

Citation: *R. v. Corporal S.J.D. Raymond and Corporal S. Robertson*, 2006 CM 46

Docket: V200646

**PERMANENT COURT MARTIAL
CANADA
QUEBEC
AREA SUPPORT UNIT VALCARTIER**

Date: 18 October 2006

COLONEL M. DUTIL, C.M.J.

HER MAJESTY THE QUEEN

v.

**CORPORAL S.J.D. RAYMOND AND CORPORAL S. ROBERTSON
(Accused)**

VERDICT

(Delivered from the Bench)

OFFICIAL ENGLISH TRANSLATION

INTRODUCTION

[1] Corporals Raymond and Robertson are charged and tried jointly by this Permanent Court Martial on charges arising from an incident that allegedly occurred on November 24, 2004 at CFB Valcartier. They are charged, on the one hand, under section 130 of the *National Defence Act* with an offence punishable under section 267(b) of the *Criminal Code*, namely assault causing bodily harm. On the other hand, the prosecution laid a charge in the alternative under section 95 of the *National Defence Act*, that of ill-treating a person who by reason of rank was subordinate. The particulars of this 2nd count allege that the ill-treatment was physical in nature. The facts surrounding these charges revolve around an altercation that occurred on the second floor of the building housing the 3rd Battalion of the Royal 22nd Regiment, more precisely in the region of the lockers and the rest area, within B company lines. This altercation allegedly occurred between the accused and Corporal Légaré, who held the rank of Private at the time of the alleged offences.

Evidence

[2] The evidence before this Court consists essentially of the following:

Firstly, the testimony heard in the order in which the witnesses appeared before the Court, namely that of Corporal Légaré — the alleged victim and a private at the time — ex-Corporal Haché, Master Corporal Forgues, Corporal Tremblay and Corporal Masson. These witnesses were called by the prosecution. Witnesses who were also heard were Corporal Raymond, Corporal Robertson — the accused in this case — as well as Corporal Bouchard and Sergeant Charette.

Secondly, Exhibit 3, a drawing made by Corporal Légaré during his testimony that identifies the premises where the incidents occurred and some of the people present at the time.

Thirdly, Exhibits 4 to 7, which are photographs taken by the Military Police Officer Masson, of which Exhibits 5 to 7 show the upper body and the face of Corporal Légaré on November 25, 2004, the day following the incidents.

Finally, the judicial notice taken by the Court of the facts and issues that fall within section 15 of the *Military Rules of Evidence*.

FACTS

[3] The facts relating to this case revolve around an altercation that occurred on the second floor of the building housing the 3rd Battalion of the Royal 22nd Regiment and, as I noted earlier, in the area of the rest-area lockers within B Company lines. The altercation took place between Corporal Légaré and Corporal Raymond and Corporal Robertson. The evidence indicates that certain facts preceding the altercation and others that occurred afterward are relevant to a full understanding of the dynamics and the state of mind of the people involved in this case at the time the incidents allegedly occurred.

[4] The events that led to the incident on November 24, 2004 occurred on the previous day when Private Légaré allegedly had a particularly animated discussion with Corporal Brassard, who was responsible for organizing a forced march on that day. Corporal Légaré's version was that he was not in possession of his equipment in order to take part in the said forced march because he had just returned from a mountain warfare course. He apparently went to the office of his platoon sergeant to inform him of this and the Sergeant had authorized him to remain with him in order to perform other duties.

[5] As he came out, Private Légaré came face to face with Corporal Brassard, who asked him where his equipment was. Private Légaré apparently replied that the Sergeant had given him permission not to take part in the forced march. According to Légaré, Corporal Brassard began to insult him when he tried to provide the reason why he did not have his equipment. Among other things, Corporal Brassard called him a “shirker” and noted that he had not integrated sufficiently into the group. It was at this point that the conversation became so nasty that Corporal Brassard invited Private Légaré to resolve their dispute outside, an invitation that Private Légaré accepted.

[6] According to the version of the witness Légaré, he did not harbour any bellicose intentions toward Corporal Brassard and merely wished to explain. The shouting match continued outside until other people came out of the offices and told them that it was not seemly for them to be shouting at each other in this way.

[7] The evidence heard mentioned a rumour that immediately began to circulate, to the effect that a certain private had offered to “give any corporals who wanted it a punch in the face” or words to this effect.

[8] On the following morning, Corporal Tremblay was talking to Private Légaré on the first floor of the building of the 3rd Battalion near the staircase leading to the second floor, where the lockers of the privates and corporals of B Company are located. At that point Corporal Robertson noticed Private Légaré and invited him to climb the stairs so that they could have a discussion in an “O Group”. Private Légaré agreed and climbed the stairs. According to his statement, he quickly realized that it was a trap. He reported that he saw Corporal Raymond order the other privates who were present to go downstairs with the result that he was alone in the presence of ten or so corporals, including the accused. According to prosecution witness Haché, it was rather Corporal Robertson, who had told the privates to go downstairs. According to Corporal Légaré, Corporal Robertson had grabbed him by the neck before pushing him twice against the lockers. He had shouted at him just as Corporal Brassard had done on the previous day. He called him a “shirker” and said that Private Légaré was not on board with them and stood apart from the others. According to Légaré, when he had his back against the lockers, as indicated in Exhibit 3, Corporal Raymond struck him in the back with his elbow. Again according to Corporal Légaré, he indicated to Robertson that he had not done anything to them and that the problem was rather between him and Corporal Brassard. He also questioned them concerning his absence from this “O Group”. Private Légaré asserted that at that point he saw Corporal Brassard appear and start to laugh right in his face. According to Légaré, Brassard was hidden behind the lockers. However, this version was contradicted by the witness Haché, who stated that Corporal Brassard was seated with him in the rest area near the lockers before the incident grew worse.

[9] Corporal Légaré testified that when he spoke to Corporal Brassard, Corporal Raymond continued to strike him in the back, he turned around and without lowering his gaze, began to stare at him. In his version of the facts, Corporal Raymond grabbed him in a head-hold as if to cut his throat and said: [TRANSLATION] “Who’s the boss here; it’s us, the corporals”. He then tried to break free using his inside arm to strike Raymond’s face or eyes when his head was facing the ground or toward Corporal Raymond’s abdomen. Légaré told us that Robertson prevented him from doing so by using his arm to hold him and grabbing his hands. Raymond and Légaré fell to the foot of the lockers. Légaré choked. A voice said: [TRANSLATION] “He’s not breathing”. Raymond relaxed his grip. Légaré stood up although Robertson was still holding him and Raymond had his hand on Légaré’s throat. Légaré was leaning against the lockers and Raymond clenched or “balled” his fist and was ready to strike him in the face. At that point, Corporal Tremblay became involved by using his arm to prevent Corporal Raymond from striking and said to them: [TRANSLATION] “That’s enough of this nonsense”. According to Corporal Légaré, the accused released him and they all went back downstairs while he and Tremblay remained upstairs until he regained his breath.

[10] Prosecution witness Haché testified that he saw very little but that he heard Corporal Robertson conversing with Private Légaré. According to Haché, Légaré had blown up and said: [TRANSLATION] “If you don’t quit making me sick, I’m going to slug somebody.” This was when Corporal Raymond challenged him and one pushed the other. They had grabbed each other and fallen on the ground. According to him, one of them was gasping for air and someone had said: [TRANSLATION] “That’s enough!”. It had all ended at this point, according to this witness.

[11] Master Corporal Forgues, another prosecution witness, testified that he was present and that the corporals had had no aggressive intention when they got together with Private Légaré. According to him, the purpose of the meeting was merely to repeat to Private Légaré that when a corporal replaced a master corporal, he was to be listened to. He said that it was Corporal Raymond who had discussed this with Private Légaré. According to Forgues, he was facing them. He testified that he saw Private Légaré throw his jacket on the ground and look at Corporal Raymond. The two then began to argue.

[12] Master Corporal Tremblay, a corporal at the time of the altercation, corroborated Corporal Légaré’s testimony that they were discussing with each other at the foot of the stairs but, according to Tremblay, it was rather Corporal Raymond who had asked the complainant to go up the stairs. He then heard the sound of lockers being struck on two occasions before he himself went up. When he arrived there, these two individuals were grappling with each other and Master Corporal Tremblay intervened to separate them, saying to Légaré: [TRANSLATION] “Relax, calm down!”. He noted that Légaré’s face was red, although there was nothing unusual about his face. According to

him, Légaré was pushing against him to return to grappling with Raymond. Master Corporal Tremblay did not see any action being taken by Corporal Robertson against Légaré. As for the statements allegedly made by Légaré, he testified that Légaré had said: [TRANSLATION] “This isn’t over yet”. However, he did not remember hearing Private Légaré say that he would get revenge.

[13] Called by the defence, Corporal Bouchard testified that on November 24, 2004, when he was taking a course with twenty or so other corporals, including the accused, someone told them during the morning break that a private in the 3rd Battalion had struck a corporal in the face. At that point, according to Corporal Bouchard’s statement, everyone stood up because, according to him, this made no sense and that no private could be allowed to do such a thing. They therefore all went upstairs. It seems clear to the Court that the identity of the private was known and that it was Private Légaré, even though Corporal Bouchard, had, for his part, never heard the name. He accordingly went to the other floor within B Company lines, near the lockers, to where the private was. Corporal Bouchard indicated that there were then between 10 and 15 corporals, or about that number, including the accused and Corporals Coulombe, Dubois, Joly, Forgues and Boivin. When he arrived, he saw that the private was at the back of the room and said to those he found standing before him:

[TRANSLATION] “That’s big of you to arrive here in a gang like this!”.

Corporal Raymond then said that they were not there to beat him up but to talk to him. Private Légaré then replied immediately: [TRANSLATION] “I don’t give a damn; I’m not afraid of anybody”. Corporal Bouchard testified that he saw the private in question look at the people around him — he used the word [TRANSLATION] “sized up everyone” — and unbutton his jacket before throwing it on the ground as the animated discussion between Raymond and Légaré continued. Ten seconds later, Private Légaré hurled himself on Raymond like a cat and grabbed him. They became tangled up in the lockers until Raymond held Légaré by the neck and they both fell to the ground. When he saw this, Corporal Bouchard left the room at once, unimpressed by what he had just seen. He also uttered the words: [TRANSLATION] “They’re a bunch of kids here”. Corporal Bouchard did not see anything else.

[14] Corporals Robertson and Raymond also testified. Corporal Robertson denied striking or pushing Private Légaré into the lockers. He suggested that the discussion with Private Légaré was designed to inform him how to behave. He corroborated the statements of Corporal Raymond and Master Corporal Tremblay that it was Corporal Raymond who had asked the complainant to go upstairs. He explained that the location chosen was to ensure that this impromptu meeting took place away from the bosses and the other privates. He stated that he asked two privates to leave the premises. He then spoke to Légaré and reproached him for his attitude and the fact that he had not integrated into the group. He also reproached him for the fact that it was not correct to threaten to strike someone. According to Corporal Robertson, he asked Légaré to think and asked him to put himself in Corporal Robertson’s situation of

authority and command. Légaré replied in no uncertain terms that he did not give a damn. Robertson then decided to ask Corporal Brassard, who was also present, to resolve his problems with Private Légaré. Brassard spoke and said to Légaré, among other things: [TRANSLATION] “You’re a shirker”. This was when Private Légaré unbuttoned his jacket and threw it on the ground, saying: [TRANSLATION] “That’s the army! Ten against one; I’m not afraid of anyone.”. As he faced him, he saw Private Légaré take a determined step forward toward Corporal Raymond and grab his face with his hands. Corporal Raymond overcame him and wrestled him to the ground. They both stood up and he separated them.

[15] For his part, Corporal Raymond corroborated the testimony of Master Corporal Tremblay and Corporal Robertson stating that he asked Private Légaré to follow him upstairs. He also corroborated the testimony of Corporal Robertson concerning the discussion between him and Private Légaré and concerning the arrival of Corporal Brassard, who then called Légaré a “shirker” and the jacket thrown on the ground by Légaré. Corporal Raymond contradicted Corporal Robertson when he said that Légaré moved toward Brassard and Robertson with his fists clenched. He testified that he took a step forward in anticipation of an attack by Légaré. Private Légaré then grabbed his face. He responded with a head-hold and a trip, which caused them both to fall to the ground. He overcame him on the ground while the other struggled. Robertson, Dubois and Tremblay told them that was enough. Corporal Raymond then let go and they both stood up. According to the accused Raymond, Private Légaré wished to continue and he even tried to give him a punch, which missed its target. The incident ended and, according to him, he had used only the necessary force.

[16] The evidence also indicated that the complainant was a person who had practised kick-boxing, a martial art, for ten or so years prior to the altercation. The evidence given by Sergeant Charette stated that he heard of the incident from his spouse who is a friend of Private Légaré’s spouse. He called him immediately to inquire how he was and to find out what had happened. Private Légaré had apparently told Sergeant Charette during a telephone conversation that he had in fact taken off his coat during the altercation, that he was ready to fight but that no blows were exchanged. Private Légaré told him that he had simply been restrained. Private Légaré admitted that he had received such a call from Sergeant Charette, but he claimed that this had not been the main reason for the call.

[17] Private Légaré referred to his injuries. He stated in particular that his lip had been cracked during this altercation. This injury had prevented him from eating and drinking whatever he wanted for about a week. The photographs in Exhibits 5 to 7 show a small scratch between two and three centimetres in length on the right side of his face near the upper lip, and a reddish mark below his right eye. Exhibit 7 also proved to be the best picture of the complainant’s face because it was a close up. However, none of these photographs supported the statement of the complainant Légaré to the effect

that his lip had been cracked. The photographs do not show any apparent redness, mark, scratch or swelling of either the upper or the lower lip. It was established that these photographs were taken on the day following the incident. There was also no additional evidence before this court concerning the nature and consequences of the marks on the complainant Légaré's face that appear in these photographs. This completes the summary of the evidence heard by this Court, on the basis of which the Court will render its decision.

Applicable law and essential elements of charges

[18] Paragraph 267(b) of the *Criminal Code* reads in part as follows:

Every one who, in committing an assault,

...

(b) causes bodily harm to the complainant,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding ten years or an offence punishable on summary conviction and liable to imprisonment for a term not exceeding eighteen months.

Besides the identity of the accused, the date and place as alleged in the indictment, the prosecution had to establish the following essential elements beyond a reasonable doubt:

firstly, the fact that Corporal Raymond and Corporal Robertson used force directly or indirectly against Corporal Légaré, who was a private at the time;

secondly, the fact that the accused used this force unlawfully against Corporal Légaré. I use this expression here because the defence raised the consent of the alleged victim or self-defence as a defence here; and

finally, the prosecution had to prove beyond a reasonable doubt the fact that the assault caused bodily harm to Corporal Légaré as a result of the application of this force.

[19] Concerning the 2nd count, which was in the alternative to the 1st count, beside the identity of the accused, the date and place as alleged in the indictment, the prosecution had to prove the following essential elements beyond a reasonable doubt in order for the Court to be able to find that an offence was committed under section 95 of the *National Defence Act*:

firstly, the fact that Corporal Raymond and Corporal Robertson ill-treated Corporal Légaré;

secondly, the fact that Corporal Légaré was subordinate to them by reason of rank or appointment;

thirdly, the fact that the mistreatment was physical in nature since this was what the prosecution elected to allege in the particulars of the charge; and

finally, the culpable intention of the accused at the time the alleged offence was committed.

Presumption of innocence and reasonable doubt

[20] Whether in charges laid under the *Code of Service Discipline* or proceedings in a civilian criminal court involving criminal charges, an accused person is presumed innocent until the prosecution has established his or her guilt beyond a reasonable doubt.

[21] This onus of proof lies with the prosecution throughout the trial. An accused does not have to prove his or her innocence. The prosecution must prove each of the essential elements of a charge beyond a reasonable doubt.

[22] Proof beyond a reasonable doubt does not apply to the individual items of evidence or the different parts of the evidence; it applies to the evidence as a whole on which the prosecution relies to prove the accused's guilt. The onus of proof lies with the prosecution throughout the trial and never shifts to the accused.

[23] A court must find the accused not guilty if there is a reasonable doubt concerning his or her guilt after it has weighed all the evidence. The words "beyond a reasonable doubt" have been used for a very long time. It is part of the history and the traditions of our judicial system. In *R. v. Lifchus*, [1997] 3 S.C.R. 320, the Supreme Court of Canada determined how reasonable doubt should be explained in a charge to the jury. The principles in *Lifchus* have been applied in several subsequent appeals. Essentially, a reasonable doubt is not an imaginary or a frivolous doubt. It cannot be based on sympathy or a prejudice. Rather, it must be based on reason and common sense. It must flow logically from the evidence or the lack of evidence.

[24] In *R. v. Starr*, [2000] 2 S.C.R. 144, at paragraph 242, Mr. Justice Iacobucci, writing for the majority, stated "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 should be noted, however, that it is virtually impossible to prove something with absolute certainty and that the prosecution is not required to do so. Such a standard of proof does not exist in law.

The prosecution has to prove the guilt of the accused, namely Corporal Raymond and Corporal Robertson in this case, only beyond a reasonable doubt.

[25] As I indicated earlier, the appropriate approach to the standard of proof is to weigh all the evidence and not to assess individual items of evidence separately. It is essential therefore to assess the credibility and reliability of the testimony in light of the evidence as a whole.

[26] This standard of proof beyond a reasonable doubt also applies to issues of credibility. The Court does not have to determine the credibility of a witness or a group of witnesses definitively. Furthermore, the Court does not have to believe all the testimony of a person or group of persons.

[27] If the Court has a reasonable doubt about the guilt of Corporal Raymond on the basis of the credibility of the witnesses, it must acquit him. This also applies to Corporal Robertson. When the decision depends entirely or almost entirely on the credibility of the complainant and that of an accused, the issue is not to determine which version of the facts is true or whether the complainant or one of the two accused must be believed. The question is always the same: has the prosecution proved its claims beyond a reasonable doubt?

[28] Under the following circumstances, the law requires the Court to find an accused not guilty:

firstly, if the Court believes the version given by an accused, and

secondly, even though the Court does not believe one or both of the accused but has a reasonable doubt as a result of their testimony, after examining the deposition or their deposition in the context of the evidence as a whole.

Finally, if, after weighing all the evidence, the Court does not know whom to believe or has a reasonable doubt as to whom it should believe, it must give the benefit of this doubt to the accused or, in this case, one or both of them, and accordingly acquit.

[29] As pointed out by counsel for the defence, Mr. Asselin, it was in *R. v. W.(D.)*, [1991] 1 S.C.R. 742 at page 757, that Mr. Justice Cory proposed a three-pronged approach when the trial judge might have to give directions to jurors concerning credibility in the context of the proof beyond a reasonable doubt standard, and I quote:

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.

[30] After these few words concerning the presumption of innocence and the standard of proof beyond a reasonable doubt — including the standard applicable to questions of credibility — the Court will now consider the facts disclosed by the evidence in light of the applicable law.

Issues

[31] From the outset, the essential elements of the offence concerning the identity of the accused, the date and place of the offences are not in dispute. As far as the 1st count is concerned, namely assault causing bodily harm, the issues relate to the following points:

Firstly, the legality of the alleged acts of the accused Raymond and Robertson against Corporal Légaré, or Private Légaré as he was at the time, at the time of the use of force against him, either because of Corporal Légaré's consent to this or the right of the accused Raymond in particular to argue self-defence in the circumstances of this case.

Secondly, the sufficiency of the evidence concerning the injuries allegedly sustained by Corporal Légaré for them to constitute bodily harm within the meaning of the law. The Court is of the view that the assessment of the credibility of the witnesses heard by this Court is particularly important in determining whether the prosecution discharged its onus of proof.

[32] As far as the 2nd count is concerned, namely ill-treating a person who was subordinate by reason of rank, the only issue relates to the determination by this Court as to whether there was actually physical ill-treatment of Corporal Légaré on the basis of the evidence admitted by the Court.

[33] In order to answer these questions, it is essential to assess the credibility and reliability of the testimony in light of the evidence as a whole.

DECISION

[34] The Court has carefully examined all the testimony separately as well as in light of the evidence as a whole. There is no magic formula for use in deciding on the credibility of testimony or the value to be given to it. *Inter alia*, the Court closely considered the integrity and intelligence of each of the witnesses, their faculties of observation and their ability to relate these observations to the Court. The Court considered their ability to remember the events in view of the fact that some events or facts may mark each person differently. By paying attention to factors such as, for example, whether a witness attempted or honestly tried to tell the truth, the Court observed whether he was sincere and frank or biased, reticent and evasive. In assessing this credibility of each of the witnesses, the Court asked several questions. Did the witness seem honest? Did he have any particular reason not to tell the truth? Did the witness have any interest in the outcome of the case or any reason to adduce evidence that favoured one party rather than another? Was the witness able to make accurate and complete observations concerning the event? Did he have an opportunity to do so? Under what circumstances were the observations made? What was the state of the witness? Was it an ordinary or an extraordinary event? Did the witness give the impression that he had a good memory? Does the witness have any reason to recall the events concerning which he testified? Did the witness's ability to recall the events or difficulty in doing so seem genuine or was it used as an excuse to avoid answering the questions? Was the testimony consistent in itself and with other testimony? Did the witness say something different earlier? Were the contradictions in the testimony so serious that they made its main aspects less credible or less reliable? Was the contradiction substantial or minor? Was it the result of a different statement or of an omission by the witness? Can it be explained? Does the explanation make sense? How did the witness behave when testifying, without attaching too much importance to this, because we all know that appearances can be deceptive.

Corporal Raymond

[35] Corporal Raymond testified before this Court. Although his testimony seemed very careful and prepared, he testified directly and without prevarication. There is no doubt for this Court that both he and Corporal Robertson had intended to intimidate Private Légaré in order to teach him a lesson for the incident that had occurred with Corporal Brassard on November 23, 2004. However, the Court is satisfied that this impromptu meeting out of sight of the superiors and the other privates was not designed to take it out physically on Private Légaré. This Court is also of the view that this kind of conduct is not acceptable on the part of corporals. This was an act of intimidation for which there is no place. To come back to Corporal Raymond,

however, his testimony was credible and generally corroborated, including by some of the witnesses for the prosecution, including witnesses Haché, Forgues and Tremblay. There is no doubt that his testimony was not in agreement in its main points with that of Corporal Légaré, the complainant in this case. The Court cannot conclude, on the basis of all the evidence, that Corporal Raymond lied on the essential questions, but the Court is convinced that he deliberately attempted to show himself in a particularly favourable light, especially in his account of his physical actions against Private Légaré.

Corporal Robertson

[36] Corporal Robertson was also a relatively credible witness. The Court did not accept his testimony concerning the explanations he gave to ensure that this problem would be resolved at the lowest level. As I said earlier, this was a deliberate attempt at intimidation that turned out badly. However, his testimony was largely corroborated.

Corporal Légaré

[37] Corporal Légaré, who was a private at the time, testified in a way that was rather unconvincing. His story was not consistent with respect to the attack of which he claimed to be a victim. The Court accepts the version of all the witnesses who asserted that he said to anyone wishing to listen that he was not afraid of anyone and that he was ready to fight, even going so far as to unbutton his jacket and throw it on the ground while keeping his eye on the others. The Court also does not accept his testimony concerning the extent of the injuries he claims to have sustained, including an injury to the lip that cannot be seen on any of the photographs filed in the Court.

Ex-Corporal Haché

[38] Ex-Corporal Haché, who was called by the prosecution, stated that he had seen very little. The Court does not believe him on this point but cannot reject his testimony solely for this reason. The Court accepts his testimony to the extent that it is corroborated.

Master Corporal Forgues

[39] Master Corporal Forgues was also called by the prosecution. He appeared nervous, reticent and evasive. His testimony does not support the

prosecution's argument and the Court accepts his testimony only to the extent that it is corroborated.

Master Corporal Tremblay

[40] Master Corporal Tremblay testified clearly and precisely. He testified honestly and to the best of his knowledge. There is no question as to his credibility. The prosecution noted that the first sounds heard by the witness Tremblay occurred when Corporal Robertson allegedly pushed Private Tremblay[sic] against the lockers. This interpretation was not corroborated by an independent witness who might have seen or heard such a thing, including ex-Corporal Haché, Master Corporal Forgues or Corporal Bouchard.

Corporal Bouchard, Sergeant Charette and Corporal Masson

[41] The testimony of Corporal Bouchard, for its part, is particularly credible and convincing. The Court has no doubt of the reliability of his testimony. The same is true of Sergeant Charette, who had no interest in this case. Finally, the credibility of Military Police Officer Masson is not the subject of any doubt whatsoever for this Court.

Analysis of law in light of facts

[42] Concerning the analysis of the law in light of the facts of this case, the defence submits that the evidence allows this case to be considered in stages. On the one hand, it invited the Court to begin by considering the 1st count, namely assault causing bodily harm, before analysing the 2nd count. It suggested to this Court that neither accused could be found guilty of the 2nd count if the Court has a reasonable doubt with respect to the 1st count because the prosecution was careful to explain in the particulars of the 2nd count that the alleged ill-treatment had been committed physically. The defence submits that the prosecution did not discharge its onus of proof, in that, on the one hand, it did not establish beyond a reasonable doubt the lack of consent by the complainant Légaré, and, on the other hand, that Private Raymond acted in self-defence when he grabbed Private Légaré and wrestled him to the ground. Concerning the accused Corporal Robertson, the defence argued that he never pushed Private Légaré and that he was not sufficiently involved in the case. The prosecution submits that the accused cannot argue self-defence under sections 34 and 37 of the *Criminal Code*. It maintains that the accused cannot argue self-defence in the circumstances because there is no evidentiary basis for it and there is no doubt, again according to the prosecution,

that the facts showed that the accused committed an assault against the person of Private Légaré that caused him bodily harm, as appears from the evidence.

[43] It follows from all the evidence that was accepted by the Court that the prosecution's argument based almost entirely on the testimony of Corporal Légaré, who was a private at the time, cannot be accepted. All of this evidence accepted by the Court shows unequivocally that Private Légaré provoked the altercation, that he was prepared to fight and that he had no intention of backing down before anyone. However, it is extremely unfortunate that his reaction was directly caused by the initiative of Corporals Raymond and Robertson, who intended to intimidate him in the good old-fashioned way, some would say, and this was conduct that the Court considers unacceptable in the circumstances.

[44] There is no doubt that neither Corporal Raymond nor Corporal Robertson or any other corporal who was present at that time wanted to take physical action against Private Légaré. Légaré felt trapped and reacted aggressively. The whole thing degenerated and the Court is satisfied that the force used against him was minimal in the circumstances.

[45] The prosecution did not succeed in proving beyond a reasonable doubt that Private Légaré had not consented to the physical exchange between himself and Corporal Raymond, and the Court has a reasonable doubt as to the truth of the theory that Corporal Robertson pushed Private Légaré against the lockers on two occasions solely on the strength of the latter's uncorroborated evidence, unless it was corroborated by the witness Tremblay, in the prosecution's theory.

[46] Furthermore, the testimony heard confirmed the theory of a concerted confrontation consent to which was not negated by the serious injuries caused or desired, or the argument of self-defence made by Corporal Raymond, who acted to protect himself or, according to his own version, because he apprehended an attack by Private Légaré against Brassard or Robertson. It must be understood that in the context, the physical altercation and the prelude thereto obviously happened very quickly. Consequently, the accused must be given the benefit of reasonable doubt.

[47] I cannot fail to make mention of the extent to which the approach taken by Corporals Raymond and Robertson was worthy of blame and that it was the factor that triggered this incident. They wished to intimidate a person who, rightly or wrongly, did not accept this. In acting as they did, they quite simply poured oil on the fire rather than informing their chain of command of the quite unacceptable conduct of a private to a corporal or to another corporal, obviously with respect to Corporals Raymond and

Robertson. They wanted to be both judge and a party and lacked judgment, This does not mean that a corporal may not have a robust and civilized conversation with a private on the subject of breaches that must be corrected quickly. In its comments, the Court refers solely to the circumstances of this case with respect to the quite inappropriate nature of this kind of group conduct designed to intimidate a subordinate.

[48] As far as the 2nd count is concerned, the Court also has a reasonable doubt as to whether Private Légaré was physically ill-treated. Since the prosecution itself elected in this way to limit the commission of the offence in drafting the particulars of this charge, the Court does not have to consider all of the evidence in light of the possibility of a special finding under section 138 of the *National Defence Act*, because such a difference would have harmed the accused in preparing their defence. Thus, the Court does not have to answer the question as to whether there was sufficient evidence to establish that Private Légaré was ill-treated in a manner that was not physical.

Disposition

[49] Corporal Raymond, stand up. This Court finds you not guilty of the 1st count and not guilty of the 2nd count. Officer of the Court, return his headdress. Attach your headdress. Salute the Court. Leave this room.

[50] Corporal Robertson, stand up. This Court also finds you not guilty of the 1st count and not guilty of the 2nd count. His headdress should be returned. Salute the Court and leave this room.

COLONEL M. DUTIL, C.M.J.

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Lieutenant-Commander M. Raymond, Regional Military Prosecutor, Eastern Region

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