



## COURT MARTIAL

**Citation:** *R v Rainville*, 2013 CM 3017

**Date:** 20130705

**Docket:** 201302

Standing Court Martial

Canadian Forces Base Trenton  
Trenton, Ontario, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Master Warrant Officer J.C.B. Rainville, Accused**

**Before:** Lieutenant-Colonel L.-V. d'Auteuil

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OFFICIAL ENGLISH TRANSLATION

### **REASONS FOR FINDING**

(Orally)

[1] Master Warrant Officer Rainville is charged with a single offence for using insulting language toward a superior officer, contrary to section 85 of the *National Defence Act*.

[2] This charge is related to the relationship and respect that are expected to exist between a subordinate and a superior officer in a military context and stems from an incident that allegedly occurred in the course of a telephone conversation on 19 July 2012 at Canadian Forces Base (CFB) Trenton, in Ontario.

[3] Essentially, this Standing Court Martial must determine whether the prosecution has proved beyond a reasonable doubt that Master Warrant Officer Rainville committed the service offence of which he stands accused. The accused decided to present a defence and testify on his own behalf in making his case.

[4] This Court Martial began hearing this case on 3 July 2013. The presentation of evidence by the parties and their oral arguments lasted just one day. The evidence consists of the following:

- a) the testimonies of, in order of appearance, Lieutenant Yokom, Captain Walker and Master Warrant Officer Rainville, the accused in this case;
- b) a verbal admission made by Master Warrant Officer Rainville through his counsel to the effect that he committed the offence of which he is accused, that he knew that the person in respect of whom he committed the offence was a superior officer, and that the language and words that he used were directed toward a superior officer; and
- c) the judicial notice taken by the Court of the facts and matters contained in Rule 15 of the *Military Rules of Evidence*, including Chapter 5019-1 of the Defence Administrative Orders and Directives (DAOD) entitled "Personal Relationships and Fraternization".

[5] On 19 July 2012, Master Warrant Officer Rainville was working with the Transportation & Electrical and Mechanical Engineering (TEME) Squadron at 8 Wing as a mobile support equipment controller.

[6] That morning, he received a call from his spouse, Master Corporal Rainville, who was working in the finance section of 8 Wing's administration as assistant to the section manager. She wanted his opinion on an email that had been sent out by her immediate superior, Lieutenant Yokom, welcoming her replacement, Master Corporal Ouellet.

[7] Because of certain health-related limitations following her return in October 2011 from her deployment to Afghanistan, Master Corporal Rainville was still not working full-time as part of her duties. In July 2012, Master Corporal Rainville was working half days instead of full days, as she had been doing for some time already.

[8] In his email to Master Corporal Ouellet, carbon copies of which were sent to Master Corporal Rainville and a certain number of superior officers, Lieutenant Yokom stated, among other things, that he would finally have a full-time master corporal. From his point of view, given the work to be done, he wanted to tell Master Corporal Ouellet that she was welcome, particularly because she would be working full-time.

[9] However, Master Corporal Rainville took this as a sort of negative comment directed at her, and she felt affected by the contents of the email. This is why she wanted to discuss the contents with her spouse, Master Warrant Officer Rainville.

[10] Master Warrant Officer Rainville read the email and discussed its contents with his spouse. During the conversation, he realized how upset his spouse was by the

contents of the email, particularly considering her poor health. He shared her view, namely, that she was right to think that the email was denigrating her and should be perceived as a personal attack on her work performance.

[11] After ending his conversation with his spouse, Master Warrant Officer Rainville decided, immediately and without hesitating, and on his own initiative, to telephone his spouse's immediate superior and author of the email, Lieutenant Yokom, to let him know how his spouse felt about the contents of the email.

[12] Master Warrant Officer Rainville and Lieutenant Yokom did not know each other. When they spoke, Master Warrant Officer Rainville mentioned that he had read the email that had been sent to Master Corporal Ouellet, that Master Corporal Rainville had been affected by its contents, and that she felt hurt, denigrated and inadequate. Considering in particular the email's distribution list and his spouse's poor health, this did not do her any good in the circumstances and undermined her self-esteem. He took the opportunity to remind Lieutenant Yokom that it was very important to support his troops. He stated that he never mentioned Lieutenant Yokom's supervisory skills, and he categorically denies having said anything in this regard in his telephone conversation with the lieutenant.

[13] Master Warrant Officer Rainville stated that he had led the conversation and that he had told Lieutenant Yokom that he had noticed that his immediate superior did not appear as a recipient in the email in question and that he would be forwarding the email to his immediate superior so that he could discuss its contents with Lieutenant Yokom. It seemed to him that Lieutenant Yokom was rather uncomfortable with this last statement.

[14] It is alleged that Lieutenant Yokom apologized for the email and that Master Warrant Officer Rainville said that he should be apologizing to Master Corporal Rainville, not him. Master Warrant Officer Rainville ended the conversation by saying that he should hang up before he said something he regretted. He did not want his feelings on the matter to get the better of him, as this could have led him to say something inappropriate.

[15] He deliberately kept the conversation short, about one minute, and wanted to be precise in what he had to say. He said that he used a normal tone of voice throughout the conversation. The purpose of his call was to make Lieutenant Yokom aware of the impact that his email had on Master Corporal Rainville, given the contents, his choice of words and the individuals identified as recipients.

[16] Lieutenant Yokom confirmed that he had indeed sent the email in question but did not intend to show disrespect for Master Corporal Rainville. He confirmed that Master Warrant Officer Rainville had called him on 19 July 2012.

[17] He stated that Master Warrant Officer Rainville had told him that he was doing a bad job as supervisor, did not take good care of his staff and had a terrible way of going

about his work. He replied that this was a matter of interpretation, but the master warrant officer cut him off brusquely. He tried to apologize by saying that he never intended that his email be taken that way, but he was once again cut off, this time being told that it was not the master warrant officer that he should be apologizing to and that his immediate superior would be hearing about this. Lieutenant Yokom felt denigrated and offended by this last comment. He said that it was Master Warrant Officer Rainville who ended the conversation, telling him that he had better do so before he became too angry.

[18] Essentially, Lieutenant Yokom was shocked, surprised and offended by this conversation. Once the telephone conversation was over, he immediately discussed it with persons in his chain of command, and he was advised to refer everything to Master Warrant Officer Rainville's chain of command.

[19] Lieutenant Yokom then wrote an email to Master Corporal Rainville apologizing for how his email had been interpreted and telling her that he was very lucky to have her in his section.

[20] In retrospect, Lieutenant Yokom admitted that he could have done things differently by combining the contents of the first email with the one sent to Master Corporal Rainville to apologize.

[21] He stated that he had seen Master Warrant Officer Rainville as being aggressive, speaking in a loud voice and using a disrespectful tone. He understood that the purpose of the conversation had been to angrily and disrespectfully tell him that he was doing a bad job as a supervisor.

[22] Section 85 of the *National Defence Act* reads as follows:

Every person who uses threatening or insulting language to, or behaves with contempt toward, a superior officer is guilty of an offence and on conviction is liable to dismissal with disgrace from Her Majesty's service or to less punishment.

[23] The purpose of this service offence found in the Code of Service Discipline is to ensure the minimum degree of respect that must exist, in a military context, between a subordinate and a superior officer, regardless of whether or not other Forces members are present, with the idea being to avoid any conduct that could ultimately lead the subordinate to be disobedient, such that the cohesion and morale of Canadian Forces members at any level could be affected, thereby jeopardizing the accomplishment of the mission and respect for the law.

[24] In addition to establishing the identity of the accused and the date and place of the offence set out in the charge sheet, the prosecution had to prove beyond a reasonable doubt the following elements: that Master Warrant Officer Rainville used the language alleged in the particulars of the charge, that the language used was insulting, that he

knew that the person to whom he was speaking was a superior officer and that the language was directed toward that superior officer.

[25] As regards proving that Master Warrant Officer Rainville used insulting language, it is important to note that, to decide this issue, the Court must adopt the meaning that a reasonable person would give in any circumstances to the language used. In other words, the Court must analyze this issue from an objective perspective.

[26] Furthermore, as regards the accused's intent in respect of committing this offence, the Court must be able to conclude that the language he used was disrespectful and abusive in that context, thus proving his intention to be insubordinate.

[27] Finally, regarding the fact that Master Warrant Officer Rainville knew that he was speaking to a superior officer, it is important to bear in mind that "superior officer" means any officer or non-commissioned member who, in relation to any other officer or non-commissioned member, is by the *National Defence Act*, or by regulations or custom of the service, authorized to give a lawful command to that other officer or non-commissioned member.

[28] Before applying the law to the facts of the case, I believe it is important to discuss the presumption of innocence and the standard of proof beyond a reasonable doubt, which is an essential component of the presumption of innocence.

[29] Whether facing charges under the Code of Service Discipline before a military court or proceedings before a civilian criminal court involving criminal charges, an accused person is presumed to be innocent until the prosecution has proved his or her guilt beyond a reasonable doubt. This burden of proof rests with the prosecution throughout the trial.

[30] An accused person does not have to prove that he or she is innocent. The prosecution must prove each of the essential elements of a charge beyond a reasonable doubt. A reasonable doubt is not a far-fetched or frivolous doubt. It is not a doubt based on sympathy or prejudice. Rather, it is based on reason and common sense. It can be based not only on the evidence, but also on a lack of evidence. Proof beyond a reasonable doubt does not apply to individual pieces of evidence or to separate parts of the evidence; it applies to the entire body of evidence relied on by the prosecution to establish guilt. The burden of proof rests with the prosecution throughout the trial and is never shifted to the accused. A court must find the accused not guilty if it has a reasonable doubt as to his or her guilt after having assessed all the evidence.

[31] In *R v Starr*, [2000] 2 SCR 144 at paragraph 242, Justice Iacobucci, writing for the majority, stated as follows:

. . . [A]n 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.

[32] It is useful, however, to recall that it is virtually impossible to prove something with absolute certainty, and that the prosecution is not required to do so. That kind of standard of proof does not exist in law. In other words, if the court is satisfied that Master Warrant Officer Rainville is probably or likely guilty, then the accused shall be acquitted, since proof of probable or likely guilt is not proof of guilt beyond a reasonable doubt. The standard of proof beyond a reasonable doubt also applies to questions of credibility. The Court need not make a definitive determination of the credibility of a witness or group of witnesses. In addition, the Court need not believe the entire testimony given by a person or group of persons. If the Court has a reasonable doubt regarding the guilt of Master Warrant Officer Rainville that stems from the credibility of the witnesses, it must acquit him.

[33] What is evidence? Evidence may include testimony under oath or solemn affirmation by witnesses about what they observed or what they did; it could also be documents, photographs, maps or other items introduced by witnesses, the testimony of expert witnesses, formal admissions of facts by either the prosecution or the defence, and matters of which the Court takes judicial notice under the Military Rules of Evidence. It is not unusual that some evidence presented before the Court may be contradictory. Often, witnesses may have different recollections of events, and the Court has to determine what evidence it finds credible.

[34] Credibility is not synonymous with telling the truth, and a lack of credibility is not synonymous with lying. Many factors influence the Court's assessment of the credibility of the testimony of a witness. For example, the Court will assess a witness's opportunity to observe, a witness's reasons to remember, such as whether the events were noteworthy, unusual or striking, or relatively unimportant and, therefore, understandably more difficult to recollect. Does a 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.

[35] Another factor allowing the Court to determine whether a witness is credible is the apparent capacity of the witness to remember. The demeanour of the witness while testifying is a factor that may be used in assessing credibility. Consideration must be given to whether the witness was responsive to questions, straightforward in his or her answers, or evasive, hesitant or argumentative, and indeed whether his or her testimony is consistent with itself and with the uncontradicted facts. Minor discrepancies, which can and do innocently occur, do not necessarily mean that the testimony should be disregarded. However, deliberate falsehoods are an entirely different matter; they are always serious and may well taint a witness's entire testimony. The Court is not required to accept the testimony of any witness except to the extent that it has impressed the Court as credible. However, the Court will accept evidence as trustworthy unless there is a reason to disbelieve it.

[36] As the rule of reasonable doubt applies to the issue of credibility, the Court must first decide on the credibility of the accused, considering that the accused has testified in his or her own defence. In other words, the Court must decide whether or not it believes the evidence submitted by the accused in his or her own testimony.

[37] This is one of those cases where the approach to be followed in assessing the effect of the credibility and reliability of an accused's testimony in court in light of the rule of reasonable doubt was laid down by the Supreme Court of Canada in *R v W(D)*, [1991] 1 SCR 742. That decision must be applied because the accused, Master Warrant Officer Rainville, testified.

[38] As established in *R v W(D)* at page 758, the test is as follows:

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

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

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

[39] This test was established mainly to prevent the trier of fact proceeding by choosing the evidence he or she should believe, either that submitted by the accused or that submitted by the prosecution. However, it is also clear that the Supreme Court has reiterated several times that this formula does not have to be recited word for word as some magic incantation. On this point, see *R v S (W D)*, [1994] 3 SCR 521 at page 533. The trap that this Court must avoid is to appear to be or to actually be in a situation where it chooses between two versions in its analysis, namely that submitted by the prosecution and that put forward by the accused.

[40] So, having instructed myself as to the presumption of innocence and the standard of proof beyond a reasonable doubt, I will now turn to the questions in issue.

[41] First of all, the Court notes that because of the admissions made by Master Warrant Officer Rainville, the prosecution has discharged its burden of proving, beyond a reasonable doubt, the essential elements of the offence of insubordination, specifically, that Master Warrant Officer Rainville is the person who committed the offence, that he knew that the person whom he was addressing was a superior officer and that his words were directed at this superior officer.

[42] Now, regarding the date and place of the offence, the evidence proves beyond a reasonable doubt that the alleged offence occurred on 19 July 2012 at CFB Trenton, in Ontario. Accordingly, the Court finds that the prosecution has also discharged its burden of proof with regard to these two essential elements of the offence of insubordination.

[43] Therefore, all that remains for the Court to determine is whether the prosecution has discharged its burden of proving beyond a reasonable doubt that the accused used the language alleged in the charge sheet, that this language was insulting and that he had the requisite intent to commit this offence.

[44] The Court must analyze each of these essential elements separately, in light of the test set out in *R v W(D)*. Regarding the fact that Master Warrant Officer Rainville used the language alleged in the charge sheet, the Court must first rule on the credibility and reliability of his testimony in this regard.

[45] The testimony of Master Warrant Officer Rainville was frank, direct and consistent, and he demonstrated an excellent recollection of the events about which he was questioned, particularly with regard to the words exchanged in his telephone conversation with Lieutenant Yokom on 19 July. His answers were precise, and he did not hesitate to ask that a question be repeated if he did not understand it.

[46] Moreover, the evidence presented by the prosecution corroborated some of the evidence given by Master Warrant Officer Rainville in his testimony:

- a) the fact that he did not know Lieutenant Yokom personally before he spoke with him on the telephone;
- b) the time of the conversation, that is, the morning of 19 July 2012;
- c) the duration of the conversation, that is, approximately one minute;
- d) the factor that triggered the call by Master Warrant Officer Rainville to, namely, the contents of the email of 19 July 2012 sent by Lieutenant Yokom to Master Corporal Ouellet which listed Master Corporal Rainville as a carbon copy recipient;
- e) the way in which the conversation unfolded, and particularly the fact that it was a one-sided conversation in which Master Warrant Officer Rainville stated things to Lieutenant Yokom with no real intention of discussing the matter with him or allowing him to do anything;
- f) the fact that Master Warrant Officer Rainville mentioned the question of the importance of taking care of one's staff;
- g) the fact that Master Warrant Officer Rainville intended to refer the matter to Lieutenant Yokom's immediate superior;
- h) the fact that Lieutenant Yokom apologized to Master Warrant Officer Rainville and that Master Warrant Officer Rainville told him that he was not the one he should be apologizing to; and



- i) the fact that Master Warrant Officer Rainville ended the conversation because he did not want to make the situation worse because of the emotions he was feeling over this situation.

[47] Counsel for the prosecution raised the fact that the testimony of Master Warrant Officer Rainville could not be reliable and credible because of the tone that he said he used in the circumstances that he himself described. According to the prosecution, Master Warrant Officer Rainville stated that he used a normal tone when he spoke to Lieutenant Yokom, whereas the facts and actions that he mentioned much more closely described someone who was acting out of emotion, not reason, and who was in the grip of feelings of injustice and anger.

[48] Master Warrant Officer Rainville is a heavyset, solidly built man with a rather deep and monotone speaking voice, and he generally expresses himself in a direct manner, as the Court was able to note from his testimony. The Court has no trouble believing that the accused used a normal tone, as he stated. This does not rule out the fact that because this was a one-sided conversation, he used a firm tone and was perhaps even a bit loud to make himself understood, which in itself is not an unusual and significant discrepancy with respect to the testimony he gave.

[49] In our opinion, this minor discrepancy in the characterization of the tone used during the telephone conversation, which is something that the accused in no way refuted, except by saying that he used a normal tone without giving any opportunity to respond, is not in itself enough to allow the Court, considering its other findings regarding the manner in which Master Warrant Officer Rainville testified in court and the existence of numerous items of evidence corroborating his testimony, to conclude that this single item of evidence, on its own, makes his testimony unreliable and lacking in credibility.

[50] In these circumstances, the Court finds that the testimony of Master Warrant Officer Rainville is reliable and credible with regard to the words he used during the conversation with Lieutenant Yokom. The Court believes the accused when he says that he never commented on Lieutenant Yokom's performance during the conversation he had with him because he knew nothing about that. The Court also believes that he did not say to Lieutenant Yokom such things as "you should be very upset with yourself for not taking care of your people", "you are doing a poor job as a supervisor" or "I will be discussing this with your chain of command".

[51] However, the Court is of the opinion that the accused said something along the lines of "I will be discussing this with your chain of command" when he said that he intended to refer the topic of their conversation to Lieutenant Yokom's immediate superior. On this point, the Court concludes that the prosecution has proved beyond a reasonable doubt that the accused used language of the sort described in more detail in the particulars of the charge. Indeed, it is the accused himself who admitted using such language.

[52] We now turn to the question of whether this language is insulting. In our view, an informed reasonable person, aware of all the circumstances of this case, would not interpret this language as being insulting.

[53] First, the Court should clarify something that was raised by Master Warrant Officer Rainville in his defence. As was described by Captain Walker, a witness for the prosecution, and by Master Warrant Officer Rainville, senior non-commissioned officers at the rank of warrant officer, master warrant officer and chief warrant officer in the Canadian Forces generally have a role to play with young officers, and young officers freely consult them because of their knowledge and experience when it comes to exercising leadership. However, it is clear to the Court that at the time of the telephone conversation Lieutenant Yokom and Master Warrant Officer Rainville, Master Warrant Officer Rainville was not exercising such a function. This was, rather, related to the personal relationship he had with Master Corporal Rainville, and this was the only perspective that should be given to his intervention, based on the facts submitted to this Court.

[54] That being said, it was established that Lieutenant Yokom's immediate superior did not appear as a recipient in the email that triggered this case. In mentioning that he intended to bring the contents of the email to the attention of this superior officer because of what it contained and to whom it was sent, and given the impact that this email had on his spouse, Master Warrant Officer Rainville was simply stating that he planned to bring the contents of the email to the attention of Lieutenant Yokom's immediate superior without further ado. The Court is of the opinion that a reasonable person would not see these words as an affront or insult to Lieutenant Yokom but a simple statement that because of the impact of such an email and the recipients listed in it, Lieutenant Yokom's immediate superior should be apprised of the situation.

[55] Therefore, in light of the testimony of Master Warrant Officer Rainville, which the Court finds to be reliable and credible on this issue, and based on its finding on the meaning that a reasonable person would give in any circumstances to the language used, the Court concludes that the prosecution has not discharged its burden of proof such that it has proved beyond a reasonable doubt that the language considered by this Court as having been used by the accused was insulting.

[56] As to whether there was insubordinate intent, the Court concludes that the prosecution has not discharged its burden of proof in this regard. The circumstances of this case and the language that the Court considers as having been used do not support such a conclusion. The Court is of the opinion that the testimony of Master Warrant Officer Rainville is credible and reliable on this issue. The purpose of his call was to make Lieutenant Yokom aware of the consequences that such an email had on his spouse, Master Corporal Rainville. There was nothing disrespectful or abusive in this, and he took care not say what he personally thought about the situation. He did not convey, explicitly or implicitly, any intention on his part or on the part of his spouse, to

refuse to submit to or obey any order or authority because of the circumstances of this case.

[57] However, the Court is of the opinion that the circumstances of this case show that this was a rather unusual and probably inappropriate way of dealing with the situation, given the lack of a hierarchal relationship between Master Warrant Officer Rainville and Lieutenant Yokom, particularly from a chain-of-command perspective.

[58] The Canadian Forces have stated in their policy on personal relationships that, to prevent the erosion of lawful authority while safeguarding the integrity of command and exercising lawful authority in the chain of command, and to maintain operational effectiveness while preserving unit effectiveness through a high state of discipline and morale on the part of each individual member, a Forces member in a personal relationship with another Forces member shall not be involved in the professional life of the other member, particularly by getting involved in that person's professional relationship with his or her immediate superior.

[59] The Court understands that, under the policy concerning this subject, and more specifically as regards DAOD 5019-1, should such a situation arise, it may ultimately lead to disciplinary action, including the laying of a charge under the Code of Service Discipline for failure to comply with this policy.

[60] Being a Forces member comes with special responsibilities, including putting service to one's country before one's own needs, and in a personal relationship involving two members, this becomes even more complicated and requires the members involved must take extra care to lead by example.

[61] Finding the accused's testimony to be reliable and credible on the whole and in particular with regard to the aspects relating to whether Master Warrant Officer Rainville used insulting language and intended to be insubordinate, the Court concludes that the prosecution has not discharged its burden of proof, which was to prove beyond a reasonable doubt that Master Warrant Officer Rainville used insulting language to a superior officer. Essentially, your testimony, Master Warrant Officer Rainville, regarding the charge and, more specifically, the two essential elements of the offence raise a reasonable doubt.

**FOR ALL THESE REASONS, THE COURT:**

[62] **FINDS** Master Warrant Officer Rainville not guilty on the first and only count appearing on the charge sheet.

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**Counsel:**

Major K. Lacharité, Canadian Military Prosecution Service  
Counsel for Her Majesty the Queen

Major E. Thomas and Lieutenant-Commander D. Liang, Defence Counsel Services  
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