



COURT MARTIAL

Citation: *R v Clark*, 2011 CM 4003

Date: 20110224

Docket: 201065

Standing Court Martial

Canadian Forces Base Petawawa
Petawawa, Ontario, Canada

Between:

Her Majesty the Queen

- and -

Captain L.M. Clark, Accused

Before: Lieutenant-Colonel J-G Perron, M.J.

REASONS FOR FINDING

(Orally)

INTRODUCTION

[1] The accused, Captain Clark, is charged with having disobeyed a lawful command of a superior officer and of lying to her Commanding Officer (CO) and to the unit Sergeant Major; thus prejudicing good order and discipline.

[2] The prosecution asserts that the evidence presented to this court proves beyond a reasonable doubt every element of the alleged offences. The prosecution argues the evidence demonstrates that Captain Clark told Warrant Officer Galway his ranking on the 2 Military Police (2 MP) Unit merit board contrary to an order from her CO and that she lied to her CO and to the unit Sergeant Major when asked by them if she had told Warrant Officer Galway his ranking and had disclosed a copy of his draft Personnel Evaluation Report (PER) to Warrant Officer Galway. Defence counsel argues the evidence does not prove beyond a reasonable doubt the offences because the court cannot rely on the evidence of the prosecution's witnesses.

THE APPLICABLE LAW

[3] Before this court provides its analysis of the evidence and of the charges, it is appropriate to deal with the presumption of innocence and the standard of proof beyond a reasonable doubt. Although these principles are well known to counsel, other people in this courtroom may be less familiar with them.

[4] It is fair to say that the presumption of innocence is most likely the most fundamental principle in our criminal law, and the principle of proof beyond a reasonable doubt is an essential part of the presumption of innocence. In matters dealt with under the Code of Service Discipline, as with cases dealt under Canadian criminal law, every person charged with a criminal offence is presumed to be innocent until the prosecution proves his or her guilt beyond a reasonable doubt. An accused person does not have to prove that he or she is innocent. It is up to the prosecution to prove its case on each element of the offence beyond a reasonable doubt. An accused person is presumed innocent throughout his or her trial until a verdict is given by the finder of fact.

[5] The standard of proof beyond a reasonable doubt does not apply to the individual items of evidence or to separate pieces of evidence that make up the prosecution's case, but to the total body of evidence upon which the prosecution relies to prove guilt. The burden or onus of proving the guilt of an accused person beyond a reasonable doubt rests upon the prosecution and it never shifts to the accused person.

[6] A court must find an accused person not guilty if it has a reasonable doubt about his or her guilt after having considered all of the evidence. The term, "beyond a reasonable doubt," has been used for a very long time. It is part of our history and traditions of justice.

[7] In *R v Lifchus*, [1997] 3 SCR. 320, the Supreme Court of Canada proposed a model chart on reasonable doubt. The principles laid out in *Lifchus* have been applied in a number of Supreme Court and appellate court decisions. In substance, a reasonable doubt is not a far-fetched or frivolous doubt. It is not a doubt based on sympathy or prejudice, it is a doubt based on reason and common sense. It is a doubt that arrives at the end of the case, based not only on what the evidence tells the court, but also on what that evidence does not tell the court. The fact that a person has been charged is no way indicative of his or her guilt.

[8] In *R v Starr*, [2000] 2 SCR. 144, at paragraph 242, the Supreme Court held that:

... an effective way to define the reasonable doubt standard for a jury is to explain that it falls much closer to absolute certainty than to proof on a balance of probabilities.

On the other hand, it should be remembered that it is nearly impossible to prove anything with absolute certainty. The prosecution is not required to do so. Absolute certainty is a standard of proof that does not exist in law. The prosecution only has the burden of prov-

ing the guilt of an accused person, in this case Captain Clark, beyond a reasonable doubt. To put it in perspective, if the court is convinced, or would have been convinced, that the accused is probably or likely guilty, then the accused would be acquitted since proof of probable or likely guilt is not proof of guilt beyond a reasonable doubt.

[9] Evidence may include testimony under oath or solemn affirmation before the court by witnesses about what they observed or what they did. It could be documents, photographs, maps or other items introduced by witnesses, the testimony of expert witnesses, formal admissions of facts by either the prosecution or the defence, and matters of which the court takes judicial notice.

[10] It is not unusual that some evidence presented before the court may be contradictory. Often, witnesses may have different recollections of events. The court has to determine what evidence it finds credible.

[11] Credibility is not synonymous with telling the truth, and a lack of credibility is not synonymous with lying. Many factors influence the court's assessment of the credibility of the testimony of a witness. For example, the court will assess a witness's opportunity to observe; a witness's 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? 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? This last factor applies in a somewhat different way to the accused. Even though it is reasonable to assume that the accused is interested in securing his or her acquittal, the presumption of innocence does not permit a conclusion that an accused will lie where that accused chooses to testify.

[12] The demeanour of the witnesses while testifying is a factor which can be used in assessing credibility; that is, was the witness responsive to questions, straightforward in his or her answers, or evasive, hesitant and argumentative? Finally, was the witness's testimony consistent with itself and with the uncontradicted facts?

[13] Minor discrepancies, which can and do innocently occur, do not necessarily mean that the testimony should be disregarded. However, a deliberate falsehood is an entirely different matter. It is always serious, and it may well taint a witness's entire testimony.

[14] The court is not required to accept the testimony of any witness, except to the extent that it has impressed the court as credible. However, a court will accept evidence as trustworthy unless there is a reason, rather, to disbelieve it.

[15] The court must focus its attention on the test found in the Supreme Court of Canada decision of *R v W. (D.)*, [1991] 1 SCR. 742. This test goes as follows:

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

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

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

[16] In *R v J.H.S.*, 2008 SCC 30 at paragraph 12, the Supreme Court of Canada quoted approvingly the following passage from *R v H. (C.W.)* (1991), 68 CCC (3d) 146 British Columbia Court of Appeal, where Wood J.A. suggested the additional instruction:

I would add one more instruction in such cases, which logically ought to be second in the order, namely: "If, after a careful consideration of all the evidence, you are unable to decide whom to believe, you must acquit."

[17] In the present trial no evidence was presented by defence counsel. Therefore, the court must focus immediately on the third step of the *W.(D.)* test; that is to say, whether on the basis of the evidence which the court accepts, the court is convinced beyond a reasonable doubt by that evidence of the guilt of Captain Clark.

[18] The evidence before this court martial is composed essentially of the following: judicial notice, exhibits and the testimony of witnesses. Judicial notice was taken by the court of the facts and issues under Rule 15 of the Military Rules of Evidence (MRE). The court also took judicial notice under Rule 16 (1)(e) of the MRE of the contents of five publications, namely:

- a. *Defence Administrative Order and Directive 7023-1 - Defence Ethics Program;*
- b. B-GL-300-000/FP-000 - *Canada's Army;*
- c. A-PA-005-000/AP-001 - *Duty with Honour-The Profession of Arms in Canada 2009;*
- d. A-PA-005-000/AP-003 - *Leadership in the Canadian Forces-Doctrine;*
- e. A-PA-005-000/AP-004 - *Leadership in the Canadian Forces-Conceptual Foundations;* and
- f. A-PA-005-000/AP-005 - *Leadership in the Canadian Forces-Leading People.*

[19] Two exhibits were produced by the prosecution. Exhibit 3 is the PER presented to Warrant Officer Galway on 20 April 2010 and Exhibit 4 is the draft PER

that had been attached to Warrant Officer Galway's Redress of Grievance. The witnesses heard in the order of their appearance before the court are Master Warrant Officer Bélanger, Major Flight and Warrant Officer Galway.

[20] Firstly, I will review the evidence that is not disputed in this trial. A unit merit board was held in a lecture room at 2 MP Platoon's building at CFB Petawawa during the period of 19 to 21 January 2010. Major Flight is the Commanding Officer of 2 MP Unit and 2 MP Platoon is a sub-unit of 2 MP Unit. Captain Clark was the Officer Commanding (OC) of 2 MP Platoon and Warrant Officer Galway was the acting Sergeant Major of 2 MP Platoon at the time of the alleged offences. Major Flight, Captain Clark and Warrant Officer Galway were present in the same room at the beginning of the merit board when Master Warrant Officer Bélanger, acting as the chairperson of the board, informed the participants of the procedure to be followed and of the need of confidentiality with regards to the upcoming deliberations and rankings. Major Flight was sitting in the front row and stood up to emphasize the need for confidentiality by indicating that it was an order that the information was not to leave the room. The size of the room was approximately 15 feet by 20 feet. Warrant Officer Galway was ranked second in the 2 MP Unit Warrant Officer ranking. On 20 April 2010, Warrant Officer Galway refused to sign his annual PER when it was presented to him by Captain Clark.

[21] As in most trials, the assessment of the credibility of the witnesses is a fundamental aspect of the trial. An assessment of credibility involves the evaluation of the honesty of a witness but also the reliability of the evidence of that witness. Credibility is a function of the veracity of the witness and reliability pertains to the accuracy of the evidence. The assessment of credibility may not be a purely intellectual exercise. Numerous factors are involved. Some factors may defy verbalization.¹ The trial judge may assess evidence "through the lens of common sense and everyday experience, in the same manner as juries are instructed to do by trial judges."²

[22] Master Warrant Officer Bélanger was the first witness for the prosecution. She spoke with Warrant Officer Galway on the morning of 21 April 2010. Warrant Officer Galway was extremely agitated; he was "hollering and swearing." She understood from her conversation with him that he was not happy with his PER because he knew that he had initially placed second in the merit list but had been dropped because the CO hated him. He would not say how he knew that, but that he knew. He would have told her he had seen a copy of the draft PER. He also would have initially told her that he had a copy of the draft PER, then he would have recanted that statement. On 23 April, Master Warrant Officer Bélanger called Captain Clark and asked her if she had provided a copy of the draft PER to Warrant Officer Galway; Captain Clark replied no. Master Warrant Of-

¹ *R v R.E.M.*, 2008 SCC 51 at para 49.

² *R v H.C.*, 2009 ONCA 56 at para 64.

ficer Bélanger then asked her if she had shown him a copy of the draft PER; Captain Clark replied no. Master Warrant Officer Bélanger also asked Captain Clark if she had told him his ranking; Captain Clark replied no. Master Warrant Officer Bélanger then briefed the CO on her conversation with Captain Clark. Master Warrant Officer Bélanger believed Captain Clark and did not believe Warrant Officer Galway. She felt he was bluffing her.

[23] During her cross-examination, she testified that on 7 May she had a conversation with Warrant Officer Galway, where he told her that Captain Clark had shown him a copy of his draft PER on 17 January 2010, that Captain Clark had told him his ranking approximately ten minutes after the merit board and that Captain Clark had told him she would deny any allegation she would have told him where he was ranked. Master Warrant Officer Bélanger then briefed the CO on her conversation with Warrant Officer Galway and told him they had to investigate this situation. She also testified that Warrant Officer Galway was not forthcoming with her when he first spoke to her on 21 April 2010. On 10 May 2010, she drafted a request for a Canadian Forces National Investigation Service (CFNIS) investigation into this matter. The CFNIS chose not to investigate. On 12 May, she reviewed a Unit Disciplinary Investigation (UDI) drafted by Major Flight. This UDI was completed on 18 May and the Deputy Commanding Officer (DCO) of the unit charged Captain Clark on 18 May 2010. On 8 June 2010, she received a Redress of Grievance concerning his PER from Warrant Officer Galway. She was shocked to see a copy of the draft PER attached to the Redress of Grievance.

[24] During her re-examination, she confirmed that paragraph 11 of the UDI refers to the CO's conversation with Captain Clark and that paragraph 13 refers to her conversation of 23 April with Captain Clark, in which Captain Clark denies telling Warrant Officer Galway his ranking and denies informing Warrant Officer Galway of his draft PER. Paragraph 15 of the UDI refers to her May 7 conversation with Warrant Officer Galway.

[25] Master Warrant Officer Bélanger is a credible and reliable witness. She was forthright throughout her testimony and answered each question to the best of her knowledge and in an honest manner.

[26] Major Flight was the next witness. He did not participate in the 19-21 January merit board because he wanted to remain at arm's length from that process. Major Flight met Captain Clark in Petawawa on 26 March 2010. They discussed amongst other subjects the PER of Warrant Officer Galway. He had some issues with section 5, the potential portion, which is the portion bearing his signature block. He advised Captain Clark it had to be re-written and that he would write it if she was not comfortable re-writing it. He did not have to modify that section when the PER was presented to him a second time.

[27] During the evening of 20 April 2010, Captain Clark left him a message. Major Flight stated there was a sense of urgency in the message because things had not gone well when Captain Clark had debriefed Warrant Officer Galway on his PER and that somehow Warrant Officer Galway had a copy of his draft PER. He first spoke to Captain Clark via telephone before unit physical training (PT) on the morning of 21 April. He asked her how Warrant Officer Galway could have gotten a copy of the draft PER and Captain Clark responded she had not given him a copy. Later, after unit PT, he met Captain Clark to discuss this matter. He testified he received no further information on this situation until May 7 when Master Warrant Officer Bélanger came to his office to inform him of the allegations made by Warrant Officer Galway.

[28] During his examination in chief, Major Flight stated he had asked Captain Clark after unit PT on the morning of 21 April if she had given or shown a copy of the draft PER to Warrant Officer Galway and if she had told Warrant Officer Galway of his ranking on the merit board. He stated that Captain Clark had emphatically denied doing any of these actions.

[29] During his cross-examination, he confirmed that paragraph 11 of the UDI pertains to the conversation he had with Captain Clark on 21 April 2010. This paragraph provides that Captain Clark denied providing a copy of the draft PER to Warrant Officer Galway. He agreed with defence counsel that this paragraph does not indicate he asked Captain Clark whether she had shown a copy of the draft PER to Warrant Officer Galway and whether she had told Warrant Officer Galway of his ranking on the merit board. When pressed on that latter point, he stated he would not have been in a position to ask that latter question because that information had not come to him before May 7. On 31 January 2011, he sent an email to the prosecutor where he stated that Captain Clark had emphatically said no to his questions and that Captain Clark had lied on 21 April about telling Warrant Officer Galway his ranking.

[30] During his cross-examination he reiterated that he had asked Captain Clark if she had shown Warrant Officer Galway a copy of his draft PER and if she had told him about his ranking on the merit list. He explained it was an exercise in sense-making, working as allies and it was natural to ask the question. He stated he had failed to reduce it in writing in the UDI.

[31] Major Flight's explanation during his cross-examination as to why paragraph 11 of his UDI does not indicate he had asked Captain Clark whether she had told Warrant Officer Galway of his ranking on the merit board completely contradicts his description of his discussion with Captain Clark on the morning of 21 April and also strips his testimony of any credibility as it relates to charges two and four unless his evidence is corroborated by other witnesses.

[32] Mr Galway was the last witness. He was a member of 2 MP Platoon at the time of the alleged offences, serving in the rank of warrant officer as the acting

Sergeant Major for the subunit. He stated he had an excellent relationship with Captain Clark. He testified he met Captain Clark in her office some time before the unit merit board and that she showed him his draft PER. He would have told her she could not do that, but she persisted because she wanted to ensure she had written the PER correctly. He reviewed it quickly and gave it back to her. The meeting would have lasted approximately ten minutes. On 21 January she would have told him his ranking when they met in the hallway. On 20 April he informed her he would not sign the PER and that he would grieve it because he had seen the draft and he had been told his ranking. Captain Clark would have told him she did not remember showing him the draft or telling him his ranking. He thought she was lying because she knew she was wrong and that she had made a mistake.

[33] He called the unit Sergeant Major and told her he would grieve the PER. He could not remember when he called the unit Sergeant Major. He recalled telling the unit Sergeant Major that Captain Clark had shown him a draft PER and had told him his ranking but he could not remember when they had that conversation. He recalled telling the unit Sergeant Major that Captain Clark did not recall showing him the PER or telling him his ranking.

[34] He stated he had found a copy of his draft PER in the trash can in the open area and that it was all balled up. He found it prior to the merit board but "a couple of days" after Captain Clark had shown him the draft. The copy he found was the same he had been shown by Captain Clark. He does not recall telling the unit Sergeant Major where he found the draft PER. He included the draft PER as an Annex to his Redress of Grievance.

[35] During his cross-examination he replied, "I guess so" when defence counsel pointed out, that based on the appearance of Exhibit 4, there was no evidence such as lines on the photocopy that indicated the draft had been balled up.

[36] He could not recall when he told the unit Sergeant Major about finding the draft PER but he recalled telling her. He told the prosecutor on 10 February 2011, that Captain Clark had not given him a copy of the draft PER and that he had never mentioned to anyone other than the unit Sergeant Major that he had found a copy of the draft PER.

[37] Although Warrant Officer Galway often stated he could not remember exact dates or the exact words he used when communicating with Master Warrant Officer Bélanger and with Captain Clark, his testimony on the principal events at the heart of this trial is consistent and is not contradicted by other evidence. While his testimony was generally vague, his demeanour and his manner of answering questions were consistent throughout his testimony. Although the court believes that Warrant Officer Galway does not want to reveal all the information as to how he obtained a copy of the draft PER, the court has not been presented with any evidence that contradicts Warrant Officer Galway's evidence on how he first saw his draft PER, and how he learned his ranking on the merit board. No

evidence demonstrates that that evidence is false or incorrect. His testimony has not been impeached during his cross-examination. Therefore, Warrant Officer Galway is deemed credible and reliable.

[38] The particulars of the first charge read as follows:

"In that she, on or about 21 January 2010, at or near Canadian Forces Base Petawawa, Ontario, revealed to Warrant Officer J.G. Galway his ranking on the 2 Military Police Unit merit board contrary to the order of Major N. Flight."

[39] The prosecution had to prove the following essential elements for this offence beyond a reasonable doubt:

- a. the identity of the accused as the offender and the date and place as alleged in the charge sheet;
- b. that an order was given to Captain Clark;
- c. that it was a lawful order;
- d. that Captain Clark received and knew the order;
- e. that the order was given by a superior officer;
- f. that Captain Clark was aware of that officer's status;
- g. that Captain Clark did not comply with the order; and
- h. the blameworthy state of mind of the accused.

[40] It is clear from the undisputed evidence that Captain Clark is the accused. The identity of the accused is not an issue in these proceedings. Captain Clark knew that Major Flight was a superior officer. An order by a CO to members of his unit that the results of a merit board are to be kept confidential is a lawful order since it is clearly related to a military duty.³ The court is satisfied beyond a reasonable doubt that Captain Clark heard that order when it was given by Major Flight on 19 January 2010.

[41] Defence counsel argued that it was inherently unlikely that Captain Clark would have told Warrant Officer Galway his ranking in the circumstances described by Warrant Officer Galway. He used Master Warrant Officer Bélanger's description of Captain Clark as an impressive young officer to justify this assertion. Defence counsel did not contradict or attempt to impeach Warrant Officer Galway's testimony on this issue. Warrant Officer Galway did not ask Captain Clark about his ranking, he testified she told him his

³*Liwyj v R*, 2010 CMAC 6 at para 24.

ranking. The court has not been presented any evidence that would make it doubt the veracity of Warrant Officer Galway on this specific issue. The court is also satisfied that Captain Clark intentionally told Warrant Officer Galway his ranking on the unit merit board. Having accepted the testimony of Warrant Officer Galway as credible, the court finds the prosecution has proven beyond a reasonable doubt that Captain Clark did tell Warrant Officer Galway his ranking on the 2 MP Unit merit board contrary to the order of Major Flight.

[42] The particulars of the second and third charges read as follows. Charge number two:

"In that she, on or about 21 April 2010, at or near Canadian Forces Base Petawawa, Ontario, lied to Major N. Flight by stating she had not revealed to Warrant Officer J.G. Galway his ranking on the 2 MP Unit merit board when she had so done."

Charge number three:

"In that she, on or about 23 April 2010, at or near Canadian Forces Base Petawawa, Ontario, lied to Master Warrant Officer N.E. Bélanger by stating that she had not revealed to Warrant Officer J.G. Galway his ranking on the 2 Military Police Unit merit board when she had so done."

[43] The prosecution had to prove the following essential elements for these offences beyond a reasonable doubt:

- a. the identity of the accused as the offender and the date and place as alleged in the charge sheet;
- b. that Captain Clark had revealed to Warrant Officer Galway his ranking on the 2 MP Unit merit board;
- c. that Captain Clark told Major Flight she had not revealed to Warrant Officer Galway his ranking on the 2 MP Unit merit board for the second charge and that Captain Clark told Master Warrant Officer Bélanger she had not revealed to Warrant Officer Galway his ranking on the 2 MP Unit merit board for the third charge;
- d. that Captain Clark intentionally made that false statement; and
- e. the prejudice to good order and discipline resulting from the conduct.

[44] The court has already stated that it did not believe Major Flight's evidence concerning his discussion with Captain Clark after the unit PT on the morning of 21 April 2010; therefore, the court finds the prosecution has not proven beyond a reasonable doubt

that Captain Clark told Major Flight on 21 April 2010 she had not revealed to Warrant Officer Galway his ranking on the 2 MP Unit merit board.

[45] The court has already found that Captain Clark did reveal to Warrant Officer Galway on 21 January 2010, his ranking on the 2 MP Unit merit board. The court, having found that Master Warrant Officer Bélanger's evidence on this matter is credible and reliable, finds the prosecution has proven beyond a reasonable doubt that Captain Clark told Master Warrant Officer Bélanger on 23 April 2010 she had not revealed to Warrant Officer Galway his ranking on the 2 MP Unit merit board.

[46] Intent to commit an act is a state of mind. A person usually intends the natural and probable consequences of his or her voluntary actions. The court has to use common sense to infer from all the evidence what Captain Clark intended when she told Master Warrant Officer Bélanger she had not revealed to Warrant Officer Galway his ranking on the 2 MP Unit merit board. Based on the evidence accepted by the court, the court finds that Captain Clark intentionally made a false statement to Master Warrant Officer Bélanger on 23 April 2010.

[47] The court must now determine whether this conduct was prejudicial to good order and discipline. Captain Clark showed Warrant Officer Galway the draft version of his PER, Exhibit 4, before the unit merit board and she told him his ranking after the unit merit board on 21 January 2010. In March 2010, Major Flight met with Captain Clark and she had to re-write the PER. The scoring on the annual PER presented to Warrant Officer Galway on 20 April, Exhibit 3, was much lower than the scoring on the draft PER, Exhibit 4, he had been shown. He was extremely unhappy and indicated he would grieve his PER.

[48] On 21 April, he told Master Warrant Officer Bélanger why he was unhappy with his PER; he knew he had placed second and had seen a draft copy of his PER. This led Master Warrant Officer Bélanger to call Captain Clark on 23 April in an attempt to fully understand this situation. Captain Clark lied to Master Warrant Officer Bélanger when she told her she had not revealed to Warrant Officer Galway his ranking on the 2 MP Unit merit board. Master Warrant Officer Bélanger believed Captain Clark on 23 April and she did not trust Warrant Officer Galway because she did not believe he was telling the truth at that time. She thought he was bluffing her. She testified she sent an email to Warrant Officer Galway on 23 April, but that her tone would have been the same even if she had thought at that time that he was truthful. She also stated she did not mention Captain Clark's denials in the email to Warrant Officer Galway because she believed her.

[49] On May 7 Master Warrant Officer Bélanger had a conversation with Warrant Officer Galway where he told her Captain Clark had shown him his draft PER on 17 January and she had told him his ranking a few minutes after the unit merit board. Master Warrant Officer Bélanger testified he also would have told her Captain Clark had stated she would deny having told him his ranking or showing him a draft. Following this telephone conversation, Master Warrant Officer Bélanger informed her CO and recommended that a disciplinary investigation be conducted.

[50] The DCO laid charges against Captain Clark on 18 May, on the same day the UDI was concluded by the CO. She saw Warrant Officer Galway's Redress of Grievance on 8 June 2010, and saw a copy of his draft PER attached as an Annex. She was shocked at seeing this. She felt ashamed that she had not believed Warrant Officer Galway and had believed Captain Clark until that date.

[51] Master Warrant Officer Bélanger described the leadership dynamic within 2 MP Unit. The headquarters of the unit is located in Toronto and its ten sub-units are located throughout Ontario. The command team in Toronto, Major Flight and herself, had to rely on the sub-units' command teams. More specifically the CO had to rely on his officers and she had to rely on the non-commissioned officers (NCOs) She described how trust is important in that she needs to trust her NCOs to tell her what is happening in the sub-units.

[52] She would have kept her trust in Warrant Officer Galway on 23 April if Captain Clark would have told her she had shown the draft PER to Warrant Officer Galway. She would have believed what he had told her previously. This trust in her NCO was critical to ensure she could support her CO and ensure the success of the unit. She needs to be able to trust her NCO to give her a complete picture of the unit. This lack of trust made her second guess her NCO and question whether she could rely on him. When she realized Captain Clark had lied to her she felt she had failed in her mentoring role vis-à-vis Captain Clark.

[53] Captain Clark has now lost the trust of Master Warrant Officer Bélanger but she also caused Master Warrant Officer Bélanger to lose trust in Warrant Officer Galway for a period of time. Captain Clark's lie to Master Warrant Officer Bélanger had a negative effect on Master Warrant Officer Bélanger. It changed how Master Warrant Officer Bélanger viewed Warrant Officer Galway and how she could trust and rely on him and the information she was getting from him. The publication *Canada's Army* provides at page 52:

"To be good leaders, officers must be models of professional excellence, displaying absolute and uncompromising integrity of character, taking responsibility for their actions and being accountable of the actions of those in their charge. If an officer's integrity is compromised, he or she will be unable to maintain the bond of trust upon which their leadership relies."

[54] *Duty with Honour: The Profession of Arms in Canada 2009*, touches on the concept of discipline at page 28 as follows:

"Discipline plays a major role in maintaining a high standard of military professionalism. Discipline helps build the cohesion that enables individuals and units to achieve objectives that could not be attained by military skills alone and allows compliance with the interests and goals of the military institution while instilling shared values and common stand-

ards.... A high standard of military discipline is generated from an understanding of the demands of combat, a knowledge of comrades and trust in leaders."

[55] *Canadian Forces: Conceptual Foundations* deals with the importance of trust at page 73:

"Trust in leadership is positively related to individual and group performance, persistence in the face of adversity, the ability to withstand stress, job satisfaction, and commitment to continued service. A climate of trust between leaders and led is also positively related to such 'good soldier' qualities as conscientiousness, fair play, and co-operation. It follows that an important part of the leader's job is to build and maintain healthy trust relationships with subordinates, peers, and superiors.

Leaders build and maintain trust through their decisions, actions, and interactions. Trust relationships take time to develop but can be easily broken by a significant breach of the expectations that others hold. Three major personal qualities are critical to the development of trust in leaders: leader competence, the care and consideration for others displayed by a leader, and leader character (integrity, dependability, and fairness.)"

[56] Finally, *Leadership in the CF: Leading People* also emphasizes the importance of building trust at page 70.

[57] Major Flight attended the Army Command Team course. He explained that the command team, the officer and the NCO, must trust each other. It is essential to unit cohesion and the command team must model it. He must rely on his officers and detachment commanders to be his eyes and ears on the ground. There must be trust between himself and his sub-unit commander. The sub-unit commanders form part of his extended command team.

[58] He stated that, after having been apprised of Warrant Officer's Galway's allegations and after having seen Warrant Officer Galway's Redress of Grievance, he believed Captain Clark had shown Warrant Officer Galway his draft PER. He testified that a major domestic operation, G8/G20 meeting, was approaching and that the 2 MP Platoon command team was fractured; thus complicating matters for him. Instead of calling Captain Clark or having Master Warrant Officer Bélanger call Warrant Officer Galway he contacted a sergeant in 2 MP Platoon he knew personally to find out what was happening in 2 MP Platoon because he thought the sergeant would be impartial. He had never taken such actions previously in his career. He did let Captain Clark deploy to OP CADENCE as his representative to 2 Brigade because he did not assume guilt, but he spoke to her on June 7th and gave her written directions on how to do her job.

[59] Achieving goals or in other words ensuring mission success is a fundamental objective in the Canadian Forces. Leaders must be able to trust their subordinates; time and energy wasted second guessing subordinates may lead to failure. Teamwork is also an important value that leads to mission success. Teamwork is based on trust. Trust is a product of integrity. Simply put, we as an institution rely on integrity and on trust because every commander and every member of the team must trust that his superiors, his peers and his subordinates will perform their duties and ensure mission success as well as the security of the men and women working together towards that same objective. The court finds that Captain Clark's lie to Master Warrant Officer Bélanger caused Master Warrant Officer Bélanger to lose trust in Warrant Officer Galway and thus, changed the way in which Master Warrant Officer Bélanger would conduct her dealings with that sub-unit. Had Captain Clark honestly answered Master Warrant Officer Bélanger's question on 23 April, Master Warrant Officer Bélanger would not have lost trust in Warrant Officer Galway and she would have worked with them to resolve the situation. Instead, this lie adversely affected the 2 MP Unit extended command team. Major Flight also modified his manner in dealing with Captain Clark and with the sub-unit after being fully briefed of the allegations. Therefore, the court is satisfied beyond a reasonable doubt that Captain Clark's lie to Master Warrant Officer Bélanger was an act to the prejudice of good order and discipline within 2 MP Unit.

[60] The particulars of the fourth and fifth charges read as follows:

"In that she, on or about 21 April 2010, at or near Canadian Forces Base Petawawa, Ontario, lied to Major N. Flight by stating that she had not disclosed to Warrant Officer J.G. Galway a draft of Warrant Officer Galway's Personnel Evaluation Report when she had so done,"

and charge number five:

"In that she, on or about 23 April 2010, at or near Canadian Forces Base Petawawa, Ontario, lied to Master Warrant Officer N.E. Bélanger by stating that she had not disclosed to Warrant Officer J.G. Galway a draft of Warrant Officer Galway's Personnel Evaluation Report when she had so done."

[61] The prosecution had to prove the following essential elements of these offences beyond a reasonable doubt:

- a the identity of the accused as the offender and the date and place as alleged in the charge sheet;
- b that Captain Clark had disclosed to Warrant Officer Galway a draft of his annual PER;
- c that Captain Clark told Major Flight she had not disclosed to Warrant Officer Galway a draft of his annual PER for the fourth charge and that Cap-

tain Clark told Master Warrant Officer Bélanger she had not disclosed to Warrant Officer Galway a draft of his annual PER for the fifth charge;

d that Captain Clark intentionally made that false statement; and

e the prejudice to good order and discipline resulting from the conduct.

[62] The court has already stated it did not believe Major Flight's evidence concerning his discussion with Captain Clark after unit PT on the morning of 21 April 2010; therefore, the court finds the prosecution has not proven beyond a reasonable doubt that Captain Clark told Major Flight on 21 April 2010 she had not disclosed to Warrant Officer Galway a draft of his annual PER.

[63] Captain Clark is not accused of lying by stating she had not provided a copy of the draft PER to Warrant Officer Galway. She is accused of lying by stating she had not disclosed a draft of his PER. "Disclose" is defined in the *Concise Oxford English Dictionary Eleventh Edition Revised*, as "make known" and "allow to be seen."

[64] The evidence of Major Flight and Master Warrant Officer Bélanger portray Captain Clark as a young officer that showed good potential and performed well in her responsibilities at the time of the alleged offences. Captain Clark had been posted as OC of 2 MP Platoon during the summer of 2009. She had a good working relationship with Warrant Officer Galway, her acting Sergeant Major. Defence counsel spent much time during his cross-examination of the witnesses on the fact that it was Captain Clark's first experience at writing PERs. While Warrant Officer Galway agreed that it was a well known rule in 2 MP Platoon that members were not to see draft PERs, the evidence does not indicate that Captain Clark was aware of that rule until Warrant Officer Galway told her he was not supposed to see the draft PER.

[65] When cross-examining Warrant Officer Galway, defence counsel did not contradict him on the fact that she had shown him his draft PER or impeach Warrant Officer Galway's evidence on that issue. Defence counsel did focus on the fact that it was the wrong thing to do. Warrant Officer Galway agreed it was wrong and that he knew it was wrong, but that she had insisted he review it to ensure she had done a good job and that he receive a fair PER for the work he had done. The court thus concludes that Captain Clark did show Warrant Officer Galway a draft of his annual PER before the unit merit board.

[66] The court, having accepted the evidence of Warrant Officer Galway, finds that Captain Clark did disclose to Warrant Officer Galway a draft of his annual PER. The court, having accepted the evidence of Master Warrant Officer Bélanger, finds that Captain Clark did tell Master Warrant Officer Bélanger that she had not shown Warrant Officer Galway a copy of his draft PER. Showing a copy of a draft PER is the same as allowing to be seen or making known. The court finds the prosecution has proven beyond a reasonable doubt that Captain Clark told Master Warrant Officer Bélanger on 23 April 2010, she had not disclosed to Warrant Officer Galway a draft of his annual PER.

[67] Intent to commit an act is a state of mind. I have already covered the law dealing with intent. Based on the evidence accepted by this court, the court finds that Captain Clark intentionally made that false statement to Master Warrant Officer Bélanger on 23 April 2010.

[68] The court must now determine whether this conduct was prejudicial to good order and discipline. For the same reasons the court provided at charge number three, the court finds that Captain Clark's lie to Master Warrant Officer Bélanger did cause prejudice to good order and discipline within 2 MP Unit. Therefore the court is satisfied beyond a reasonable doubt that Captain Clark's lie to Master Warrant Officer Bélanger was an act to the prejudice of good order and discipline.

FOR THESE REASONS, THE COURT:

[69] **FINDS** you guilty of the first, third and fifth charge.

[70] **FINDS** you not guilty of the second and fourth charge.

Counsel:

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