



COURT MARTIAL

Citation: *R. v. Beaulieu*, 2011 CM 1016

Date: 20111217

Docket: 201154

Standing Court Martial

Canadian Forces Base Gagetown
Oromocto, New Brunswick, Canada

Between:

Her Majesty the Queen

- and -

Sergeant J.J.G.Y. Beaulieu, Accused

Before: Colonel M. Dutil, C.M.J.

REASONS FOR FINDING

(Orally)

INTRODUCTION

[1] Sergeant Beaulieu is charged with three offences. The first charge alleges a contravention to section 97 of *National Defence Act* for drunkenness where the second and third charges respectively are laid under section 129 of the *National Defence Act* for a conduct to the prejudice of good order and discipline for harassment on two female soldiers contrary to DAOD, Defence Administrative Orders and Directives, 5012-0. The particulars of the first charge read:

In that, on or about 9 December 2010, at or near Griffin's Pub and Eatery, Oromocto, New Brunswick, was drunk.

[2] The particulars of the second charge read:

In that he, between the dates of 6 and 27 November 2010 inclusive, at or near Canadian Forces Base Suffield, Alberta, did harass Corporal Babin, contrary to Defence Administrative Orders and Directives 5012-0.

Finally, the particulars of the third charge read:

In that he, between the dates of 6 and 27 November 2010 inclusive, at or near Canadian Forces Base Suffield, Alberta, did harass Private Williston, contrary to Defence Administrative Orders and Directives 5012-0.

THE EVIDENCE

[3] The evidence before this court consists of the matters that the court took judicial notice under section 15 of the Military Rules of Evidence, including but not limited to: the *National Defence Act*, the *Queen's Regulations and Orders for the Canadian Forces* and the Defence Administrative Orders and Directives 5012-0. It consists also of a statement made by the accused to a person in authority that was filed by the prosecution as an exhibit during the trial for which the defence waived the requirement for a *voir dire* and admitted that it had been made voluntarily. The evidence is completed by the testimony of four witnesses, including Sergeant Beaulieu, who has chosen to testify at trial. The other witnesses were called by the prosecution; namely, Caporal Babin, Private Williston and Captain Johnson.

THE FACTS

[4] The events related to the second and third charges would have taken place during Exercise POTENT KNIGHT that took place in November 2010 in the area of Canadian Forces Base Suffield, Alberta. The accused's main duties with 4 Air Defence Regiment consisted of ensuring and taking care of supply within his unit and supervising subordinates. During the exercise, Sergeant Beaulieu had no direct or indirect supervisory relationship with both Corporal Babin and Private Williston. The accused testified that he had met Corporal Babin prior to the exercise for only a few minutes on two occasions before Exercise POTENT KNIGHT during a visit to her battery as part of a visit to ascertain and brief on supply rules and procedures. He stated that he remembers that Corporal Babin did not listen to what he had to say and that she was not receptive to his advice. He qualified her attitude then as indifferent.

[5] Corporal Babin stated that she met the accused for the first time during Exercise POTENT KNIGHT during an O group, where Sergeant Beaulieu was introduced to her as the TQ. Prior to the incidents which form the basis of the charges, Corporal Babin had some unqualified interaction with him once or twice. The evidence indicates that Sergeant Beaulieu encountered both Corporal Babin and Private Williston in the first half of Exercise POTENT KNIGHT, held in the Suffield area. Sergeant Beaulieu had been tasked to leave the training area called "X-21," to go to Canadian Forces Base Suffield as part of his duties. He was also requested to transport three injured soldiers from the training area to the base to receive medical care. These three persons were

Corporal Babin, Corporal Duchesne-Tanguay and Private Williston. The accused was driving the vehicle described as a truck SUV. Corporal Babin sat in the front passenger seat, where Private Williston sat behind her. Corporal Duchesne-Tanguay sat behind Sergeant Beaulieu.

[6] It appears that during the trip from X-21 to the Canadian Forces Base Suffield, the atmosphere was casual. They all discussed generalities. Sergeant Beaulieu testified that the music was fairly loud in the vehicle and that Corporal Babin was the improvised DJ. He stated that it was a normal working day for him, but that his passengers were more relaxed. To use the expression of Sergeant Beaulieu, they were "shooting the shit" including, amongst other subjects, previous relationships, i.e., ex-boyfriends and girlfriends. The itinerary was made of several segments. Firstly, they went to the MIR at CFB Suffield. Secondly, Sergeant Beaulieu left his passengers at the MIR to go to Suffield and returned one hour later. Later, they went from Suffield to Medicine Hat because Corporal Duchesne-Tanguay needed to attend at a clinic for X-rays. Finally, they returned to X-21, but only after having dinner at a McDonald's restaurant.

[7] Corporal Babin testified that the first event occurred when Private Williston and she were in the van waiting for Corporal Duchesne-Tanguay to return from the MIR. According to her, this is where Sergeant Beaulieu told them that he had had a 20-year-old girlfriend and that she had told him that "he was the best fuck she ever had". She testified that she found that comment unprofessional from a sergeant and told him to stop. He would have chuckled and laugh about it. He would have added that if he was one of the cool guys she would have no problem with him making these comments. According to Corporal Babin, Sergeant Beaulieu would have then made other comments of a sexual nature until Corporal Babin told him to "keep his fucking mouth shut". Private Williston testified that Sergeant Beaulieu made these remarks but in Medicine Hat as they were waiting for Corporal Duchesne-Tanguay. She testified that Corporal Babin told Sergeant Beaulieu to shut up. Sergeant Beaulieu testified that he only mentioned that the largest age gap difference he had with a previous girlfriend was 13 years when he was 33 years old. He stated that he never mentioned anything about his previous sexual life or what his previous partners thought about it. He affirmed that these matters are strictly personal and private. He added that he would never discuss about his sexual life with subordinates or friends. Sergeant Beaulieu denies that Corporal Babin used the words, "shut the fuck up" towards him and said he would never let a subordinate do so.

[8] Corporal Babin stated that she listened to Sergeant Beaulieu in disbelief and that she was very uncomfortable. She stated that her embarrassment and angriness were caused by the fact that Sergeant Beaulieu made the comment in the present of a young female private that had been in the Canadian Forces only for a few years. She testified that during the rest of the exercise, she met Sergeant Beaulieu several times. She stated that he then made more comments of a sexual nature to her that she found to be inappropriate and made her embarrassed, including one regarding the fact that because she had red hair, she liked it rough or words to that effect. Corporal Babin does not

recall the exact words of that comment. To her, most comments had a sexual connotation. With regard to all the other comments that she said were made by Sergeant Beaulieu, she could not recall any one of them, but she stated that she told him again a few times to "shut the fuck up". Corporal Babin said that she was mad at the time because there were other people around them when Sergeant Beaulieu made his comments, again without being able to state what those comments were.

[9] Corporal Babin testified also that one night or one evening, prior to their departure from Suffield, they gathered in a restaurant pub to celebrate the end of the exercise. She said that they all had a good time and that she, like others, drank alcohol. People were having fun and some were dancing. She said that she may have had three or four drinks, which was not unusual for her. Corporal Babin stated that late in that evening, she reached for her wallet to discover that her bank card was missing. Because she was leaving the next day, she was shocked and frantic about the loss and started crying. Corporal Babin testified that more than one hour later Sergeant Beaulieu stared at her and asked, "Did you lose something?" as he showed her the bank card while telling her that she had dropped it on the floor. She testified that this was not possible. She added that the next day, at the airport, Sergeant Beaulieu jokingly told her that she owed him an apology to have retrieved her card and that she was very upset at him because such a prank was totally unprofessional from a sergeant.

[10] Sergeant Beaulieu testified that he found Corporal Babin's wallet on the floor but in other circumstances. He stated that during the evening just described, most people were highly intoxicated, including Corporal Babin. According to him, the only sober persons were a Warrant Officer Drake and him. Sergeant Beaulieu said that it is only after seeing Corporal Babin seated on a high chair and crying that he approached her to inquire. It was past midnight. She would have brushed him off. He would have then talked with a Sergeant Porter to find out what had happened but without success. Sergeant Beaulieu added that shortly after, he had noticed that a jacket laid on the floor with nobody around. He picked it up and patted its contents. He reached into a pocket and retrieved a wallet. It belonged to Corporal Babin. Sergeant Beaulieu testified that he then gave it to Sergeant Porter. According to his testimony, he never heard of this story after.

[11] Private Williston testified also concerning other encounters with Sergeant Beaulieu during the trip to the MIR and Medicine Hat, as well as comments made by Sergeant Beaulieu during the exercise where they both met outside the kitchen at X-21. It would have taken place for the first time as she and Corporal Babin were outside the vehicle both smoking a cigarette, as they were waiting for Corporal Duchesne-Tanguay at the MIR. She said that Sergeant Beaulieu commented on her looks in those terms: "As I stepped out, Sergeant Beaulieu joined me and started to speak to me like someone like myself should not be smoking, you are too nice looking," or words to that effect. She stated that she remembers him saying that she was "hot". It made her uneasy and a bit uncomfortable. She did not want to overreact and did not say anything in return. She stated that later during the trip to Medicine Hat, she changed her perception when Sergeant Beaulieu told the story concerning his previous relationship with a younger

woman. According to her, she felt that the alleged comment of the girlfriend stating that "he was the best fuck she ever had" was in fact directed at her. She said that she met with Sergeant Beaulieu several times later during that exercise when she was doing kitchen duties. Private Williston stated that Sergeant Beaulieu used to meet her outside the tent when she was smoking a cigarette. He would make the same comment again to the effect that she should not smoke because she was too good looking, that smoking was not good for her and that she should not be doing that. To her, smoking had nothing to do with her appearance and she did not like the comment. She stated that being complimented on her appearance by younger soldiers before did not make her uncomfortable but it was made by a sergeant older than herself that made her uncomfortable. She said that she kept looking down and felt that she was sending Sergeant Beaulieu the vibe that his comment made her uncomfortable. She added that she did not say anything because she did not know how to react, because of the rank structure, as she did not want to be in trouble. She stated that these comments would occur once or twice a day, repeatedly.

[12] In cross-examination, Private Williston could not point to any other comments but she said that Sergeant Beaulieu did not use obscene language or did not ask for sexual favours. She said that she did not feel threatened. Private Williston stated that she did not tell Sergeant Beaulieu to stop making these comments and she tried to laugh it off. Sergeant Beaulieu testified that while at the MIR in Suffield he asked Private Williston, as they were outside the vehicle, why a good looking woman like her was smoking as it made her unattractive. He said that he told her that smoking was a bad habit and that she should break it before leaving her, and going into the MIR to look for the other passengers. Sergeant Beaulieu testified that he made similar comments when he met her on a few other occasions during the exercise outside the tent when she was having a cigarette. He denies making any comment such as that Private Williston was "hot".

[13] The last incident relates to the charge of drunkenness, where Sergeant Beaulieu would have made inappropriate remarks to Private Williston during the evening of 9 December 2010 at Griffin's Pub and Eatery in Oromocto, as he was intoxicated by alcohol. This incident would have taken place after the members of the unit participated in several official functions organized traditionally and held at the end of the year. The evidence indicates that they had participated in a Christmas function called the Gunners Appreciation Dinner. Private Williston testified that after being dismissed at the dinner, some of them went to Griffin's Pub to continue the celebration and have a drink. She said that she was accompanied by her boyfriend. While at the pub, she was standing up at the edge of the bar, as her boyfriend was gone to the bar to get a drink, when Sergeant Beaulieu came to her and told her that if she wanted to make her boyfriend jealous and mad at her, Sergeant Beaulieu would kiss her in front of him and the boyfriend would be told that she was the one that kissed Sergeant Beaulieu.

[14] She stated that although she was in civilian clothes, the accused was still wearing his military uniform. She testified that everyone around them was feeling pretty good. Private Williston stated that Sergeant Beaulieu's breath smelled of beer

and that he was leaning with his back towards the bar at the time, a little unsteady. She further said that she could not remember his general appearance. Private Williston testified that she had only one or two drinks herself that evening. Of Sergeant Beaulieu, she said that it was evident for her that he had a few drinks, but could not provide more detail. She stated that she saw Sergeant Beaulieu drink and assumed it was alcohol, but could not say how much consumption he had that evening. During cross-examination, Private Williston confirmed that in her previous statements she made no remarks with regard to the state of sobriety of Sergeant Beaulieu on 9 December 2010 at Griffin's Pub, other than to say that alcohol was no excuse to act rude. She confirmed that she had not mentioned any sign of drinking, including Sergeant Beaulieu's speech and coordination or being drunk. Private Williston testified that she did not pay attention to his demeanour; she did not know what he was drinking or how many drinks he had. She confirmed that it is only in her telephone conversation with the prosecutor last August that she provided some details at his request. She agreed that it was the first time that she stated that Sergeant Beaulieu had a drunken way about him, because of the manner in which he was leaning with his back against the bar. She also confirmed that she had not mentioned anything during that telephone conversation about Sergeant Beaulieu's coordination or balance at the time, but she said that she had mentioned that Sergeant Beaulieu's speech at the time was clear and precise.

[15] Sergeant Beaulieu testified that on 9 December 2010, he attended at the Gunners Appreciation Dinner at noon or 1200 hours. He stated that he had only one beer. He testified that he was then transported via a bus from the senior NCOs' Mess to the Officers' Mess where he drank one more beer that was offered to him by a Captain Donovan. According to his version, they stayed at the Officers' Mess approximately 90 minutes before returning to the senior NCOs' mess. He testified that he drank no alcohol at that location. Sergeant Beaulieu said that he joined many others at the Griffin's Pub later, still wearing his military uniform. Sergeant Beaulieu testified that he went to Griffin's Pub five or six hours after the end of the appreciation dinner. He denies making any comments to Private Williston on 9 December 2010, and affirmed that he had only one alcoholic drink made of Tia Maria and milk. Sergeant Beaulieu testified that he had a total of three drinks that day and that he is not a drinker.

[16] Sergeant Beaulieu provided a cautioned statement to Captain Johnson on 18 March 2011 as part of his disciplinary investigation. He denied making any inappropriate comments to Corporal Babin or Private Williston. In that statement, he wrote that he was an instructor at the recruit school for four years and instilled the no harassment policies in recruits. During his testimony, he stated that he has no direct knowledge of DAOD 5012-0, but he testified that he is aware in general terms of the Canadian Forces policy on prevention of harassment and he gave a broad portrait of what he considered to be covered by the policy. The testimony of Captain Johnson is not determinative of the issues at trial, except that Captain Johnson was not able to form an opinion that Sergeant Beaulieu was aware of the harassment policy, but he reported that Sergeant Beaulieu had told him that one of his duties as an instructor was to ensure that the candidates would not harass each other.

ANALYSIS AND DECISION

Presumption of innocence and the Burden of Proof beyond a reasonable doubt

[17] Let me begin, first, with an explanation about the presumption of innocence and the standard of proof beyond a reasonable doubt, a standard that is intertwined with that principal fundamental to all criminal trials, including trials under the Code of Service Discipline. It is fair to say that the presumption of innocence is perhaps the most fundamental principle in our criminal law. In matters dealt with under the Code of Service Discipline, as in cases dealt under criminal law, every person charged with an offence is presumed to be innocent until the prosecution proves his or her guilt, and that, beyond a reasonable doubt.

[18] 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 and that, beyond a reasonable doubt. 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 the 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. The 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. 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 must logically come from the evidence or the lack of evidence.

[19] The fact that a person has been charged is in no way indicative of his or her guilt. In *R v Starr* [2000] 2 S.C.R. 144 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 ...

It is not enough to believe that Sergeant Beaulieu is probably or likely guilty. Proof of probable or likely guilt is not proof of guilt beyond a reasonable doubt. However, 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. As I said earlier, the proper approach to the burden of proof is to consider all the evidence together and not to assess individual items of evidence in isolation, and it is essential that the credibility and the reliability of the witnesses be tested in light of all the evidence presented.

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

[21] Credibility is not synonymous with telling the truth and the 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, a court will assess a witness's opportunity to observe, a witness's reason to remember, like were the events noteworthy, unusual and striking or relatively unimportant and therefore, understandably, more difficult to recollect? Does the witness have any 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 the accused chooses to testify.

[22] Another factor in determining credibility is the apparent capacity of the witness to remember. The demeanour of a witness 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 or argumentative? Finally, was the witness's testimony consistent to itself and with the uncontradicted facts?

[23] 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 may well taint a witness's entire testimony.

[24] A court is not required to accept the testimony of any witness or a group of witnesses, 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 to disbelieve it. As I said earlier, the proper approach of the burden of proof is to consider all of the evidence together and not to assess individual items of evidence in isolation. It is essential that the credibility and the reliability of the witnesses be tested in light of all the evidence presented. In this case, the accused has chosen to testify. It is fair to say that his version of the events contradicts in all important areas the evidence heard from Bombardier Babin and Gunner Williston. The evidence presented by witnesses called by the prosecution also reveals some discrepancies. In addition, some elements of the accused's evidence are not corroborated. As the rule of reasonable doubt also applies to the issue of credibility, the court is not required to definitely decide on the credibility of a witness or a group of witnesses, nor does the court need to fully believe or disbelieve one witness or a group of witnesses.

[25] In a case such as this one, where credibility is important and where the accused testified on his own behalf, the law requires that the court approach this issue in the following manner with regard to each offence charged:

- (a) Firstly, if the court believes the testimony of Sergeant Beaulieu that he did not commit the offence, the court must find him not guilty.

- (b) Second, even if the court does not believe the testimony of Sergeant Beaulieu, if it leaves the court with a reasonable doubt about his guilt or about an essential element of an offence, the court must find him not guilty of that offence.
- (c) Third, if the court does not know whom to believe, it means the court has a reasonable doubt and the court must find Sergeant Beaulieu not guilty.
- (d) Finally, even if the testimony of Sergeant Beaulieu does not raise a reasonable doubt about his guilt or about an essential element of the offence, if, after considering all the evidence, the court is not satisfied beyond a reasonable doubt about his guilt, the court must find him not guilty of the offence.

[26] What the judge must not do is simply choose between alternative versions and, having done so, convict if the complainant's version is preferred. It must be understood that the court is not attempting to resolve the broad factual question of what happened. The court's function is the more limited one of deciding whether the essential elements of the charge have been proven beyond a reasonable doubt. The ultimate issue is not whether the court believes the accused or any or both of the complainants or part or all of what each had to say. The issues at the end of the day in a trial it is not credibility but reasonable doubt.

Credibility of the Witnesses and the Reliability of their Testimonies

[27] The nature of the evidence before the court requires the court to make certain findings as to the credibility of various witnesses and the reliability of their testimonies. This is not a matter where one can choose between the version of the accused or of other witnesses.

[28] There is no magic formula for deciding how much or how little to believe of a witness's testimony or how much to rely on it in deciding in this case. Amongst the factors considered by the court in light of all the evidence, I have tried to assess if the witness seemed to be honest or if the court could find any reason why that witness would not be telling the truth, including if he or she had an interest in the outcome of the case or any reason to give evidence that is more favourable to one side than to the other. Did the witness seem to exaggerate or embellish his or her testimony or part thereof? Were there any inconsistencies in the witness's evidence that would make his or her testimony more or less believable and reliable? Is the inconsistency about something important, or a minor detail? Did it seem like an honest mistake? Is it a deliberate lie? Is the inconsistency because the witness said something different before, or because he or she failed to mention something? Is there any explanation for it? Does the explanation make sense? I have also assessed how each witness was able to make accurate and complete observations about the allegations made against the accused, including the state of their memory or lack thereof. The court has also considered what if anything explains why a witness remembers a specific event or not.

[29] Corporal Babin testified to the best of her recollection. She was very emotional at times, particularly in cross-examination. She was very nervous and uneasy to be in the presence of the accused. Except for the specific comments reported by Corporal Babin and Private Williston that Sergeant Beaulieu told them that his young 20-year-old ex-girlfriend would have said "he was the best fuck she ever had," and the comment related to the fact that because she had red hair she liked it rough or words to that effect, Corporal Babin was incapable of stating what she described as several other comments of a sexual nature or else that would have been made by Sergeant Beaulieu. Not only was she unable to provide any details, she could not describe them, even in general terms, except to say that she had no recollection of them. Corporal Babin testified that she was mad at the remarks made in the van, because she felt they were unprofessional for a superior in the presence of a young soldier. Although she did not want to hear about that from Sergeant Beaulieu, it is the accumulation of several other comments that she cannot remember that caused her anger and frustration at him. She stated that she did not make a complaint against Sergeant Beaulieu during Exercise POTENT KNIGHT, but she waited until March when she learned that he had allegedly made similar comments to another female soldier. She also added that one of the reasons that she complained had to do with him stealing her bank card prior to their departure from Suffield.

[30] Corporal Babin testified in a fairly straightforward manner. She was also very emotional, which would be consistent with the type of conduct that she alleges against the accused. Even if her testimony seems to be generally honest, she displayed a significant lapse of memory by being incapable to provided any of the several comments that would have been made by the accused of a sexual or any other nature that caused her grief, other than the allegation in the vehicle and the comment referring to the fact that she had red hair and would like it rough. In the context where the conduct consists of the sum of multiple occurrences that amount to an unacceptable conduct, such significant lapse of memory ought to affect the overall reliability of a testimony. The passage of time may well have contributed to this situation, considering that the events would have taken place more then one year ago.

[31] Private Williston was also nervous when she testified. She was hesitant and she had some difficulty to explain what she meant with regard to the frequency Sergeant Beaulieu made comments about her appearance and smoking habit. With regard to the incident that would have happened in the vehicle where Sergeant Beaulieu would have told them that his 20-year-old ex-girlfriend would have said that "he was the best fuck she ever had," she does not recall any other comment made during that trip. She felt that the statement was directed at her because of the remarks made to her by Sergeant Beaulieu with regard to her looks shortly before. She is a credible witness. Private Williston also decided to make a complaint in March 2011 after she learned that Sergeant Beaulieu had allegedly made similar comments to another female soldier. Questioned on a previous statement where she stated that Sergeant Beaulieu kept making statements about her looks throughout Exercise POTENT KNIGHT, she

testified that he made them once or twice. Private Williston testified that she could have used other words to describe this situation.

[32] In cross-examination, counsel for the defence tried to clarify her previous statement on 17 March 2011, where she would have stated that Sergeant Beaulieu came outside the tent when she was doing kitchen duties during Exercise POTENT KNIGHT to comment on her looks and her smoking habit repeatedly. It was unclear as to what she meant. Did Sergeant Beaulieu follow her or meet her outside each and every time she went outside to smoke a cigarette to make the comments, or did Sergeant Beaulieu comment on her looks and smoking habit once or twice a day? After being re-examined by the prosecution and questioned by the court on this question, the court can only conclude that whenever the comment was made, it was stated once or twice. Looking at her testimony objectively on this aspect, the court notes that the remarks made by Sergeant Beaulieu concerning her physical appearance occurred only when she was observed smoking. This pattern would have occurred repeatedly.

[33] Concerning the incident that would have taken place at Griffin's Pub on 9 December 2010, it is only in August 2011 that she provided any signs of apparent intoxication concerning Sergeant Beaulieu that night. Private Williston candidly stated that the triggering event that convinced her to make a complaint in March 2011 is when she heard of other allegations made by other people in the regiment concerning Sergeant Beaulieu. The court noted that when she was examined with regard to the omission or lack of specific signs of impairment by alcohol in her previous statement, she could not provide any satisfactory answer. The testimony of Private Williston is the evidence before the court, but the court finds that the reliability of her testimony on this aspect is lowered significantly. With regard to discrepancies between her version and that of Corporal Babin as to their exact location where Sergeant Beaulieu would have made the comments with regard to his previous sexual life with a younger woman, the court does not find it sufficiently significant to make their recollection of that event or these events less credible and reliable.

[34] Sergeant Beaulieu had testified in a straightforward manner despite being very nervous and emotional. He was polite and firm, but he seemed to have the tendency to exaggerate on certain details of the circumstances throughout the events mentioned for someone who denies the allegations made against him. In other words, why would someone remember specific collateral details of insignificant events, including the specific number of drinks at a specific party in November 2010 or 9 December 2010? He was adamant that he never spoke about his personal sexual life with a previous girlfriend of any age. He denied making any derogatory or inappropriate comments to Corporal Babin. Concerning her accusation that he had stolen her bank card at the restaurant pub where they celebrated the end of the Exercise POTENT KNIGHT, he also denies it.

[35] Sergeant Beaulieu does not deny making remarks to Private Williston to the effect that she was a very nice looking woman who should break a bad smoking habit because it made her less attractive. He also said that he made that remark during the

trip to the MIR in Suffield and also later during the exercise when he met her once or twice outside of the tent when he saw her smoking a cigarette. Sergeant Beaulieu testified that his remarks were aimed at the bad smoking habit of Private Williston, nothing else. He affirmed that he never used words to the effect that Private Williston was "hot".

[36] Concerning the allegation made by Private Williston to the effect that he told her, while intoxicated, that she could make her boyfriend jealous if she kissed him in front of her boyfriend, Sergeant Beaulieu testified that this is not true. When asked by his counsel, he returned the question by asking why he would do this as it is inappropriate, out of place and not in line with his personality. With regard to his knowledge of the Canadian Forces policy on harassment and DAOD 5012-0, he was somewhat evasive and purposely tried to minimize his personnel knowledge. When questioned on his knowledge on DOAD 5012-0 and the harassment policy in the Canadian Forces, he explained what he meant in his statement when he wrote that during his four-year posting as an instructor as CFLRS, he instilled the no harassment policies in recruits. Sergeant Beaulieu testified that he ensured that candidates would not harass each other. However, he stated that the instructors were not allowed in the classrooms during the briefings on the Canadian Forces policy on harassment that were delivered by an outside agency. He said that he was aware of the Canadian Forces policy on harassment, but that he had not read DAOD 5012-0 before. Despite being a member of the Canadian Forces since 1989, he did know of the DAODs, but he claimed that he was not aware as to where they were. Sergeant Beaulieu testified that he was an instructor at CFLRS, and that they had templates, and that the references were normally provided in these templates.

[37] He also described his drinking pattern as being low. Sergeant Beaulieu took great care to testify that he was sober both with regard to the bank card incident and the remarks he would have made at Griffin's Pub. Moreover, on both occasions, he was the only, or one of the only two persons sober on these occasions. According to him, everybody else was drunk.

[38] In his testimony, Sergeant Beaulieu has put his character in issue. First, he claimed that he would never have made the comments or conduct in relation to his past sexual experience because that would be unprofessional and contrary to his personality. Sergeant Beaulieu denied the alleged event at Griffin's Pub for the same reason. He also stated that he is not a heavy drinker. Sergeant Beaulieu admitted that he was previously convicted of an offence under section 129 of the *National Defence Act* and of two offences under section 266 of the *Criminal Code*. However, a previous conviction, even many of them, does not necessarily mean that the court cannot or should not believe or rely upon the testimony of Sergeant Beaulieu. The court has concern as to the credibility and the reliability of his testimony on some important aspects related to all the allegations made against him.

The offences : Drunkenness under s. 97 of the National Defence Act and Conduct to the Prejudice of Good Order and Discipline under s. 129 the National Defence Act

Drunkenness

[39] Sergeant Beaulieu faces a charge under section 97 of the *National Defence Act* for drunkenness. Section 97 reads as follow:

97. (1) Drunkenness is an offence and every person convicted thereof is liable to imprisonment for less than two years or to less punishment, except that, where the offence is committed by a non-commissioned member who is not on active service or on duty or who has not been warned for duty, no punishment of imprisonment, and no punishment of detention for a term in excess of ninety days, shall be imposed.

(2) For the purposes of subsection (1), the offence of drunkenness is committed where a person, owing to the influence of alcohol or a drug,

(a) is unfit to be entrusted with any duty that the person is or may be required to perform; or

(b) behaves in a disorderly manner or in a manner likely to bring discredit on Her Majesty's service.

[40] The prosecution submits that Sergeant Beaulieu, owing to the influence of alcohol, behaved in a manner likely to bring discredit on Her Majesty's service on 9 December 2010 at Griffin's Pub in Oromocto, New Brunswick. The identity of the accused as well as the date and place of the offence are not in issue. The behaviour in question relates to the conduct of Sergeant Beaulieu that night where he would have approached Private Williston and told her that if she wanted to make her boyfriend jealous and mad at her, he would kiss her in front of him and the boyfriend would be told that she was the one that kissed Sergeant Beaulieu. The prosecution's case rests on the testimony of Private Williston. Sergeant Beaulieu denies that this incident happened.

[41] The court does not believe the accused with regard to this incident, nor is it left with a reasonable doubt with regard to the alleged behaviour; however such behaviour must likely bring discredit to Her Majesty's service. The court must first be satisfied beyond a reasonable doubt that the behaviour of Sergeant Beaulieu was owed to the influence of alcohol. The court does not believe the accused when he said precisely that he had exactly three drinks of alcohol that specific night or that day. In its normal meaning in a phrase, the word "owing" means owing to, because of, or on account of. Therefore, the prosecution must establish beyond a reasonable doubt that the behaviour was owing to, because of, or on account of alcohol.

[42] The evidence on this aspect rests only on the testimony of Private Williston. Private Williston stated that Sergeant Beaulieu's breath smelled of beer and that he was leaning with his back towards the bar at the time, a little unsteady. She further said that she could not remember his general appearance. Private Williston testified she had only one or two drinks herself that evening. Of Sergeant Beaulieu, she said that it was evident for her that he had a few drinks, but could not provide more details. She stated

that she saw Sergeant Beaulieu drink and assumed it was alcohol, but could not say how much consumption he had that evening.

[43] During cross-examination, Private Williston confirmed that in her previous statements she made no remarks with the state of sobriety of Sergeant Beaulieu on 9 December 2010 at Griffin's Pub other than to say that alcohol was no excuse to act rude. She confirmed that she had not mentioned any sign of drinking, including Sergeant Beaulieu's speech and coordination or being drunk. Private Williston testified that she did not pay attention to his demeanour; she did not know what he was drinking or how many drinks he had. She confirmed that it is only in her telephone conversation with the prosecutor last August that she provided some details at his request. She agreed that it was the first time that she stated that Sergeant Beaulieu had a drunken way about him, because of the manner in which he was leaning with his back against the bar. She also confirmed that she had not mentioned anything during that telephone conversation about Sergeant Beaulieu's coordination or balance at the time, and she also said that she had mentioned that Sergeant Beaulieu's speech at the time was clear and precise.

[44] This evidence is insufficient to establish that the behaviour of the accused was caused by his consumption of alcohol. As a matter of fact, such behaviour may have had nothing to do with alcohol. The testimony of Private Williston is not sufficiently reliable to establish that the behaviour was owing to the consumption of alcohol by Sergeant Beaulieu. This is an essential element of this offence. The court is left with a reasonable doubt with regard to the level of intoxication, if any, of Sergeant Beaulieu at the time. The mere fact that the court would conclude the existence of the behaviour is not sufficient to establish the offence beyond a reasonable doubt, in absence of proof beyond a reasonable doubt that the behaviour was attributable to, because of, or on account of his previous consumption of alcohol.

Conduct to the Prejudice of Good Order and Discipline

[45] Sergeant Beaulieu is also charged with two counts of conduct to prejudice of a good order and discipline under section 129 of the *National Defence Act*. It provides in part:

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

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

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

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

The particulars of the second charge read:

In that he, between the dates of 6 and 27 November 2010 inclusive, at or near Canadian Forces Base Suffield, Alberta, did harass Corporal Babin, contrary to Defence Administrative Orders and Directives 5012-0.

Whereas the particulars of the third charge read:

In that he, between the dates of 6 and 27 November 2010 inclusive, at or near Canadian Forces Base Suffield, Alberta, did harass Private Williston, contrary to Defence Administrative Orders and Directives 5012-0.

[46] With regard to the second and third charges, other than the blameworthy state of mind of the accused, the prosecution must establish beyond a reasonable doubt the existence of the conduct alleged in the particulars, whose consequence is prejudicial to good order and discipline. In this case, the prosecution has alleged that the prohibited conduct was in the form of harassment contrary to DAOD 5012-0. By doing so, it relies on the presumption of subsection 129 (2) of the *Act*, which would presume from the conduct alleged the existence of the prejudice to good order and discipline as well as the existence of the causal relationship between the act and the prejudice.

[47] In addition to the elements as to the identity of the accused and the date and location of the offence, the prosecution must establish beyond a reasonable doubt the alleged conduct by the accused. In this case, the conduct is harassment as defined in DAOD 5012-0. Once the conduct is proven, the prosecution must also establish beyond a reasonable doubt the nature and the existence of the order, the accused's knowledge of the order and that his conduct amounted to a contravention of that order. It is only where these elements are established that the prosecution can rely on the presumption under subsection 129 (2) of the *Act*.

[48] Let me deal, first, with the second charge, which alleges that Sergeant Beaulieu would have harassed Corporal Babin between the dates of 6 and 27 November 2010 inclusive, at or near Canadian Forces Base Suffield, Alberta. The evidence before the court requires that findings of credibility be made and the court approached this issue in the manner previously described. The prosecution does not rely only on one single incident or fact to amount to harassment in the context of second charge. In a nutshell, it relies on the sum of events that would have taken place during Exercise POTENT KNIGHT in November 2010 in Suffield, Alberta. The first event consists of improper comments made by Sergeant Beaulieu during a visit to the MIR at CFB Suffield and to a clinic in Medicine Hat where he would have made remarks to Corporal Babin and Private Williston with regard to his previous sexual life with an ex-girlfriend that was 13 years younger than him, as well as other comments of a sexual nature. His conduct would have continued with Corporal Babin through other inappropriate comments made

to her during the exercise, including that "because she had red hair she would like it rough" or words to that effect. The harassment would have continued during the evening prior to the departure from Suffield at the end of the Exercise POTENT KNIGHT, where Sergeant Beaulieu would have hidden her bank card from her as a prank. Finally, Sergeant Beaulieu would have continued throughout the exercise to make derogatory comments to Corporal Babin in presence of others.

[49] I do not believe Sergeant Beaulieu when he testified that he never told Corporal Babin and Private Williston, with regard to his previous girlfriend, that she would have said that he was the best fuck she ever had. The court believes that he said those words. The testimonies of both Corporal Babin and Private Williston are clear, credible and reliable on this point. There is not an iota of evidence that would support the possibility of collusion in that regard. Their recollection of the words spoken is coherent internally and externally. The atmosphere during that trip was jovial and they were talking generalities about previous relationships. I believe Corporal Babin when she said that Sergeant Beaulieu gave gruesome details about his previous sexual life that embarrassed her and made her mad. However, her embarrassment stemmed from the presence of Private Williston in the back seat, because she felt that Sergeant Beaulieu was unprofessional, as a superior, to talk in this manner in the presence of a young private. She was not personally embarrassed by the comment but by the presence of Private Williston hearing these comments.

[50] As to the comment related to the fact that because she had red hair, she liked it rough or words to that effect, she stated that it sounded like it had a sexual connotation, but she did not provide either the context of these remarks or when they were made. Corporal Babin was incapable to state what she described as several other comments of a sexual nature, or else, that would have been made by Sergeant Beaulieu. It is a fact that she was unable to provide any detail concerning the comments or remarks. She could not describe them, even in general terms except to say that she had no recollection of them. Corporal Babin testified that she was mad at the remarks made in the van, because she felt they were unprofessional for a superior in a presence of a young soldier. She also stated that she did not make a complaint against Sergeant Beaulieu during Exercise POTENT KNIGHT, but she waited until March when she learned that he had allegedly made similar comments to another female soldier. She also added that one of the reasons that she complained had to do with him stealing her bank card prior to their departure from Suffield.

[51] The evidence surrounding the event concerning the bank card is not conclusive. The testimony of Sergeant Beaulieu concerning that evening, even if the court would not believe the accused, leaves the court with a reasonable doubt about the reliability of the version provided by Corporal Babin.

[52] Overall, the testimony of Corporal Babin was problematic. Even if her testimony seems to be generally honest, she displayed a significant lapse of memory by being incapable to provide any of the several comments of a sexual nature or any other nature that would have been uttered by the accused that caused her grief other than the

allegation in reference to the comments made in the vehicle and the comment referring to the fact she had red hair and she would like it rough. In the context, where the conduct consists of the sum of multiple occurrences that amount to unacceptable conduct, such a significant lapse in memory ought to affect the overall reliability of a testimony. The passage of time may well have contributed to this situation, considering that the event would have taken place more than one year ago. The court is left with a reasonable doubt as to the second charge and the prosecution has failed to prove its case.

[53] The third charge refers to the conduct of Sergeant Beaulieu towards Private Williston during Exercise POTENT KNIGHT. It would begin when she and Corporal Babin were outside the vehicle both smoking a cigarette as they were waiting for Corporal Duchesne-Tanguay at the MIR. This is where she says that Sergeant Beaulieu commented on her looks. She stated, "As I stepped out, Sergeant Beaulieu joined me and started to speak to me like someone like myself should not be smoking, you are too nice looking," or words to that effect. She testified that she remembers him saying that she was "hot". It made her uneasy and a bit uncomfortable. She did not want to overreact and did not say anything in return. She stated that later during the trip to Medicine Hat, she changed her perception when Sergeant Beaulieu told the story concerning his previous relationship with a younger woman. According to her, she felt that the alleged comment of the girlfriend stating that "he was the best fuck she ever had" was in fact directed at her. She did not recall any other comment made during that trip.

[54] She said that she met with Sergeant Beaulieu several times later during that exercise when she was doing kitchen duties. Private Williston stated that Sergeant Beaulieu used to meet her outside the tent when she was smoking a cigarette. He would make the same comment again to the effect that she should not smoke because she was too good looking, that smoking was not good for her and that she should not be doing that. To her, smoking had nothing to do with her appearance and she did not like the comment. She stated that being complimented on her appearance by younger soldiers before did not make her uncomfortable, but it was made by a sergeant older than herself, and it made her uncomfortable. She said that she kept looking down and felt that she was sending Sergeant Beaulieu the vibe that his comment made her uncomfortable. She added that she did not say anything because she did not know how to react, because of the rank structure, as she did not want to be in trouble. She stated that these comments would occur once or twice a day, repeatedly.

[55] In cross-examination, Private Williston could not point to any other comments, but she said that Sergeant Beaulieu did not use obscene language or did not ask for sexual favours. She said that she did not feel threatened. Private Williston stated that she did not tell Sergeant Beaulieu to stop making these comments, as she tried to laugh it off. Sergeant Beaulieu testified that while at the MIR in Suffield he asked Private Williston, as they were outside the vehicle, why a good looking woman like her was smoking, as it made her unattractive. He said that he told her that smoking was a bad habit and that she should break it, before leaving her and going in the MIR to look for

the other passengers. Sergeant Beaulieu testified that he made similar comments when he met her on a few other occasions during the exercise outside the tent, when she was having a cigarette.

[56] Sergeant Beaulieu denied making any comment such as that Private Williston was "hot", but he admits that he addressed comments to Private Williston with regard to her appearance and her smoking habit. He confessed that he made these remarks on more than one occasion. The court does not believe the accused when he tries to minimize the number of times he would have made these, the said remarks, to Private Williston; however, these remarks can not be split. The court cannot reject the testimony of Sergeant Beaulieu that his remarks were aimed at the smoking habit of Private Williston as they affected her appearance and her looks. The fact that Sergeant Beaulieu made the use of beauty superlatives, like: a beautiful girl like you; or a pretty lady like you should not smoke, might be perceived negatively and unwelcomed by someone who thinks that her looks have nothing to do with her smoking habit. However, the testimony of the accused concerning this comment and how it was made cannot be discarded, at least when it was first made.

[57] It would be improper for the court to disbelieve the accused and draw an inference that Sergeant Beaulieu knew, or ought reasonably to have known that his comment was aimed to embarrass, demean, belittle or cause personal humiliation to Private Williston. It does not mean that Private Williston was not truly embarrassed when Sergeant Beaulieu made the comment with regard to his previous girlfriend shortly after and thought that he was addressing that remark at her because of her young age. However, can someone conclude that the only inference that could be drawn from the fact that when Sergeant Beaulieu made these two distinct comments within a short period of time, he knew or ought reasonably to have known that his comment was aimed to embarrass, demean, belittle or cause personal humiliation to Private Williston? After reviewing all the evidence, the court believes that such definite a conclusion would be unreasonable. There is no issue that Private Williston felt genuinely annoyed at Sergeant Beaulieu when he continued to make comments about her smoking habit and her looks repeatedly, however, as stated previously, the court cannot reject the testimony of Sergeant Beaulieu on that aspect.

[58] And because of that and the application of *R v W. (D.)* the court is left with no choice. The conclusions reached by the court in this case do not support any inference that the witnesses did not testify to the best of their ability and that they were untruthful. To the contrary, the passage of time is a major, significant, contributing factor that has affected the reliability of their testimony in light of all the evidence, including the testimony of the accused. The conduct of Sergeant Beaulieu toward Corporal Babin and Private Williston, if examined with a different standard of proof, may lead to different conclusions as to its nature. However, when a person is charged with having committed a service offence under the *National Defence Act*, it is not enough to believe that the accused is probably or likely guilty. Proof of probable or likely guilt is not proof beyond a reasonable doubt.

FOR THESE REASONS, THE COURT:

[59] **FINDS** you not guilty of all charges.

Counsel:

Lieutenant-Commander D.T. Reeves, Canadian Military Prosecution Services
Counsel for Her Majesty the Queen

Major C.E. Thomas, Directorate of Defence Counsel Services
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