut. The evidence suggests that it was impossible for anyone standing in 4 Section to see directly into the showering area. Private Mariadas's testimony also suggested that the men's showers provided a private area to change in:

"PROSECUTOR: Was there a policy on where candidates were supposed to change?"

WITNESS: Pretty sure if you are in the showers you changed in the showers, by your bunk, by your bed, you just maintained respect and dignity, you just changed when you're changing."

[My emphasis.]

[78] More importantly, there was absolutely no evidence before the Court to support Private Mariadas's assertion that Private Sylvestre-Ravary ever compromised the privacy of the men coming in and out of the showers. His assertion regarding this simply defies his own evidence that if you are in the showers, you would normally change there. The showers were private and not visible even from the hallway.

[79] Of all the witnesses that came before the Court, Private Monk was the only candidate who testified to having witnessed the argument between Private Mariadas and Private Sylvestre-Ravary on the Thursday evening. Before this Court, he described that on that night they were all on their free time. Private Monk testified that a couple of the guys were getting out of the shower indecent, and Private Sylvestre-Ravary had someone she was dating at the time in 4 Section, so she would walk through the H-hut, no knocking or announcing herself and she just walked through the shacks to hang with her significant other. He described how Private Mariadas "went up to her and went, hey, there are people changing, you cannot do that. You have to address yourself and be decent."

Private Monk explained that from there, a verbal disagreement took place between Privates Mariadas and Sylvestre-Ravary and he confirmed to the prosecution, he personally saw this all unfold.

[80] In comparing Private Monk's version of what transpired during the Thursday evening incident to the evidence of Private Mariadas, it is clear they cannot both be telling the truth.

[81] I then turned to the evidence of Private Sylvestre-Ravary who made it clear that the fact that she had entered the men's barracks while guys were changing was simply not true. She stated that on that Thursday evening, she knocked on the door to join her section. They told her to come in. Later, she explained that without her doing or saying anything, Private Mariadas came up to her and swore at her calling her a "fucking dumbass" and she told the Court that at no time did he ever raise any privacy concerns with her.

[82] Interestingly, despite his testimony in direct, under cross-examination Private Mariadas confirmed that he did approach Private Sylvestre-Ravary in an aggressive and heated manner threatening her with violence. He admitted, "I mean I was aggressive, I'm mean, not going to deny that, I was more than willing to fight anybody at that point but again, I wasn't really in my right mind anyways"— a comment to suggest that he was heated due to being concussed.

[83] Private Sylvestre-Ravary testified that Private Mariadas approached her for no apparent reason. She was clear in expressing that the messaging he conveyed was to the gist that she did not belong there. She told the Court that she was unsure whether it was because she was a female or Francophone. She explained that this was the issue she addressed with Master Corporal Radewych the next morning.

[84] It is clear from the evidence of the other witnesses that Private Mariadas minimized his own violent outburst and legitimized his personal conduct by placing the blame for his outburst exclusively at the feet of Private Sylvestre-Ravary. Somehow, he seemed to have convinced his other section candidates of this narrative. As I referred to earlier, Private Monk, who was in Private Mariadas section and wrote the letter of complaint with him, told the Court that he witnessed this incident, which based on his testimony, I find that it is not possible. Importantly, the evidence of both Privates Monk and Mariadas was that they were all on "free time", which on this type of course involved candidates relaxing, cleaning weapons and preparing for activities the next day, all activities where their female peers should be included.

[85] To compound the inconsistencies with respect to the Thursday night incident, Private Mariadas told the Court multiple times that he and Private Sylvestre-Ravary worked things out between themselves while they were doing remedial punishment given to them by Master Corporal Black. When defence counsel cross-examined him on this assertion, I found that he was uneasy and his responses shifted. He told the Court that during that time, they started talking and figuring out how to communicate and then they

said sorry to each other. He then provided examples of how they worked things out themselves at the end of the course when they all had to live together, etc.

[86] However, I noted that Private Mariadas' evidence is completely inconsistent with the evidence given by Private Sylvestre-Ravary, who was very clear in her testimony, that until the end of the course, she simply did everything she could to avoid Private Mariadas. She told the Court that at no time did she apologize to him nor him to her. She did say that at the end of the course, she asked him if he was cool with things, to which he said yes. However, according to Private Sylvestre-Ravary, the exchange and apology that Private Mariadas told the Court occurred simply did not happen.

[87] It was clear on the evidence, including Private Mariadas' own evidence, that the Thursday evening in the barracks was not a time when people would have been wandering around naked. If, for some reason someone had to have a shower, the evidence suggested that the candidate could use the shower stalls that provided a private changing area.

[88] Based on his own evidence given in court, Private Mariadas' treatment of Private Sylvestre-Ravary was completely unacceptable and any attempts by anyone to rationalize it as a noble effort in addressing privacy concerns is misguided and wrong. His actions that evening were serious, unprovoked and on their own would constitute a code of service discipline offence. Anyone who did witness this dispute should have recognized that Private Mariadas' conduct was inexcusable and, under the Code of Service Discipline, they had an obligation to report it to their chain of command.

[89] Even if I was to accept Private Mariadas's description of the Thursday evening events, I cannot accept his rationale for his own unacceptable conduct. Even if he had legitimate privacy concerns, his threats of violence were not justified in any way to address them. He might very well have been suffering from a concussion but when he was challenged on whether his concussion might have affected his memory of some of the details with respect to the charges before the Court, he was emphatic that it was a concussion, not a brain injury.

[90] This concerted assertion of Private Mariadas that an unprovoked threat of violence towards Private Sylvestre-Ravary was somehow justified in response to the alleged threat that Private Sylvestre-Ravary posed to the male candidates simply for being in their barracks is troubling. Yet, not one of the witnesses testified that the female candidates ever went near their bathroom or shower area. Further, at the end of the course, women did move into the barracks while they were living under a COVID-19 quarantine protocol and they were quite able to co-exist together.

[91] The irony is that while championing respect for the personal privacy rights and the dignity of the men on the course, Private Mariadas engaged in conduct completely disrespectful of Private Sylvestre-Ravary, Master Corporal Radewych and his entire chain of command. I had to consider whether he purposefully sent the letter of complaint to

Borden as a pre-emptive attack or as a ruse to distract attention away from the Thursday evening incident and to avoid accountability for his own unacceptable behaviour.

[92] It is not to say that respect for privacy is not important. It clearly is. But based on the facts in evidence, he is saying that thirty-eight men living together en masse, in open barracks, always surrounded by multiple witnesses, felt so threatened by the presence of one of their female peers that a pre-emptive violent attack on her was necessary.

[93] Quite simply, if there was a legitimate concern for their privacy rights, they should have discussed this directly with their chain of command, had them clarify the policy and more simply, closed the existing fire doors on both sides of the washroom area. That would have closed the washroom area off and avoided any inadvertent disclosure. The solution was obvious and these doors exist for a purpose. Instead, despite the obvious solution, they chose a course of action that did not seek to resolve their purported concerns, but it did accomplish what Private Mariadas intended which was to have Master Corporal Radewych immediately removed as an instructor from their course.

Private Mariadas' evidence on the first charge

[94] When asked by the prosecution to describe what happened on the morning of the two alleged charges, Private Mariadas responded as follows:

“WITNESS: Staff came in, wanted to parade around the fact that Sylvestre and I had a big fight about the concept of decency and respect. I believe that’s what happened that morning because we did fight about Thursday before, from what I have it remembered as. I don’t remember the date itself but I’m pretty sure if Thursday, Friday, Saturday was—it all lined up.”
[My emphasis.]

[95] He then went on to explain how the Friday morning, after the Thursday evening incident started:

“PROSECUTOR: Okay so can you give us a little more detail about what occurred on the morning on the twenty-first?”

WITNESS: We all got stood for what we thought was an inspection. Master Corporal Black, Master Bombardier Hate came rushing in towards me. I got pulled up by Master Bombardier Hate to have a conversation about how I approached a situation with one of the other candidates. I was being reprimanded for my, I guess, lack of respect for terms and I guess being rude for calling out another candidate for not calling out “decent” when we were changing or just doing ready to.”
[My emphasis.]

[96] When this part of his testimony is compared to his earlier testimony on the Thursday incident, where he admitted to violently threatening his peer, I found it

troubling that he then suggested that he was inappropriately chastised for calling out Private Sylvestre-Ravary for not yelling “decent” when they were changing. More notably, when it was later suggested to him that he was not happy about being “jacked up” by Master Corporal Hate for his conduct, he replied “no but you’re trained to just deal with it.” It quickly became obvious that Private Mariadas was more accepting of criticism received from the male instructors than he was from a female instructor.

[97] With respect to the specific allegations set out in the particulars of the first charge, Private Mariadas stated that Master Corporal Radewych called them “bitches,” “pussies”, and “weak” for not dealing with the situation appropriately. When the prosecution posed more direct questions to him seeking his explanation of what transpired with respect to the first charge before the Court, he replied as follows:

“WITNESS: Apparently she wanted to give us a talking-to about what she felt was appropriate advice against the matter.

PROSECUTOR: Okay and what was that appropriate advice?

WITNESS: Well she called us bitches, pussies for not dealing with the situation. We were told that.”

[98] He later described:

“WITNESS: Her exact words, I believe, were “I’ve been on course naked multiple times with multiple people we just shut up and did our work.” She also motioned towards me and looked me straight in the face and said if you want to make it a problem it is a problem, so. . . .”

[99] He further stated:

“WITNESS: What I said, us being bitches, us being pussies, weak. That it shouldn’t matter that we’re decent or not, it’s a problem if you make it a problem. More or so sums it up.

PROSECUTOR: Okay. What was her demeanour during this incident?

WITNESS: Seemed like she enjoyed it, smiled, came up to me, looked me right in the face, looked like she wanted to just direct it at me. Well it was directed at me considering most of the people around me were saying don’t move”.

[100] When I compare Private Mariadas’ evidence to the evidence as a whole that I found most reliable, I find that not one other candidate testified that Master Corporal Radewych called them “pussies” or “weak” and aside from Private Monk, no other witness testified that any candidate was singled out by Master Corporal Radewych. Under cross-examination, when it was suggested to him that maybe his concussion may have

affected his memory, he repeated again that it was not a brain injury. Defence pointed out that despite having written a letter of complaint and giving a police statement, his testimony in court was the first time he ever used those words “pussies” or “weak”, to which he did not provide any meaningful explanation.

[101] The Court noted that despite there being four different sections in the platoon, the prosecution’s witnesses providing the most unfavourable evidence with respect to alleged statements set out in the first charge came mostly from Private Mariadas’ section. I also noted that their evidence was notably different from the evidence given by witnesses from the other sections. Those candidates in 3 Section provided evidence similarly unfavourable, but yet they used different terminology leading me to conclude that they were not recounting what they heard, but rather imputing their own words based on the narrative they had subscribed to.

[102] For example, Private Monk testified that Master Corporal Radewych suggested they had to get used to females looking at their genitalia and referred to them as girls, and lacking balls. Similarly, he was the only one who testified to hearing these specific terms. Although his evidence was somewhat similar to that of Private Mariadas it was inconsistent with the evidence of all the other candidates from the other three sections and those witnesses who I found to be credible.

[103] Corporal Pinsent, who was also in 3 Section, testified that he did not witness the argument between Privates Mariadas and Sylvestre-Ravary. Under direct examination, at first, he could not recall any dressing down by Master Corporal Radewych. Eventually, he testified that Master Corporal Radewych stated words to the effect that they are all part of the same army and that there might be situations where they might have to work naked in front of one another, which he thought was weird as they were not dealing with any life or death situation happening and he did not think people needed to see each other naked. However, the Court noted that he was the only one in court who insisted she made the suggestion of having to work naked. He was also clear that her address did not single anyone out.

[104] I found that when Private Mariadas was testifying, he often supported his testimony by referencing the reactions of other persons to provide greater validity to his views. As an example, with describing Master Corporal Radewych’s address to the platoon, he stated that Master Corporal Ciafoloni was present and left because he was livid:

“PROSECUTOR: The whole platoon. And you mentioned there was one or two other instructors there?

WITNESS: Master Corporal Ciafaloni was there. I have no idea what happened to him but from what the guys on the end said, he looked, he got pissed, he walked away. That was it.

PROSECUTOR: So at what point during this interaction did he—

WITNESS: —The moment she started saying you bunch of pussies I think he just left. Apparently, that’s what was told, I have no idea I wasn’t looking at him, you know, really my focus was being pulled in the other way.”

[105] There was no other independent evidence before the Court that supports the above assertion by Private Mariadas. Most importantly, in response, the defence called then-Master Corporal Ciafoloni who emphatically denied this suggestion made by Private Mariadas. In fact, the evidence of then-Master Corporal Ciafoloni was quite the opposite.

[106] Private Mariadas also told the Court that Master Corporal Radewych’s address was directed to him personally and he felt that to single him out was bad, but it really upset him that she was taking it out on his friends. It is inescapable that there was a Thursday evening incident that involved Private Mariadas. Quite frankly, the incident needed to be addressed. However, Private Mariadas’ assertion that Master Corporal Radewych singled him out, staring at him is inconsistent with the evidence of the whole.

[107] Of all the nine witnesses that testified, aside from Private Monk who said he felt that the words used by Master Corporal Radewych referred to Thursday evening’s argument and that Master Corporal Radewych stared directly at Private Mariadas, every other candidate who was present testified that Master Corporal Radewych’s words were general in nature and not directed at anyone personally.

[108] It was clear from Private Mariadas’ testimony that he took exception to Master Corporal Radewych addressing the Thursday evening incident in front of his platoon as he viewed this as an assault to his personal dignity. In his testimony, he admitted to how “pissed off” he was and how he “wanted to punch someone”. He also testified that he felt humiliated and spoken down to for what he suggested was his attempt to reiterate the rules for respecting the privacy of other candidates. He further said that one of the master corporals had to calm him down, which was allegedly then-Master Corporal Chiafaloni, who was not asked to confirm this, but based on his testimony, it does not appear likely that he would be consoling Private Mariadas as then-Master Corporal Chiafolano adamantly denied that Master Corporal Radewych had said anything improper. Further, then-Master Corporal Chiafolano confirmed for the Court that the instructors had all agreed that Master Corporal Radewych was to personally address the issues on all their behalf.

[109] It is hard to give merit to Private Mariadas’ assertion that he felt threatened not to bring forward any complaints, because within hours, he had done just that. As discussed earlier, he personally drafted a complaint letter that he told the Court was intended to go to the highest levels. He specifically routed his letter of complaint outside of his chain of command, and confirmed in court that its purpose was to get rid of Master Corporal Radewych. To be clear, there is absolutely nothing wrong with drafting a letter of complaint. In fact, that is encouraged particularly if there are issues that need to be addressed. However, for reasons I set out in this decision, I do not find that that was Private Mariadas’ purpose.

Private Mariadas' evidence on the second charge

[110] With respect to the second charge, Private Mariadas' evidence was also problematic and inconsistent with the evidence given by the other candidates. Here are just a few examples of the inconsistencies:

- (a) he first testified that he saw Master Corporal Radewych inappropriately enter the building, busting through with the bolt box, despite the protest of Private Yang who yelled that he was not decent. He was positive that this occurred in the evening and described himself as being asleep, waking up to the commotion. He stated he was wearing combats despite also saying that this happened after having finished PT. The whole of the evidence was that there had been a change parade where the candidates changed into multiple forms of dress, with PT gear being the last order of dress. If the other candidates were all in PT gear after this change parade and preparing to go to supper, it raised question as to why he was sleeping in his combats. Under cross-examination, when questioned how he could have witnessed this, being at the opposite end of the wing and being asleep, after refreshing his memory with his police statement, it became clear to the Court that despite his confident assertions given in court, he did not witness Master Corporal Radewych enter on that occasion or any other;
- (b) the evidence of Private Yang was inconsistent with the evidence of Private Mariadas, which is troubling since Private Mariadas version of the allegations relies upon Private Yang as the person allegedly protesting Master Corporal Radewych entrance into their barracks. In his testimony, Private Yang was insistent that Master Corporal Radewych entered in the morning after PT, but he was also clear that she entered their barracks to speak to another candidate and left. He said she did not have a weapon bolt box; and
- (c) Private Mariadas also told the military police that when Master Corporal Radewych was in their barracks, with the bolt box, she was in the presence of another candidate who was naked. I noted that this same fact was relied upon in the testimony of other candidates that just so happened to be in Private Mariadas' section (Monk and Pinsent). Firstly, Private Mariadas' assertion is inconsistent with his earlier evidence that they were not permitted to be undressed or naked in the common areas, which is exactly where Master Corporal Radewych would have been with the weapon bolt box. Nonetheless, when his suggestion that there was someone naked or coming out of the shower was challenged on cross-examination, he responded by giving the name of the candidate as Private Beitz. He was quite insistent that he heard this directly from Private Beitz, but when defence suggested to him that Private Beitz would say otherwise, Private

Mariadas accepted that it did not happen. To prove this contradiction, defence filed Exhibit 5 in court, which was an affidavit of Private Beitz where he specifically affirmed that “there was never a time on course where I exited the showers in a towel in the presence of any of the course instructors” and that he “never personally saw Master Corporal Radewych, or any instructor on that course while I was fully naked or only wearing a towel.” This is just one example of a multiple where the Court found Private Mariadas relied upon a fact he asserted or that others told him, which was simply not supported by other reliable evidence.

[111] The allegations particularized in the second charge are predicated on the fact that Master Corporal Radewych entered the male barracks that evening for an improper purpose. In his testimony Private Mariadas asserted that Master Corporal Radewych entered the male barracks specifically to prove a point:

“WITNESS: Well I think she was trying to drive her point home from what she said before. Then I got a little ticked off. It was bad enough to single me out but to take it out on a bunch of my friends is like, yeah, it’s not cool, especially when you promote the fact that you’re part of the combat trade.

PROSECUTOR: So if you didn’t think that Master Corporal Radewych should have been in the barracks at the time why didn’t you ask her to leave?

WITNESS: I was not in the same state of mind I was so for me to go up to a Master Corporal who is already berating me and trying to humiliate me wouldn’t be a smart idea for me to go ahead and get out.”
[My emphasis.]

[112] To be clear, the whole of the evidence that the Court found most reliable was that day, being 21 August 2020, was the first and only day that Master Corporal Radewych was the Marching NCO and part of that Duty required her to enter and be present in the male barracks in order to fulfill the tasks associated with that Duty. The testimony of the candidates confirmed that the distribution and pick up of the weapons bolts occurred on a scheduled basis and were carried out in the common area, where students were ordered to be decent. They also testified that Master Corporal Radewych was present in the barracks that evening to provide instruction on the map lamination technique, something they needed to learn. Evidence also suggests that she provided assistance to another candidate who was preparing for his weapons drill test. That instruction occurred in the common area between 1 and 2 Section. Master Corporal Black and then-Master Corporal Ciofaloni both described what she was required to do and how they performed these duties. It is also important to note that in the whole of the evidence, some candidates stated that she entered and left within as little as five to ten minutes and they were able to say why she did so, while others thought she stayed longer. Based on the evidence, I find that as the Duty NCO, she would have been required to enter and depart on a number of occasions.

[113] Private Mariadas admitted that if she entered “for just the bolts, sure, I mean, that’s respectable enough. But it became more than just the bolts, continuously stayed there longer.” He then went on to suggest that she stayed in the barracks for three to four hours, which is also inconsistent with the whole of the evidence. The evidence is clear and I find that she did not enter their barracks and wander around to prove her point from the morning. She was fulfilling the duties and the tasks expected of her.

[114] For all the above reasons, and based upon the way Private Mariadas twisted the blame for the Thursday evening incident, combined with his admitted anger towards Master Corporal Radewych, the likelihood of him doing the same thing in blaming Master Corporal Radewych for what she said and did, was extremely high. He also admitted that his anger was raised to an even higher level than it was on the Thursday evening. It’s clear from his testimony that he had an axe to grind with his instructor and anything that she did was viewed by him through that lens. I find that Private Mariadas is not a credible witness and therefore his evidence with respect to the allegations before the Court must be disregarded.

Private Monk

[115] I reviewed Private Monk’s testimony closely to ensure it reflected his own independent recollections of the incidents and was not coloured by what others had recounted to him. He is a young soldier, who was quiet and nervous when he testified. I found that he was doing his best to tell the Court his understanding of what occurred during those few incidents. I found that in his testimony, he simply repeated the narrative advanced by Private Mariadas and although he stated several times that he personally witnessed an event, the evidence confirmed that was not true.

[116] As an example, with respect to the second charge, when asked under direct examination about Master Corporal Radewych entering their barracks, he told the Court that she entered from the far entrance by Section 4. He stated that she stopped between 3 Section and 4 Section and that there was a male candidate wearing boxer shorts and she had a discussion with him. He did not provide a name of the male candidate who was wearing the boxer shorts and no witness testified to Master Corporal Radewych approaching him when he was in this state of dress. The Court noted that this evidence was similar to that of Private Mariadas who suggested Private Beitz was caught in a state of undress which was proven to be completely untrue. Private Monk estimated that Master Corporal Radewych was there for approximately ten to fifteen minutes. He seemed to suggest that this all occurred during their change parade. He told the Court that they were given five minutes to return their weapon bolts to her.

[117] Under cross-examination, it became quite apparent that Private Monk did not personally witness Master Corporal Radewych enter the barracks. When it was put to him that he did not actually witness any personal interaction between Private Yang and Master Corporal Radewych, he admitted that he could not as they would have been at the other end of the wing. Consequently, it became clear that despite Private Monk telling the Court that Master Corporal Radewych entered the barracks without regard for their states

of dress, he never saw this interaction where she supposedly entered. This was all information that he heard from others.

[118] As another example, Private Monk admitted that he was wearing combat pants and an elemental T-shirt, as he had not yet started to change. He stated that he did not see anyone naked, but that there were people in the showers, which is contrary to the whole of the evidence. He told the Court that Master Corporal Radewych ordered them to form up and return their weapon bolts and then walked around the shacks and into the bathroom area, walking in and out without regard to their states of dress. Despite the assertions made by Privates Monk and Mariadas, I did not find any independent evidence that there was anyone in the showers when Master Corporal Radewych was in their barracks, and the “rumour” that circulated that Private Beitz was caught naked or had been in the shower and was compromised by the presence of Master Corporal Radewych was proven not to be true. Further, based on the evidence that I do believe, I do not find that Master Corporal Radewych ever entered the shower stall area at all. She may have walked through or been close to the sinks, but there is no credible evidence that she ever went into the private area where shower stalls with curtains were located.

[119] For the reasons described above, with respect to the charges 1 and 2, although I found Private Monk’s intentions and his commitment to recount what happened to be genuine, I did not find him to be a credible witness. His evidence was just too inconsistent with the evidence that the Court found reliable. Most particularly, under cross-examination, it became clear that he had not personally witnessed the events that he described. Therefore the Court could not provide any weight to his testimony with respect to the allegations in either charges 1 or 2.

Corporal Pinsent

[120] With respect to the first charge, Corporal Pinsent testified that Master Corporal Radewych told them they were all part of the same army and there would be situations where they will have to work naked in front of one another, that is how it works. He explained that he thought it was weird—that they were in a training environment and there was no life or death situation happening so he did not think people needed to see each other naked. He said that the above words were directed at the group and he did not recall anyone being singled out. Under cross-examination, Corporal Pinsent asserted that Master Corporal Radewych did in fact use the word “naked”.

[121] With respect to the second charge, he recalled Master Corporal Radewych coming in to collect bolts from the weapons but he did not see her physically enter the building. He confirmed she came in at the normal time that the Duty Marching NCO would enter. He told the Court that during the time she was there, he witnessed her in the washroom hallway area. He said other than collecting the bolts of the weapons, she did not do anything further. Corporal Pinsent’s evidence also was that he was fully clothed and he did not admit to experiencing any pain or suffering caused from her presence.

[122] I noted that the evidence of Master Corporal Radewych herself and a few of the defence witnesses left open the possibility that the word “naked” might have been used, however, each and every one of those witnesses were also very adamant that if it was used, it was not used in the context suggested by Corporal Pinsent. His suggestion that they have to get used to working naked does not make sense and is inconsistent with the whole of the evidence of the other witnesses who heard the same address. As a result, I was extremely cautious in weighing his evidence against the evidence as a whole where some witnesses suggested that if the word was used, it was definitely not in that context.

[123] With respect to Corporal Pinsent’s evidence on the second charge, when describing the various states of undress, he said the guys were “dressed in everything from PT strip, to getting in and out of the shower and walking in their underwear”. He also suggested that there were others “using the urinals”. Yet, he also said that when Master Corporal Radewych entered to collect the bolts, it was the normal time and she followed the same practice that the instructors did each day.

[124] He insisted that there were candidates in the showers, but not one witness came before the Court to say he was showering, using the urinals or had his personal privacy compromised. As stated earlier, the one name provided by Private Mariadas was that of Private Beitz and that assertion was proved to be completely untrue.

[125] In his testimony, Corporal Pinsent told the Court that in his view, it is not normal for women to be present in the men’s barracks, comparing their situation to his time serving as an air reservist in the nineteen nineties. Although Corporal Pinsent is entitled to his personal opinion and beliefs, this position is simply not consistent with a life of service within the CAF. Today, women are integrated into the CAF and serve in almost every trade alongside their male peers.

[126] As Warrant Officer Lupton testified, it was preferable to have unisex facilities, but due to the limitations of what was available to them, they had to separate men and women. However, the mere fact that the preferred approach was to have everyone in the same barracks, confirms that Corporal Pinsent’s assertion that males and females should never be housed in the same barracks for their courses is, quite frankly, wrong.

[127] Further, absent other independent supporting evidence, his assertion that Master Corporal Radewych was just hanging out in the men’s barracks does not make sense. Other witnesses stated that she assisted Private Hall and that she also helped others in the common areas, the same area where the witnesses also testified that the captain directed that they all had to be decent. The candidates were aware that instructors would be in the barracks at certain times and therefore, there was the expectation that they would respect this and be decent. The consistency of the evidence was that Master Corporal Radewych entered the barracks at the exact same time that the other master corporals entered daily when they were the Duty Marching NCO. Although it was likely more convenient and comfortable for the male candidates when the instructors were men, why was it that the first and only time a female instructor entered, that there was such a concern? Based on the design of the building, the common areas blended into the hallway and bathroom area.

Based on the set-up, even if the fire doors to the wings were open, if someone wanted privacy and was concerned, there were private bathroom stalls available. As discussed earlier, the evidence was unrefuted that the showers were not visible from the hallway. Once again, if someone was concerned about privacy, they could have shut the fire doors.

[128] After assessing Corporal Pinsent's testimony against the evidence as a whole, I felt that although he was trying his best to be as honest, fair and forthright as possible, he was so influenced by his experience in the nineteen nineties, as well as the narrative that females should never be in their barracks, that I could not rule out the potential that this coloured his evidence. Although, I found him to be generally credible, I was not prepared to accept all his testimony and I provided very little weight to his evidence with respect to the specific allegations.

Credibility and reliability of remaining prosecution witnesses (Lupton, Yang, Fahselt)

Warrant Officer Lupton

[129] I found Warrant Officer Lupton's testimony to be straightforward and helpful. As mentioned earlier, he explained why the BMQ-L candidates, which are generally housed together, were in separate barracks and he provided insight into the expectations set for the candidates. He described the direction provided to those on the course and he confirmed the fact that he directed Master Corporal Radewych to resolve the situation within the platoon regarding what had transpired during the Thursday evening incident. With respect to what he could testify to, I found that he was both credible and reliable.

Private Yang

[130] As explained previously, I noted that Private Yang had difficulty identifying Master Corporal Radewych.

[131] With respect to the first charge related to the words spoken by Master Corporal Radewych to the students, Private Yang told the Court that they were confused and found her comments weird, but they did not really talk about it. Although he could recall Master Corporal Ciafaloni being present, he could not recall what was said and was not able to provide any real meaningful input. Under cross-examination, he confirmed that Master Corporal Radewych said something to the gist that they are all in the Army and soldiers both males and females should be able to work together. He recalls her referring to her own military experience and having to do ablutions in the field alongside male members. He confirmed that she explained sometimes you have to work with the space you have. He also confirmed that she did make reference to "bitches" etc., but that all he remembers is the gist of what she said.

[132] With respect to the second charge, Private Yang described the incident in the barracks as unfolding in the morning, after PT when they were getting dressed and into their uniforms. He stated that he was the closest to the door when Master Corporal Radewych knocked. He explained that she asked if they were decent and he responded

“No, not decent” and then used himself as an example and said “No, I am shirtless.” He testified that after she opened the door, which he estimated to be about ten seconds later, which I note is actually sufficient time to put a shirt on, she said words to the effect, “I don’t care, I have seen many shirtless men before.”

[133] He testified that after Master Corporal Radewych entered, she went to speak with a candidate, Private Tremblay, who he described as having only a towel around his waist. He told the Court that after she spoke with Tremblay, she exited the building. When asked on cross-examination if she had the bolt box with her, he was adamant that she did not and clarified that she went directly to speak with Private Tremblay. He was clear that the Master Corporal entered and departed very briefly thereafter. Private Tremblay did not testify.

[134] Under cross-examination, when it was suggested to Private Yang that Master Corporal Radewych’s presence in their barracks did not personally cause him any pain or suffering, he disagreed with that suggestion. He explained that during his military career, he was told that it was part of their job as both military members and human beings to respect the human dignity of other humans. He said, just because she was a woman does not mean a man would not be offended by her entering. Although Private Yang may validly feel this way, the Court notes that this statement by itself is not a description of specific harm he personally endured at the hands of Master Corporal Radewych’s alleged entry into the barracks.

[135] When refreshed with his earlier statement, it was brought to his attention that in his police interview, he admitted he was fine with Master Corporal Radewych’s presence. He confirmed that he was physically fine in that, nothing was exposed, but he was not fine with the situation and that was the message he thought he had conveyed.

[136] I found Private Yang to be an interesting witness. Despite his physical presence at the address provided by Master Corporal Radewych, he was unable to offer any meaningful evidence with respect to what she said. His evidence was based on the discussions that later followed. However, this lack of meaningful evidence provides meaningful evidence on its own, suggesting that despite being “ranked up” and receiving an address from Master Corporal Radewych, there was nothing that she said that seemed to resonate with him as improper.

[137] I did not find his evidence to be unduly one-sided, nor did I find that he had subsumed rumours or the opinions of others into his memory. I felt that he was making every effort to be honest. As a member of 4 Section, I felt that he could have probably offered greater perspective on what occurred during some of the pivotal times, but he also admitted that he was not present for the Thursday evening incident either.

[138] With respect to the second charge, he was the only witness who was actually in a position to describe any improper entry into their barracks by Master Corporal Radewych. The evidence suggested that she regularly entered through the 4 Section door, which was

her section, and Private Yang's bed was located within a metre of the door. However, he provided evidence of only one such entry and he was certain it occurred in the morning.

[139] Furthermore, it is also clear that the details he provided with respect to her entry that morning were very inconsistent with the rest of the evidence. I believe that it is very possible that the incident he refers to did occur in the morning, but this is inconsistent with the theory of the prosecution and the evidence of the prosecution's other witnesses.

[140] If an incident did occur in the morning, it likely coincided with Master Corporal Radewych coming into their barracks that morning to distribute the weapon bolts, which they needed to prepare for their morning inspection. However, because of the significant inconsistency, and based on the testimony of Master Corporal Radewych herself, I simply cannot accept his evidence as conclusive on its own.

Private Fahselt

[141] In his testimony, Private Fahselt confirmed that he was in 2 Section and he was able to identify Master Corporal Radewych. He testified that he did not witness the Thursday evening argument.

[142] With respect to the allegations of the words spoken as set out in the first charge while they were "ranked up", he told the Court that the address was about working with your peers and how it should not matter whether you are dressed or not. He explained that they were told not to be bitching about it and that was the extent of the language he recalled. He testified that the words were directed at the whole platoon and he did not witness Master Corporal Radewych making gestures towards anyone.

[143] With respect to the second charge that allegedly occurred in the male barracks, he testified that he was the course senior for part of that evening, and Master Corporal Radewych had entered to give him some instruction for the platoon the next day. He explained that some of the male soldiers did not feel comfortable with her presence as she was there for a few hours. He did not see her enter the building and only saw her when she came through to speak with him. He described her as having gone through the common hallway/bathroom area three or four times, moving between the two wings of the H-hut. He was not aware of anyone showering at that time. He stated that at one point, he witnessed Master Corporal Radewych having a private conversation with a candidate in the washroom area, however, he did not provide any specifics as to exactly where that conversation took place.

[144] He testified that he was not aware of anyone naked but he "believed" there were others in the process of changing who did not have a shirt on at the time. When specifically asked on cross-examination if Master Corporal Radewych's presence in the male barracks caused him any pain and suffering, he stated "No".

[145] In his assessment, half of the platoon, sixteen to eighteen persons signed the joint letter of complaint. He explained that his goal in signing it was simply to get it across that

there is a privacy issue and it was a double standard. If a male entered the female shacks, the concern would not be overlooked.

[146] I found Private Fahselt to be a balanced and helpful witness that did not appear to exaggerate or recount rumours. I did note though that he also held the view that women should not be in their barracks.

[147] When I compared his evidence to the evidence as a whole, I found his estimation of how long Master Corporal Radewych was in their barracks to lack meaningful context. Overall, Private Fahselt's evidence conflicted with the evidence of many other witnesses that described Master Corporal Radewych as only being in their barracks for short periods of time. I found that he appeared to assume that she was continuously present.

Corporal Crump

[148] Corporal Crump testified that he was the course senior for the first part of the day of the alleged offences. He was in 2 Section. Of all the witnesses, he had the most precise memory of the layout of the barracks, which was likely reinforced by the fact that it was the exact same building he stayed in thirty-five years ago when he was an air cadet. He testified that he saw Master Corporal Radewych that day in their shacks but did not note anything that in his mind stood out or caused him any concern. He explained that he did not give a statement as he personally did not witness anything inappropriate.

[149] Corporal Crump confirmed that on the Friday morning, he reported to Master Corporal Radewych what had occurred during the Thursday evening incident.

[150] With respect to the first charge before the Court, as the course senior, he formed up the platoon prior to Master Corporal Radewych speaking to them. He did not hear Master Corporal Radewych say anything improper.

[151] With respect to the protocols of the other instructors who entered their barracks, he clarified that they simply would just walk in. He explained that most of the time, the instructors entered through the doors of 1 Section and 4 Section. He also confirmed that Master Corporal Radewych held a map lamination session on the Friday evening and that in his observations, she did walk through the washroom/hallway area, but he was also clear that she did not stop.

[152] Overall, I found Corporal Crump to be one of the most balanced and helpful witnesses. He testified very calmly and when he was certain of something, he said so, but he did not automatically adopt nor was he influenced by any rumours. He showed no bias toward either side and simply testified to what he personally witnessed. He was clear in noting that he was aware of the rumours that were circulating amongst some of the candidates, but he was also clear that he did not provide a statement to the MPs, because he personally did not witness anything improper.

[153] Corporal Crump reflected a level of maturity that provided helpful perspective and insight into what unfolded. I found him to be both credible and reliable with respect to the evidence he provided to the Court.

Master Corporal Black

[154] Master Corporal Black testified that he was Second in Command (2IC) for 3 Section on the BMQ-L course. He knew Master Corporal Radewych for approximately six to eight months prior to them both becoming instructors on the BMQ-L course. He told the Court that during the time he worked with her, he never had any issues.

[155] He described how at the beginning of each day, the Marching NCO would bring the weapon bolts to the candidates. Once the bolts were handed out, the students prepared for inspection and then the instructors would inspect the candidates' kit to ensure that it was up to standard. He explained that it was the responsibility of the Duty Marching NCO to ensure the bolts were under lock and key. After the bolts were disseminated, the box would be returned to the instructor's office.

[156] He specifically recalled Master Corporal Radewych being the Marching NCO on the day of the alleged charges as it was the same day that they did remedial training involving a change parade, which was the only one they had on the course. He was joined by then-Master Corporal Ciafaloni, as well as Master Corporal Radewych. He believed the change parade would have unfolded between 1700 until 1730 hours and that both he and then-Master Corporal Ciafaloni came up with the script for what they would do.

[157] He described the change parade as involving three or maybe four changes of clothes, but clarified that the last change of clothes was PT gear and both he and then-Master Corporal Ciafaloni ran the candidates around the shacks, a maximum of four hundred metres. He explained that there would have been weapons sentry left in each wing of the H-hut. He explained that after they finished their run, the candidates were dismissed to the Marching NCO and he and then-Master Corporal Ciafaloni went home. He estimated the change parade was completed at approximately 1730 until 1800 hours and then the candidates would attend supper. For dinner, he explained that the candidates would wear whatever the Marching NCO decided, which could be PT gear or combats.

[158] In terms of entry into and out of the barracks, Master Corporal Black explained that he would simply knock and give the candidates a couple of seconds and then go in. He said they are supposed to be decent while they are on duty. He also explained that in the evenings, the instructors would walk through the barracks to ensure that the candidates were not doing something they should not. In those cases, they would knock. He told the Court that when he entered the female barracks, he would knock, but he made a point of ensuring that he had their section senior with him as a witness.

[159] He also explained that they were never told why Master Corporal Radewych was removed from the course and he only received information when he got a call from her defence attorney.

[160] I found Master Corporal Black to be very forthright and honest and he very precisely explained how things unfolded on the course. He had an excellent recall of the events that were pertinent to the charges before the Court and provided important perspective that filled in many gaps in the evidence. Overall, I found him to be very credible and his evidence to be very reliable.

Corporal (then-Master Corporal) Ciafaloni

[161] Corporal Ciafaloni explained that he recently tried out for Canadian Forces Special Operations Command and in the re-muster process, he was reduced to the rank of corporal, which explains why he is currently a corporal, when during the time of the BLQ-L, he was a master corporal. He told the Court that he was the Section Commander for 4 Section and Master Corporal Radewych was his 2IC. He admitted that at first, as an instructor, she was a bit inexperienced but she quickly caught up. In his observations of Master Corporal Radewych, he did not ever note anything of concern.

[162] He explained that the weapon bolts were controlled items and the Marching NCO has to sleep with them beside their bed. He explained that in the mornings, the instructors brought the bolts to the students. He described that when he was Marching NCO, he entered the men's barracks, went to the common area between 3 Section and 4 Section and yelled "bolts". He said that there would be a frenzy of candidates retrieving their bolts and he would remind them to get the bolts for the female candidates.

[163] He told the Court that he always entered the barracks through 4 Section because he was the 4 Section Commander. He explained that the drop off in the morning is normally very quick, as the candidates need to disassemble the bolts for inspection, but the pick up later in the day, would often take longer as there was not an immediate inspection and the candidates might be busy getting help or assistance for other reasons. He explained the pickup time for the bolts varied based on the Marching NCO.

[164] Corporal Ciafaloni said he remembers the day and the subsequent events when Master Corporal Radewych was Marching NCO. He recalled that he came in and worked out, and then went to get a bite to eat and they had an instructor meeting and afterwards, Master Corporal Radewych gave the candidates a speech. With respect to what Master Corporal Radewych said to the candidates when they were formed up, he remembers it. When the charges were read out to him, Corporal Ciafaloni was emphatic that not only did Master Corporal Radewych not say the things set out in the particulars but that she did not use the word "naked". In fact, in his opinion, not even the most bravado soldiers would suggest they would need to work naked together. It simply did not make sense. He did state that Master Corporal Radewych said "don't be bitching" or words to that effect, which he explained is a term that is customarily used and does not set off flags. He testified that nothing that Master Corporal Radewych said was out of the ordinary and if it was, he would have immediately pulled her aside and corrected her. However, in his view, she did not say anything out of line. He also confirmed that Master Corporal Radewych did not single anyone out.

[165] In cross-examination, prosecution challenged Corporal Ciafoloni's position given that he did not stay for the entire address and may have missed some of the comments made. However, I also note that Private Mariadas's testimony was that then-Master Corporal Ciafoloni walked off because he was pissed that Master Corporal Radewych referred to them as pussies. With respect to the reference to "pussies" Master Corporal Ciafoloni told the Court that Master Corporal Radewych said nothing of the sort.

[166] Corporal Ciafoloni also remembers the change parade they did at the end of that same day. He explained that that was the only day on course that they had a change parade and it was because the candidates were being disrespectful, there were issues with the weapons bolts, one candidate did not salute and another did not shave. Corporal Ciafoloni confirmed that the last dress the candidates were wearing at the end of the change parade was PT gear.

[167] When asked to describe the procedure he followed in entering the women's barracks, he stated that he would knock and have someone with him to corroborate what happened while he was there to avoid a situation like Master Corporal Radewych is currently facing.

[168] He explained that despite Master Corporal Radewych being his 2 IC on the course, she disappeared in what he described as akin to a "snatch and grab operation" and that they were not told what happened.

[169] Corporal Ciafoloni's testimony was clear, detailed and provided excellent insight into the expectations of Master Corporal Radewych in fulfilling her duties as his 2 IC. It was particularly helpful because it provided clear understanding of the expected functions of Master Corporal Radewych as well as confirming that as the Marching NCO, she needed to enter the men's barracks. His evidence was consistent with the evidence as a whole that the Court found to be most reliable. I found Corporal Ciafoloni to be a very credible and reliable witness.

Private Sylvestre-Ravary

[170] I have already summarized a great deal of Private Sylvestre-Ravary's evidence within this decision. She confirmed the evidence provided by the other defence witnesses. I find that she was also able to confirm practical facts that seem to be overlooked by other witnesses. For example, with respect to her entry into the male barracks, she explained that due to the fact that it was summer, it was very warm outside and the doors to the men's building were often left open. She clarified that they closed them at night when they were sleeping, as well as during the day when they were away, but in the evening, they were always open as it was very warm. She described that when the door was closed, she always knocked and waited for an answer that it was okay to come in. She also explained that when the door was open, she would stand in front and announce herself and would only come in when it was okay.

[171] She confirmed that she spoke with Master Corporal Radewych on the Friday morning before breakfast regarding the Thursday evening incident. She told Master Corporal Radewych about the treatment she received from Private Mariadas. She explained that he made her feel that she was not welcome in the platoon and that he had a problem with her being there. She did not like what Private Mariadas had told her and was advised she could make a complaint.

[172] With respect to the address that Master Corporal Radewych provided to the platoon, she testified that Master Corporal Radewych only made general comments about the importance of males and females working together: “She said that we are supposed to be a family and being able to work together is the principle behind it and is integral to what we stand for. It does not matter that we are both men and women, we have to share the same area and she provided a personal example of having to work side by side in the field together.” She did confirm that Master Corporal Radewych did say to “stop bitching” about this, but she was clear in saying that it was no way offered in the context that they could not make a complaint. She stated that Master Corporal Radewych did not use any demeaning language such as pussy, bitches, or genitalia.

[173] She was also clear that at no time did Master Corporal Radewych say that they all had to work naked together. She said that it simply does not make sense.

[174] With respect to the second charge, she testified that she was in 4 Section with her peers, as they were helping each other, and Master Corporal Radewych came in to assist them. She did not note anything improper.

[175] After reviewing all of her evidence, I found that if anything, Private Sylvestre-Ravary did everything to underplay the Thursday incident that occurred between herself and Private Mariadas. Based on her testimony, she appeared most affected by the fact that Private Mariadas made her feel unwelcome as part of her section and the platoon. In short, her evidence suggested that she desperately wanted to fit in, which explains why she did not want to make a complaint. I found her to be honest in her assertions and confident in testifying to the truth as she understood it to be. Despite testifying in her second language, I found her to be particularly thoughtful with her responses and she took care to ensure that she was clear in her responses. She did not demonstrate animosity toward anyone, nor did I find her partial to one side of the other. I found her evidence to be both very credible and reliable.

Testimony of Master Corporal Radewych

[176] I have already summarized much of the evidence given by Master Corporal Radewych in the background summary, which includes her version of the events up to and including what was said in the address she delivered to the platoon. Master Corporal Radewych explained that she addressed the platoon after she had marched them over to the canteen for their breakfast on the Friday morning.

[177] With respect to what she actually said during that address, she said she started her speech by explaining to the candidates they are in the Army now and that for the rest of their career, they will be integrated (with men and women serving together). She explained she has always been integrated with her male peers on courses and on several bases. She clarified that there were times that she served in the field where she had to do ablutions alongside her male counterparts. She was clear that when she addressed the candidates, she did not suggest that they would have to be or work naked. Under cross-examination, she said that she does not recall using the word “naked” and was clear in saying that if she did use the word, it was certainly not used in the context suggested in the particulars. She clarified that she has never had to work naked in her military career so why would she say this? She explained that she used the word ablutions because that is simply the word she uses to describe what they do in the field.

[178] When asked what the purpose of her message was, she explained that the males needed to understand that females are part of the group. As staff, they were aware that the candidates were all coming from a support trade and might not have been exposed to the integration of women and this message was important.

[179] When asked if she used the word “bitching”, she told the Court that it was likely that she did use the term in the context of “stop bitching about females being in your shacks”. She stated that it was never to say that they could not make a complaint, but rather to provide context as to what happens in the field where men and women serve and live alongside one another. She denied that she ever called the candidates weak, or that they should get used to others seeing their genitalia or that she called them bitches, pussy or girls. She was emphatic that she would not use the words that are demeaning to women, given everything that she has had to go through in the CAF. I noted that from all the nine witnesses that testified to being present during her address, aside from Private Mariadas who used this term for the first time in Court, not one other witness heard Master Corporal Radewych use the word “pussy”. Master Corporal Radewych told the Court she views the term to be so demeaning to women that as a woman herself, it would not be a term that she would use.

[180] She testified that 21 August 2022 was the only day she was the Duty Marching NCO and also confirmed there was a change parade that day. As explained earlier, the change parade requires the candidates to change into different forms of dress and she also confirmed that the last form of dress ordered was that of PT strip. She also testified that at the end of the change parade, the candidates went for a short jog, which she explained was approximately four hundred metres around the shacks. She estimated that the change parade lasted maybe thirty or forty minutes between 1700 and 1730 hours.

[181] She told the Court that she cannot recall collecting the bolts that evening but that she did take the platoon to dinner, which she explained they would have worn their PT strip as they ate at the canteen. Under cross-examination, she told the Court that she believes that then-Master Corporal Ciafoloni took the bolts with him that evening.

[182] She testified that after dinner she needed to conduct a map laminating session, so she went to get the supplies. After she retrieved the supplies, she returned to the barracks and first called 4 Section out to clarify a discrepancy in the direction the candidates were being given on their course, which was different from what they had been taught during their BMQ. She explained that she had this discussion with her own 4 Section and that it took place outside the door of 3 and 4 Section. She said Private Sylvestre-Ravary was already there with her section for the session on map laminating. She then explained that she entered into 4 Section and put the supplies down for the map lamination session in the same common area where she had earlier placed the bolt box, which would have been in 3 Sections and 4 Section common area. She provided the candidates instructions on how to laminate their maps and then answered questions. She estimated that she would have been in the shacks for thirty to forty minutes total at that time. She told the Court that after the instruction, each section broke off and went to work in their own section areas. She realized that there was a shortage of supplies so there had to be a bit of sharing ongoing and then she verified if the candidates had any questions before she left.

[183] When asked if she walked through the common hallway/bathroom area, she admitted that she did pass through the hallway enroute to the other sections and then she would exit out the 1 Section door. Based on her testimony, she would have likely passed through the common area/hallway at least twice.

[184] She explained that later she had to come back to do remedial training with a candidate, Private Hall, but before she assisted him, she checked with the candidates to see if they needed any additional assistance with respect to the lamination technique. When asked how long she was there that time, she explained it was approximately thirty minutes or as long as it took for him to feel comfortable with the drills. She described that they did the C6 test and they worked through the test sequence several times. On that occasion, she explained that she entered again through 4 Section, went to her section, crossed over to assist Private Hall who was in 2 Section and she would have exited out the 2 Section door.

Analysis of charges 1 and 2

[185] The alleged derogatory comments set out in the particulars of the first charge are only supported by witnesses whose testimony I assessed as unreliable. The majority of the evidence before the Court was that the gist of the discussion was to explain the importance of the integration of men and women working alongside each other in the Army. On its own, in the context of what was unfolding, I do not find her reference for them to stop bitching about women being in their shacks was intended to send a message that they were not allowed to complain. It simply suggests that they as men have to accept women serving with them. That is what our Parliament and the CAF are committed to. It is a fact. I am conscious that the altercation between Privates Mariadas and Sylvestre-Ravary would have been foremost in her mind. In fact, Warrant Officer Lupton testified that he directed Master Corporal Radewych to address it and resolve the conflict. As I have already explained at length, the behaviour of Private Mariadas was not acceptable and the young men needed to understand that men and women serve together and they all

must find ways to respect each other in the process. I am fortified in my assessment given the evidence of the majority of the other witnesses, who were clear in their testimony that they did not interpret her address to be offensive or demeaning in any way.

[186] After hearing all the evidence by the prosecution and defence witnesses, in the context of all the events that unfolded, I found that Master Corporal Radewych's version of events on each of the charges provided the only plausible explanation that fits within the vast inconsistency of the evidence. Her version of events explains the disparity of the witnesses' testimony. With respect to the first charge before the Court, the greatest consistency in the evidence was to the effect that she did not say anything close to the exact words referred to or having the underlying meaning of the wording set out in the particulars. With respect to the second charge, her version was the only plausible explanation for what occurred that day while she was the Duty Marching NCO and had to enter the barracks on multiple occasions. There was no evidence that she entered the barracks for any other reason.

[187] There were a number of duties that Master Corporal Radewych was required to perform on that one and only day where she was the Duty Marching NCO, which included having to enter the men's barracks. Private Mariadas, who testified to being "intensely aggravated" and "wanting to punch someone" after he felt he had been singled out and humiliated in Master Corporal Radewych's address, told the Court that that evening, he "was already fuming from what happened", and described himself as "more aggravated than I was before." Consequently, I find that Private Mariadas' admitted heightened aggression most likely coloured his perspective and his anger influenced those around him in misinterpreting everything that Master Corporal Radewych did that evening.

[188] I need to be clear in saying that there was no evidence before the Court that suggested in any way that Master Corporal Radewych entered the men's barracks for any reason that was not directly related to her duties on that day.

Conclusion

[189] When I apply the *W.(D.)* analysis as set out by the SCC to Master Corporal Radewych's testimony, I believe the exculpatory account advanced by her on both of the charges 1 and 2, and consequently, I must acquit.

FOR THESE REASONS, THE COURT:

[190] **FINDS** Master Corporal Radewych not guilty of charges 1 and 2.

Counsel:

The Director of Military Prosecutions as represented by Major A.M. Orme

Lieutenant-Commander F. Gonsalves Defence Counsel Services, Counsel for Master
Corporal L.E. Radewych