COURT MARTIAL

Citation: *R. v. Larouche*, 2012 CM 3008

Date: 20120816
Docket: 201164

Standing Court Martial

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

Between:

Her Majesty the Queen

- and -

Private R. Larouche, Applicant

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

Restriction on publication: By order of this Court under section 179 of the *National Defence Act* and section 486.4 of the *Criminal Code*, information that could identify the persons described in this judgment as the complainants or witnesses shall not be published in any document or broadcast or transmitted in any way.

OFFICIAL ENGLISH TRANSLATION

REASONS FOR THE DECISION

(Orally)

BACKGROUND

[1] Private Larouche is charged with a variety of service offences which allegedly occurred in 2007, 2009 and 2010 in Saint-Jean-sur-Richelieu, Quebec, and Kingston, Ontario, including two counts of voyeurism, contrary to subsection 165(2) of the *Criminal Code*; one of conduct to the prejudice of good order and discipline, resulting from harassment, contrary to section 129 of the *National Defence Act*; another for

disgraceful conduct, for having produced nude visual recordings of a person, contrary to section 93 of the *National Defence Act*; and, finally, one last count of possession of child pornography, contrary to subsection 163.1(4) of the *Criminal Code*.

[2] At the beginning of the trial before the Standing Court Martial on May 22, 2012, before denying or admitting his guilt on each of the counts, defence counsel representing Private Larouche presented a motion for which written notice had been received by the Court Martial Administrator on February 20, 2012, in which he sought an order from the Court Martial under subsection 24(2) of the *Canadian Charter of Rights and Freedoms* (hereafter the Charter) excluding some evidence on the basis of an alleged infringement of the accused's right to be secure against unreasonable search and seizure under section 8 of the Charter.

[3] This preliminary motion is presented under subparagraph 112.05(5)(e) of the *Queen's Regulations and Orders for the Canadian Forces* (hereafter QR&Os) as a question of law or mixed law and fact to be determined by the military judge presiding at the Court Martial, as specified under article 112.07 of the QR&Os.

[4] It is important to note that this Court Martial was initially convened for 12 March 2012, but further to a motion filed by the prosecution just before the accused's trial was to begin, the Court ordered that it be postponed to 22 May 2012. It was therefore on this date that the Court convened the hearing, at the beginning of which the prosecution withdrew the first three counts appearing on the charge sheet, requested and obtained from the Court an order amending the fourth and fifth counts to correct a defect in form and, finally, asked for and obtained an order of the Court, which is still in force, banning the publication, broadcast or transmission of any information that could identify the three complainants or the two witnesses.

[5] I then heard the accused's motion from 22 to 25 May 2012 in a voir dire which I stayed after the accused announced his intention to enter a plea of guilty. Further to a joint application filed by the prosecution and the defence, I adjourned the trial hearing to 14 August 2012 to allow time for a medical specialist to prepare a report that could potentially be filed in evidence for the accused's sentencing, if need be.

[6] On 14 August 2012, the Court reconvened. However, I instead re-opened the voir dire to finish hearing the motion filed by the accused, since he had informed the Court and the prosecution in advance of his intention to withdraw his guilty plea.

<u>THE EVIDENCE</u>

[7] The evidence produced in support of this motion consists of the following:

a. testimony by Corporal Jean-Philippe Gauvin, a Military Police officer and an investigator in the technological crimes section who was responsible for the investigation that led to the charges before this Court and who signed the informations and affidavit that led to search warrants being issued in this case;

b. testimony by Sergeant Patrick Bourgon, a police officer with the Sûreté du Québec and acting supervisor of the technology unit who analyzed the items that were seized and submitted by Corporal Gauvin;

c. Exhibit R1-VD1-1, the Notice of Motion;

d. Exhibit R1-VD1-2, an Information to Obtain a Search Warrant and an attached affidavit dated 20 January 2010;

e. Exhibit R1-VD1-3, a search warrant dated 20 January 2010;

f. Exhibit R1-VD1-4, a report concerning the execution of the warrant, dated 27 January 2010;

g. Exhibit R1-VD1-5, an Information to Obtain a Search Warrant and an attached affidavit dated 5 February 2010;

h. Exhibit R1-VD1-6, a search warrant dated February 2010;

i. Exhibit R1-VD1-7, a search warrant dated February 2010;

j. Exhibit R1-VD1-8, a report concerning the execution of the warrant, dated 10 February 2010;

k. Exhibit R1-VD1-9, an endorsement of the search warrant, dated 10 February 2010;

l. Exhibit R1-VD1-10, a table showing the items seized and the results of the analysis;

m. Exhibit R1-VD1-11, a report by the investigator/analyst, Sergeant Bourgon, dated 28 July 2010;

n. Exhibit R1-VD1-12 a report by the investigator/analyst, Corporal Gauvin, dated 16 September 2010;

o. Exhibit R1-VD1-13, a summary of the interview of V.C. done by Sergeant Patrice Mathieu, dated 18 December 2009;

p. Exhibit R1-VD1-14, a summary of the interview of Major Laflamme done by Corporal Gauvin, dated 6 January 2010;

q. Exhibit R1-VD1-15, a summary of the interview of G. done by Sergeant Patrice Mathieu, dated 18 December 2009;

r. Exhibit R1-VD1-16, a written statement by G., dated 18 December 2009;

s. Exhibit R1-VD1-17, a table listing the items that are at issue in this motion and that were seized in the first and second searches;

t. the accused's admission, through his counsel, that the evidence appearing in subsection 3, paragraphs b, c and d of Appendix A to Exhibit R1-VD1-2 reflects the report prepared by the investigator, Corporal Gauvin, concerning the conversation that he had with V.C. on 12 January 2010, except for the word [TRANSLATION] "private" appearing in paragraph 3(d) of said appendix; and

u. the judicial notice taken by the Court of the facts and matters contained in Rule 15 of the *Military Rules of Evidence*.

THE FACTS

[8] On 18 December 2009, V.C., who works at the St-Jean Garrison, filed a complaint with a Military Police officer, Sergeant Mathieu, concerning Private Larouche. She told him that she had recently been in a romantic relationship with Private Larouche and that Private Larouche had, among other things, taken nude photos of her with her consent, but on condition that they be destroyed afterwards. She also reported that, at Private Larouche's home, she had seen a photo of another civilian employee from her place of work, G., who also was nude. V.C. said she was afraid the photos would be posted on the Internet or would be circulated, electronically or otherwise, around her workplace. This is what motivated her to go see the Military Police.

[9] The same day, Sergeant Mathieu of the Military Police met with G., and she confirmed that she had been in a romantic relationship with Private Larouche, that he had taken nude photos of her, and that she had consented to the taking of these photos, but on condition that they be destroyed. She told the police officer that she had recently learned, through V.C., that some of these photos were circulating around the medical clinic, without her knowledge.

[10] Sergeant Mathieu conducted an investigation and concluded that there were no grounds to act on the complaint because he had determined that no service offences had been committed. In the meantime, Sergeant Legault, an information services security officer (ISSO) at the St-Jean Garrison was notified of the situation by the Military Police. He wanted to verify whether such photos were on the computer systems at the workplace in question, so he consulted with Corporal Gauvin, a Military Police officer and the only investigator in the Quebec Area with training in technological crime.

[11] Sergeant Legault checked the computer systems at the workplace in question at the St-Jean Garrison and found nothing connected with the alleged photos.

[12] On 6 January 2010, a major, the authority at the workplace in question, sent Corporal Gauvin of the Military Police an email that he had received from G. that same day in which G. made statements concerning certain facts relating to the romantic relationship she had had with Private Larouche. Major Laflamme found this statement to be worrying.

[13] Corporal Gauvin therefore took charge of Sergeant Mathieu's investigation file, reviewed the evidence in it and, on 12 January 2012, contacted V.C. by telephone to hear her story again. That same day, he interviewed G. to better understand her accusations against Private Larouche.

[14] After conducting his investigation and analyzing the evidence, Corporal Gauvin concluded that there were reasonable and probable grounds to believe that service offences had been committed, more specifically, the offence of conduct to the prejudice of good order and discipline, contrary to section 129 of the *National Defence Act*, and an offence punishable under section 130 of that same Act, namely, voyeurism, contrary to subsection 162(1) of the *Criminal Code*.

[15] In light of the circumstances and facts reported by the witnesses in the course of his investigation, Corporal Gauvin concluded that the photos taken by Private Larouche of V.C. and of G. were evidence supporting charges and that he therefore thought they could be found on various electronic devices, namely, cellular telephones, digital cameras, computers or other storage devices at the home of Private Larouche.

[16] Consequently, Corporal Gauvin prepared an affidavit in support of an information that he filed on 20 January 2010 with a judge of the Court of Québec, Judge Michel Bédard. However, it appears that the judge did not fully appreciate the significance and scope of the *National Defence Act,* particularly section 129 of that Act, and asked the police officer to review his information accordingly. Corporal Gauvin therefore amended his affidavit and his information and resubmitted his documents to the judge, declaring that the evidence sought would provide evidence relating solely to the offence of voyeurism.

[17] On 20 January 2010, Judge Bédard issued a search warrant authorizing Corporal Gauvin to search the home of Private Larouche and seize the evidence identified in the document.

[18] On 21 January 2012, assisted by Sergeant Legault, Corporal Gauvin searched the home of Private Larouche. Private Larouche was informed of the search warrant and was placed under arrest. He was taken to the detachment of the Military Police and was released the same day, when the search was over.

[19] The search of Private Larouche's home began early in the morning, around 6 o'clock, and took about 10 hours. Corporal Gauvin used certain computer programs that allowed him to skim through the electronic and memory items described in the warrant to identify the relevant ones to be analyzed and seize them for a real analysis

later in a laboratory, since this was very time consuming. Two factors made the seizure more complex: first, the number of items that he had to comb through, about 1,800; and the fact that, during this survey, he noticed that some of these items contained a large number of files that might constitute child pornography that he seized in plain view. At the end of the search, they met with Private Larouche again at his home, and the evidence seized was identified for him.

[20] On 27 January 2010, Corporal Gauvin gave the judge a report on the items listed in the search warrant that were seized, which were 18 in number.

[21] On 5 February 2010, Corporal Gauvin filed an Information to Obtain a Search Warrant to allow him to search the item seized in plain view that he believed could contain child pornography and could potentially provide evidence substantiating the offence of possession of child pornography. Judge Bédard issued the search warrant, and a report of the seizure was given to him on 10 February 2010. That same day, he authorized the execution of the warrant in a district other than Iberville, namely, the district of Montréal, to allow a laboratory analysis.

[22] On 28 July 2010, Sergeant Patrick Bourgon, an investigator with the technology unit of the Sûreté du Québec, in response to a request for assistance from the Military Police, issued his report as an investigator/analyst concerning all of the items seized by Corporal Gauvin.

[23] On 16 September 2010, Corporal Gauvin issued a supplementary analysis report as an investigator/analyst concerning certain items that he had seized.

THE PARTIES' POSITIONS

[24] In this case, the applicant argues that the Court should make an order under subsection 24(2) of the Charter to exclude the items identified in the table in Exhibit R1-VD1-17 and the files identified in it, evidence which the prosecution has confirmed it plans to rely on at trial, because they were the subject of an unreasonable seizure by the Military Police in violation of his right to be secure against unreasonable seizures under section 8 of the Charter.

[25] More specifically, Private Larouche submits that the search warrant issued on 20 January 2010 authorizing the seizure of his computers, cellular telephones, digital cameras and all of his storage devices is illegal because, first, the affidavit supporting the information for this warrant does not contain reasonable and probable grounds for the investigator to believe that an offence of voyeurism was committed and that items providing evidence of such an offence would be found in his home, and, second, even if the Court concluded that this was indeed the case, the investigator's drafting of this affidavit is incomplete because of significant inaccuracies and omissions which, once corrected, would not have provided reasonable and probable grounds to believe that an offence of voyeurism could have been committed and that there was evidence of the commission of such an offence in his home.

[26] Furthermore, regarding the actual execution of the search warrant, Private Larouche argues that the data that were in his computers and that were seized could not be seized because they were not specified in the warrant, as required by subsection 487(2.1) of the *Criminal Code*.

[27] Accordingly, it is alleged that the execution of the search warrant dated 20 January 2010 was obtained illegally and constitutes an unreasonable seizure, thus infringing the applicant's right to be secure against such seizures under section 8 of the Charter.

[28] Regarding the search warrant from February 2010, the applicant submits that it, too, is illegal because, should the Court conclude that the first search warrant was obtained illegally, this would render the grounds set out in the affidavit supporting the information illegal as well, since the grounds arose exclusively from the evidence obtained from executing the search warrant dated 20 January 2010.

[29] Finally, the applicant concludes that, because of the seriousness of the Charter-infringing state conduct, the impact of the breach on his Charter-protected rights, and society's minimal interest in the adjudication of the case on the merits, the evidence that he has identified to the Court should be excluded.

[30] Meanwhile, the respondent is of the view that both of the search warrants are valid. He pointed out to the Court that search warrants are presumed to be valid and that the Court is thus reviewing them and not holding a hearing *de novo*. The respondent stressed the fact that Corporal Gauvin is a credible and reliable witness and did not ignore important factors in the affidavit he filed in support of the Information to Obtain a Search Warrant dated 20 January 2010. He asks the Court to reject the applicant's argument to the effect that the seizure at the applicant's home on 21 January 2010 was unreasonable because subsection 487(2.1) of the *Criminal Code* does not apply in this case. Finally, he stressed the fact that even if the Court should find a violation of the accused's rights under section 8 of the Charter, it should not exclude the evidence as requested by the applicant because the seriousness of the Charter-infringing state conduct is minimal in the circumstances, the impact of the breach on his Charter-protected rights is not that great and, above all, society's interest in the adjudication of the case on the merits is considerable.

ANALYSIS

[31] Subsection 24(2) of the Charter reads as follows:

> 24. (2) Where, in proceedings under subsection (1), a court concludes that evidence was obtained in a manner that infringed or denied any rights or freedoms guaranteed by this Charter, the evidence shall be excluded if it is established that, having regard to all the circumstances, the admission of it in the proceedings would bring the administration of justice into disrepute.

[32] Accordingly, the Court must first determine if the accused has established on a balance of probabilities that the evidence was obtained in such a way as to infringe the accused's right to be secure against unreasonable seizures as specified in section 8 of the Charter.

[33] Subsequently, if the Court concludes that this is the case, it must determine if, having regard to the circumstances, the use of this evidence would bring the administration of justice into disrepute.

[34] In order to determine the first issue, it is appropriate first of all to recall section 8 of the Charter, which reads as follows:

> 8. Everyone has the right to be secure against unreasonable search or seizure.

[35] In this application, the parties have agreed that the evidence showed, on a balance of probabilities, that the seizure of the electronic items and the files they contained clearly constituted state action subject to the Charter.

[36] The parties have also agreed that Private Larouche had a reasonable expectation of privacy with regard to the electronic items and files that were subject to the two warrants to search his home. The circumstances of this case clearly show that Private Larouche could reasonably expect the privacy of his home to be respected in the course of a search of his computers and other electronic devices. Indeed, this is what Justice Fish wrote on behalf of the majority in *R* v *Morelli*, 2010 SCC 8 at paragraph 105:

> As I mentioned at the outset, it is difficult to imagine a more intrusive invasion of privacy than the search of one's home and personal computer. Computers often contain our most intimate correspondence. They contain the details of our financial, medical, and personal situations. They even reveal our specific interests, likes, and propensities, recording in the browsing history and cache files the information we seek out and read, watch, or listen to on the Internet.

[37] It thus remains for the Court to determine whether the objects and files that were seized were seized unreasonably by Corporal Gauvin in executing the two search warrants he obtained and to determine whether or not the applicant's right under section 8 of the Charter was violated. In other words, was the seizure of the items and files unreasonable?

[38] First, Private Larouche argues that the search warrant issued on 20 January 2010 is illegal for the following reasons:

> a. The affidavit in support of the information concerning this warrant does not contain reasonable and probable grounds that would have allowed the investigator to believe that an offence of voyeurism had been committed and that there was evidence in his home that could have provided proof that such an offence had been committed;

b. The drafting of the affidavit by the investigator was incomplete because of significant inaccuracies and omissions which, once corrected, would not have provided reasonable and probable grounds to believe that the applicant could have committed an offence of voyeurism and that evidence relating to the commission of such an offence could be found at his home.

[39] It must be noted that when a court conducts a review of the issuance of a search warrant, it is conducting a judicial review of this decision. Accordingly, there is no question of proceeding *de novo*. Instead, the question to be determined is whether, when the warrant was issued, the judicial authority had the evidence required to satisfy it that the conditions precedent to the authorization existed. If the answer is that there was no such evidence, the court will be warranted in intervening. As the Supreme Court noted at paragraph 40 of *Morelli*, cited above in paragraph 36 of this decision,

> [i]n reviewing the sufficiency of a warrant application, however, "the test is whether there was reliable evidence that might reasonably be believed on the basis of which the authorization could have issued" (*R. v. Araujo*, 2000 SCC 65, [2000] 2 S.C.R. 992, at para. 54 (emphasis in original)). The question is not whether the reviewing court would itself have issued the warrant, but whether there was sufficient credible and reliable evidence to permit a justice of the peace to find reasonable and probable grounds to believe that an offence had been committed and that evidence of that offence would be found at the specified time and place.

[40] The offence of voyeurism is a relatively recent addition to the *Criminal Code* of Canada. It has been in the Code since 2005. One of the essential elements of this offence is the fact that an accused acted surreptitiously, that is, without the knowledge of consent of the victim. For example, it is interesting to read the summary of the various cases illustrating this principle in *R v Rocha*, 2012 ABPC 24 (CanLII). In that case, at paragraphs 48 to 58, Judge Groves of the Provincial Court of Alberta summarizes a number of cases illustrating what acting surreptitiously means in the context of this specific offence. I understand from this that the accused must try to hide the fact that he is recording or observing the victim, or that the victim must be unaware that he or she is being observed or recorded with a mechanical device.

[41] Regarding the affidavit in support of the information that allowed Corporal Gauvin to obtain a search warrant on 20 January 2010, I must admit that, on its face, and more specifically with regard to paragraphs 3 and 4, it does not appear to contain credible and reliable evidence allowing the judge to conclude that Private Larouche had acted without the knowledge of his alleged victims and hence reasonable and probable grounds to believe that an offence of voyeurism had been committed.

[42] It appears that in this case, in accordance with the judgment of the Supreme Court in *R.* v. *Garofoli*, [1990] 2 S.C.R. 1421, I authorized the applicant to question Corporal Gauvin on the two issues he raised about the validity of the search warrant and which I previously stated. I also allowed the respondent to develop these two aspects by permitting an examination of the witness on these two issues.

[43] Corporal Gauvin, the Military Police investigator in this case, gave clear, direct and consistent testimony. In my view, he answered properly and sincerely on the basis of his personal knowledge and experience.

[44] Corporal Gauvin stated twice when he was examined by counsel for the applicant and once when cross-examined by the respondent that he was faced with a situation where the two victims had consented to have Corporal Larouche take videos or photos of them on condition that all of those videos or photos be subsequently destroyed and that, when the applicant failed to do so, he was in a situation in which he was committing the offence of voyeurism.

[45] Clearly, the affidavit prepared by Corporal Gauvin in support of the information reflects this state of affairs. According to him, the facts did not present a situation where the victims were photographed or filmed without their knowledge, but rather one in which Private Larouche had kept, without the victims' knowledge, materials that should normally have been destroyed. As he explained, the victims decided to complain to the Military Police because Private Larouche had kept the materials and had probably shown them to others, without their knowledge, and they feared that they would have no control whatsoever over how widely all these materials would be disseminated.

[46] This observation thus leads me to conclude that the applicant has not shown on a balance of probabilities that Corporal Gauvin's affidavit was incomplete because it contained inaccuracies and omissions. On the contrary, in my view, the affidavit is accurate and reflects Corporal Gauvin's understanding of the facts as described in his testimony before the Court and as he tried to summarize them in the document.

[47] However, I find that the judge could not have issued the warrant on the basis of Corporal Gauvin's information because the supporting affidavit he filed does not disclose in any way, be it directly or by inference, reasonable and probable grounds to believe that Private Larouche took photos or videos of the two victims surreptitiously, that is, without their knowledge, and that he thus committed the offence of voyeurism. Consequently, I must intervene and declare that the search warrant that Judge Bédard issued in this case on 20 January 2010 is invalid.

[48] The applicant also argued that the second search warrant, issued in February 2010, was invalid because it had been unlawfully obtained. On this point, I must agree with him and declare that this search warrant, too, is invalid.

[49] Since the search warrant dated 20 January 2010 should not have been granted, and since the February warrant was issued on the basis of grounds that were unlawfully obtained, all this means that both of the ensuing searches infringed section 8 of the Charter, on the grounds that they were, by their combined effect, unreasonable.

[50] Regarding the execution of the search made pursuant to the warrant dated 20 January 2010, I do not agree with the argument of counsel for the applicant concerning the need to specify in the warrant the data sought on the computers. As the

evidence submitted to the Court showed, Corporal Gauvin tried to minimize the impact on Corporal Larouche throughout the search. He used software to skim over the 1,800 items subject to the search so that he could avoid conducting lengthy analyses at Private Larouche's home and take away with him only those items, 18 in number, requiring analysis, thereby leaving Private Larouche in possession of all the items that could have been seized but were not because they were not at all relevant.

[51] I therefore conclude that Private Larouche has proved, on a balance of probabilities, that the items of evidence listed in the table in Exhibit R1-VD1-17 were obtained in conditions that violated his right to be secure against unreasonable seizure, as provided under section 8 of the Charter.

[52] Now, should the evidence that the prosecution obtained from two unlawful searches and intends to use at trial be excluded pursuant to subsection 24(2) of the Charter?

[53] To determine this question, the Court must conduct an analysis on the basis of the criteria set out in the Supreme Court's decision in *R* v *Grant*, 2009 SCC 32, at paragraph 71:

> A review of the authorities suggests that whether the admission of evidence obtained in breach of the *Charter* would bring the administration of justice into disrepute engages three avenues of inquiry, each rooted in the public interests engaged by s. 24(2), viewed in a long-term, forward-looking and societal perspective. When faced with an application for exclusion under s. 24(2), a court must assess and balance the effect of admitting the evidence on society's confidence in the justice system having regard to: (1) the seriousness of the *Charter*-infringing state conduct (admission may send the message the justice system condones serious state misconduct), (2) the impact of the breach on the *Charter*-protected interests of the accused (admission may send the message that individual rights count for little), and (3) society's interest in the adjudication of the case on its merits. The court's role on a s. 24(2) application is to balance the assessments under each of these lines of inquiry to determine whether, considering all the circumstances, admission of the evidence would bring the administration of justice into disrepute. These concerns, while not precisely tracking the categories of considerations set out in *Collins*, capture the factors relevant to the s. 24(2) determination as enunciated in *Collins* and subsequent jurisprudence.

[54] In light of how the courts have applied these criteria over the last three years, the question which the Court must now answer is this: Would a reasonable person, fully apprised of the circumstances of this case and of the underlying Charter values, conclude that the admission of the evidence presented would bring the administration of justice into disrepute?

[55] To answer this question, as suggested in *Grant*, the Court must consider three factors:

a. How serious is the Charter-infringing state conduct?

b. What is the impact of the breach on the accused's Charter-protected rights?

c. What is society's interest in the adjudication of the case on the merits?

[56] First, let us be clear. There is an undeniable link between the evidence obtained and the violation of the accused's right to be secure against unreasonable seizure. Indeed, if the investigator had not obtained the first search warrant, he would not have had access to the photos and videos depicting the complainants, nor would he have had access to all or part of the files alleged to be child pornography.

[57] That being said, how should the conduct of the Military Police officer be characterized in these circumstances? In my view, all of the evidence clearly indicates that Corporal Gauvin never tried to deceive anyone in the process of trying to obtain the search warrant. Determined and perseverant, he presented the case to a judge to obtain a search warrant on the basis of his understanding of the essential elements of the offence of voyeurism. He was concerned that the complainants had given conditional consent to the taking of photos and video and that, in the end, the applicant used the photos and videos without the knowledge or consent, even though they should not normally still exist. He initially tried to obtain a search warrant covering both aspects, voyeurism and misconduct, but after he was turned down the first time because of the judge's lack of familiarity with the offence of conduct to the prejudice of good order and discipline, he adapted and resubmitted a case based on the facts he had collected during his investigation.

[58] Regarding the search, as I have already stated, it was carried out in a manner that minimized the impact on the applicant. There is no evidence that the investigator or his team behaved improperly in the circumstances.

[59] Accordingly, no one can fault the police officer for persevering in his investigation. On the contrary, often, this is the attitude everyone in our society expects. He took the applicant's rights into consideration by trying to obtain judicial permission before laying siege to the applicant's private domain.

[60] I therefore conclude that the police officer's conduct was entirely proper in the circumstances and that there was no reprehensible conduct on the part of state authorities in respect of the applicant's Charter rights.

[61] Now, what is the impact of the breach of the accused's Charter rights? In my opinion, it is very significant. As the Supreme Court clearly stated in *Morelli*, it is difficult to imagine anything more serious in terms of an invasion of privacy than a search, at 6 o'clock in the morning, of one's home and all of one's computers, electronic devices and data storage equipment by a police officer, particularly when one is arrested or held at somewhere far from home during this search. This shows how very important it is that police authorities obtain judicial authorization before invading the private domain of any individual.

[62] Finally, what is society's interest in the adjudication of the case on the merits? First off, let us assume that the evidence at issue in this motion is totally reliable. The ownership of the items seized at the applicant's home does not appear to be in question. They were all seized in his home, and the subsequent analysis appears to have been done in accordance with a reliable process. Consequently, the reliability of the evidence is high.

[63] This evidence is clearly essential for the prosecution, particularly for the charges of voyeurism and child pornography. The prosecution stated that, without this evidence, it would be impossible to prosecute the case, with the exception of the first count, namely, conduct to the prejudice of good order and discipline.

[64] It is important to note that the offences with which Private Larouche is charged are serious. Society's condemnation of these offences is strong, particularly with regard to possession of child pornography. It is also important to bear in mind that this evidence consists of a very large number of files that were seized in connection with this offence, over 1,000, which in itself is also an indicator of the seriousness of this offence.

[65] This is a context that involves the physical and psychological integrity of numerous alleged victims. Indeed, it involves several people in the applicant's social circle or workplace, who are also Forces members. Furthermore, the offences are objectively serious and allegedly unfolded over a long period of time at multiple locations.

[66] In light of the preceding, the public's perception of the military justice system, and the Court Martial in particular, could be severely undermined or eroded in the long term if the evidence at issue in this motion were excluded. If this evidence were excluded, the public could in the long term come to believe that the Court Martial is unable to properly exercise its truth-seeking function when dealing with serious criminal cases. In fact, in the long term, the public could come to believe that the Court Martial is unable to properly assess and deal with criminal offences, which are first of all service offences under the *National Defence Act*, not only because of their seriousness, but also because of its capacity to properly assess the seriousness of the context in which the offences were allegedly committed.

[67] In the present case, I am of the opinion that a reasonable person, fully apprised of the relevant circumstances of this case and of the underlying Charter values, would conclude that the admission of the evidence presented would not bring the administration of justice into disrepute.

[68] The two warrants in this case were not obtained through unacceptable police conduct or practices, but by a judicial authorization that was granted on the basis of a sincere belief of a police officer that use without the knowledge of the victims, who posed or were filmed totally nude or while performing a sex act with the applicant, in

itself constituted an offence of voyeurism. In the present case, the actual demonstration of the grounds incorrectly considered on a particular aspect of the offence of voyeurism, probable and reasonable, by both the police officer and the judicial authority, resulted in an invasion of the applicant's privacy. However, excluding the evidence in the circumstances of this case would, in my opinion, undermine public confidence.

[69] Therefore, I am entirely satisfied that the exclusion of the evidence identified in the table in Exhibit R1-VD1-17 would bring the administration of justice into disrepute.

FOR THESE REASONS, THE COURT

[70] **FINDS** that the applicant has proved on a balance of probabilities that the evidence identified in Exhibit R1-VD1-17 was obtained in circumstances that infringed his right to be secure against unreasonable seizures, as provided under section 8 of the Charter.

[71] **FINDS** that, having regard to the circumstances, the admission of the evidence presented would not bring the administration of justice into disrepute and that the evidence should not be excluded under subsection 24(2) of the Charter.

[72] And, finally, **DISMISSES** the motion.

Counsel:

Major G. Roy, Canadian Military Prosecution Service
Counsel for the respondent

Lieutenant-Commander P. Desbiens, Defence Counsel Services
Counsel for the applicant