

**Citation:** *R. v. Sergeant A.P.S. Quinn*, 2007 CM 3018

**Docket:** 200704

**STANDING COURT MARTIAL  
CANADA  
ONTARIO  
LCOL GEORGE TAYLOR DENNISON III ARMOURY, TORONTO**

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**Date:** 4 October 2007

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**PRESIDING: LIEUTENANT-COLONEL L -V. D'AUTEUIL, M.J.**

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**HER MAJESTY THE QUEEN**

**v.**

**SERGEANT A.P.S. QUINN**

**(Accused)**

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**Finding  
(Rendered Orally)**

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## **INTRODUCTION**

[1] Sergeant Quinn is charged with two offences punishable under section 130 of the *National Defence Act* for assault with weapon contrary to section 267(a) of the *Criminal Code*, with one offence for behaving in a disgraceful manner contrary to section 93 of the *National Defence Act*, and, alternatively to the latter, with one offence for ill-treating a person who by reason of rank was subordinate to him contrary to section 95 of the *National Defence Act*.

[2] The facts on which the four counts are based relate to events that took place from 20 to 28 August 2005 during the exercise STALWART GUARDIAN '05 at Canadian Forces Base (CFB) Petawawa, province of Ontario.

[3] At the opening of this trial by Standing Court Martial on 5 September 2007, prior to plea and after the oaths were taken, Sergeant Quinn made an application for a stay of proceedings under section 24(1) of the *Canadian Charter of Rights and Freedoms* alleging an infringement of his rights guaranteed by sections 7 and 11(b) of the *Charter* to be tried within a reasonable time. The court martial dismissed this application on 7 September 2007.

[4] The main trial took place on 11 and 13 to 14 September 2007. Several witnesses were heard during this trial, including the accused, which made it mainly a matter of credibility to be assessed by the court in accordance with the principles set out by the Supreme Court of Canada in the decision of *R. v. W.(D.)*, [1991] 1 S.C.R. 742.

### **THE EVIDENCE**

[5] The evidence before this court martial is composed essentially of the following facts:

- A. The testimony heard in the order of their appearance before the court: the testimony of Corporal Vesarinsh, Private Kaur, Private Chahal, Sergeant Quinn, the accused in this case, and Corporal Arias.
- B. The testimony of Lieutenant-Colonel Perchal, which was heard during the *voir dire* on the *Charter* motion presented previously by the accused. His testimony was incorporated to the main trial on consent of both counsel.
- C. Exhibit 3, Sergeant Quinn's Canadian Forces conduct sheet dated 17 March 2005. This exhibit was also first introduced as an exhibit during the *voir dire* on the *Charter* motion presented previously by the accused. This exhibit was also incorporated to the main trial on consent of both counsel.
- D. The admissions made by the accused for the purpose of dispensing with proof any fact the prosecutor must prove, all in accordance with Rule 37(b) of the Military Rules of Evidence. These admissions read as follow:
  - i. At the relevant time Sergeant Quinn had been issued with a Browning 9-millimetre pistol.
  - ii. At the relevant time Sergeant Quinn had been issued with 10 rounds of live 9-millimetre ball ammunition. The reason he was issued the ammunition was that Sergeant Quinn was assigned to escort weapons from Toronto to Petawawa and return.
- E. And finally, the evidence is composed of the judicial notice taken by the court of the facts and issues under Rule 15 of the Military Rules of Evidence.

## **THE FACTS**

[6] All witnesses heard in this trial, and the accused, were part of the Royal Regiment of Canada at the time of the incidents. The Royal Regiment of Canada is a Reserve Force unit located in Toronto. Unit members are from different origins and they are used to performing operations in a multicultural context.

[7] Sometime prior to the exercise STALWART GUARDIAN '05 in August 2005, Sergeant Quinn was assigned the task of sergeant quartermaster for the regimental company involved in the exercise. He was then at the head of a group of people responsible for supplying and distributing food, water, weapons, ammunition, and any other requested item to the company in the field during the exercise.

[8] It is important to highlight the fact that, according to two conversations he had with his unit commanding officer, Lieutenant-Colonel Perchal, in June and July 2005, if Sergeant Quinn had good performance reports for the jobs he performed during summer 2005, he could be recommended for a promotion to the rank of warrant officer. It would have been a great achievement for him, knowing that he was reduced from the rank of sergeant to the rank of corporal by a Standing Court Martial on 20 October 2000 for having been found guilty of three charges under section 95 of the *National Defence Act* for ill-treating a person who by reason of rank was subordinate to him (see exhibit 3).

[9] In order to assure security of the C-7 weapons during their transportation from the Royal Regiment of Canada in Toronto to the appropriate CFB Petawawa training area, it was necessary to have a person escorting them with a weapon and live ammunition. It is the reason why Sergeant Quinn was issued a 9-millimetre pistol with 10 balls of 9-millimetre ammunition, as disclosed by the admissions of the accused, in order to protect the weapons' convoy, which he did.

[10] Further to the distribution of the weapons, Sergeant Quinn was not required to keep the live ammunition with him because there was no need to do so, there was no equipment at the CQ that needed to be secured. Then, he checked with those responsible for the regimental quartermaster how he could get rid of the live ammunition for the period of the exercise. The warrant officer responsible for the regimental QM told him that he was not equipped to secure any live ammunition. Considering that, Sergeant Quinn made the decision to keep the live ammunition with him even though some other means to secure it should have been considered, including the fact to inquire about that issue with other people on CFB Petawawa.

[11] He then kept the magazine with the live ammunition in it, in a separate pocket on the 9-millimetre Browning pistol holster designed specifically for that

purpose. This way live ammunition would be separate from the pistol itself even though the pistol was in the holster.

[12] He let know his superiors about his decision, including his warrant officer and the officer responsible for the company QM, and they responded that they were comfortable with it because Sergeant Quinn's intent was to keep separate the ammunition from the pistol.

[13] As a matter of context, it is important to note that other CQ staff personnel were also using and carrying pistols and rifles for the purpose of the exercise, however, Sergeant Quinn was the only one to carry with him live ammunition.

[14] Sergeant Quinn let know all the CQ members about the situation. As a matter of security, he initially cleared the pistol in front of his staff and another sergeant. Additionally, each morning during the exercise he personally cleared his pistol, which means that he checked if there was any ammunition left in his pistol and if there was missing any live ammunition he had in his magazine. He also made sure that he never left it alone without any surveillance for all the exercise period.

[15] Concluding at the beginning of the exercise that he had not enough staff to perform the different tasks he was responsible for as a sergeant QM, Sergeant Quinn requested additional people in order to perform his mission.

[16] Private Kaur, the official complainant in this case, went through her basic training course during summer 2005. At the end of her course she was sent back to CFB Petawawa with her home unit, which is the Royal Regiment of Canada, to participate to the exercise STALWART GUARDIAN '05. Her trade at the time was a clerk. However, having done only her basic course she had no training whatsoever in her specific trade. She was initially sent to the regimental orderly room, which deals mainly with administration matters, for the time of the exercise. However, after a day or so, further to Sergeant Quinn's request for more soldiers, she was considered by OR's responsible for that task and she was finally sent to the CQ.

[17] Private Chahal, the other complainant in this case, went also through his basic training course during summer 2005 at the same time and location as Private Kaur. At the end of his course he was sent back to CFB Petawawa with his home unit, which is also the Royal Regiment of Canada, to participate to the same exercise. His trade was infantryman. He spent the first couple of days of the exercise with a platoon as a soldier. However, during a manoeuvre, he broke his glasses and was unable to continue to perform his duty as an infantryman for the remaining period of the exercise because his sight was very bad without glasses. He went to the medical where a doctor gave him a paper specifying that he could perform only light-duty tasks for the remaining period of the exercise. Basically, without glasses Private Chahal was very

restricted in order to perform any military duty as an infantryman. This is at that time he was sent to the CQ with Sergeant Quinn. He joined that subunit a day after Private Kaur arrived.

[18] Both privates testified before the court. It is important to say, only for the purpose of this trial and for a better understanding of the context of this case, that both witnesses have facial and skin distinctiveness belonging probably to people from India.

[19] The court does not know if they were born or not in Canada, but the court may assume, that considering legal requirements for recruiting people in the Canadian Forces, that they have, at least, immigrant status or Canadian citizenship. Moreover, they both indicated in their testimony that they were familiar with the Hindi language, which is the official language of India, giving to the court some indication of their origins.

[20] In August 2005 Private Kaur and Private Chahal were involved in personal relationship for about two years. This situation was unknown to Sergeant Quinn and the CQ members. Both privates having recently joined the Canadian Forces and the unit, they were both unknown people for most of the Royal Regiment of Canada.

[21] The evidence clearly established that Private Kaur and Private Chahal decided, prior to getting on their basic training course, to hide to the Canadian Forces personnel the fact that they were both involved in a personal relationship with each other. It explains why, at the time of their arrival, Sergeant Quinn and the CQ members did not know about it. Privates Kaur and Chahal's decision was made in the light of the Canadian Forces fraternization policy that was explained to them when they both joined the Canadian Forces and during their basic training course.

[22] When Private Chahal arrived at the CQ location, Sergeant Quinn had to figure where the private will sleep. Before letting Private Chahal sleep in the same modular as Private Kaur, Sergeant Quinn asked Private Chahal, and probably Private Kaur, if they were both involved in a personal relationship with each other, which they denied. In accordance with the fraternization policy, and knowing that both privates did their basic training course together, he wanted to make sure that he would not face any problem on that specific issue.

[23] In accordance with the answer he got, Sergeant Quinn authorized Private Chahal to put his gear and sleep in the same modular as Private Kaur. However, it is clear for the court that while the week of the exercise was progressing it came more and more obvious for the CQ staff members who testified in this trial that some kind of personal relationship was existing between Private Kaur and Private Chahal. Even

though nothing obvious confirmed that, the way they behaved to each other while they were speaking or looking at each other let the CQ staff members suspected that there was some kind of fraternization going on between those two individuals.

[24] It looks like it was the first experience for both privates on an exercise involving more than a regiment in the field. In fact, putting aside the basic training they received, they were not familiar at all with the military operations in the field and more specifically with logistic operations. When they first joined the CQ staff, it is clear that they were both impressed and intimidated by the people they were with and the requirements of the job. Moreover, they learned during the week, through the CQ staff, that a court martial found Sergeant Quinn guilty of ill-treating subordinates some years ago.

[25] Private Kaur was not very soldierly, as clearly described by Corporal Vasarinsh. It is clear for the court that Private Kaur had difficulties to deal with the tasks she was given by Sergeant Quinn, like her duty shift on the radio, her duty as a sentry scheduled in the middle of the night, and the fact to warm the meals and wash the dishes. She also complained about the lack of sleep in the context of the exercise. As she expressed to the court, after completion of her basic training course where she came from a bit exhausted, she thought that it would be more relaxed and the tasks she would be asked to perform during the exercise would not be demanding as it was on the course she has just finished.

[26] In the case of Private Chahal, being very restricted in the performance of any military duty made him not very useful for Sergeant Quinn and the CQ staff members. The jobs he was given were not very challenging and were very repetitive. As Private Kaur, he was expecting a more relaxed context after the course he went through, including getting more sleep. It is normal that he found what he did very boring and that he appeared disinterested to Sergeant Quinn.

[27] It is in this context that the alleged incidents occurred.

*Inappropriate, shocking, abusive language and comments by Sergeant Quinn*

[28] During that week, both complainants told the court that in order to reflect sarcastically the fact that Private Kaur seemed to expect that some other people will do things for her she got the nickname of "Princess." According to them, Sergeant Quinn used it often in the presence of other people when he talked to Private Kaur.

[29] To the contrary, Sergeant Quinn told the court that he never used this nickname. However, he confirmed the fact that he asked Private Kaur what was the correct word in Hindi language for the word "queen." She told him it was "rani." She also told him that she does not mind if he used it. Both complainants confirmed that the

word “rani” was used and that it was Sergeant Quinn who, surprisingly, used it without asking the meaning of it because he seemed to know it. However, Private Kaur made clear to the court that she did not allow Sergeant Quinn to use it either.

[30] Finally, Corporal Vasarinsh confirmed to the court that Private Kaur’s nickname was “Princess.” She heard it a couple of times, but she never heard that word said by Sergeant Quinn.

[31] Private Chahal testified on the fact that at his arrival at the CQ, Sergeant Quinn commented the fact that he was on light duty by qualifying him as “weak and pathetic.” Sergeant Quinn strongly denied that he ever said that.

[32] Both complainants testified that Sergeant Quinn used, disrespectfully, the words “whore” and “harlot” when talking to Private Kaur during that week. One time he would also have used the word “trollop” before the company members, which represents usually about 90 to 100 people, when talking to Private Kaur. The purpose of using these words would have been to refer to Private Kaur as a woman who would engage in sex activities for money.

[33] Sergeant Quinn strongly denied that he ever used these words as descriptive words for Private Kaur when he talked to her that week. To the contrary, when he heard one of Private Kaur’s former colleagues from the basic training course referring to her as a “whore,” he admonished right away the soldier who said that.

[34] Sergeant Quinn explained to the court that once, while being in a truck that week with Private Kaur and Corporal Ferguson on their way to a dropping point (DP), he told her that his civilian job was doorman for a strippers’ bar. She then got very interested by the subject and asked him many questions about stripper’s work and life conditions. He said that she was interested in that job because it seems easy money to make. However, he tried to discourage her of considering this kind of job because it does not seem what it looks like it is. It is in this context only that the words “whore,” “harlot,” and “trollop” were used.

[35] Private Kaur confirmed that conversation and added the fact that she was curious about the stripper’s job at the time of the conversation because she was a poor student without money. She mentioned that she had no concrete job. She also added that Sergeant Quinn offered money for having sex with her during that specific event, which Sergeant Quinn totally denied.

[36] At another time during that week, Sergeant Quinn was preparing and cooking the meal for the CQ staff members. When he offered to Private Kaur her meal he had cooked, she refused it. According to her testimony, and Private Chahal’s testimony, he called her “ungrateful bitch.” Sergeant Quinn confirmed that he cooked

hot meals and clearly remembered that incident. However, he denied that he said “ungrateful bitch.” He told the court that he said “ungrateful thing” to Private Kaur in order to express the fact that she was not acknowledging the effort he made to prepare the meal by tasting it. According to his testimony it is an Irish expression used to express the lack of gratitude by somebody else, it was not used in order to provoke or insult her.

[37] Sometime during that week, Private Chahal and Sergeant Quinn were discussing the presence of immigrants in the Canadian Forces. According to Private Chahal, Sergeant Quinn told him that all Sri Lankans and Jamaicans should be shot at their entrance in the Canadian Forces. According to Private Kaur, who attended the conversation, she heard Sergeant Quinn saying that all the immigrants in the Canadian Forces should be shot.

[38] According to Sergeant Quinn the conversation was about recruiting people in the Canadian Forces when they are coming from countries actually in civil war. He gave to Private Chahal as example Sri Lankans, Jamaicans, and Lebanese, as people for which it would have been difficult to do a background check when their country is at war. Not knowing their real background should be a reason for not actually enrolling them. Sergeant Quinn was quite clear that he never mentioned that these people should be shot or killed.

[39] The very last night before the exercise, CQ staff members and other members of the Royal Regiment of Canada who were part of the company in the field had some kind of party at the CQ location. People were drinking alcohol. At some point that night, Private Kaur went in a tent for sleeping, different from the one she used to sleep that week and where were quietly partying Sergeant Quinn and other CQ staff members. According to her testimony, people were drinking and she had herself a drink. While talking to her, some people in the tent offered her money for having sex with her. Then, it turned that somebody told that a hand job would be fine and Sergeant Quinn passed her a glove while telling her at the same time “you don’t have to touch us.” Corporal Commissariat put his arms around her shoulders and somebody kissed her on the neck. Disgusted and mortified, she left the tent and went back in her own tent where she used to sleep.

[40] According to Sergeant Quinn, while he was partying in a modular with some other members of the CQ staff, he heard from the modular next to the one he was, Private Kaur and Private Chahal having an argument. It was the modular where both privates usually slept that week. Sergeant Quinn went to that modular and invited Private Kaur to come and sleep in the modular he was with the other members. Private Kaur accepted the offer.



[41] Pursuant to Corporal Arias' and Sergeant Quinn's testimonies, Private Kaur sat in the modular beside Corporal Commissariat. At some point, she leaned her head toward Corporal Commissariat and he responded in doing the same thing. He put his arms around her shoulders and kissed her on the neck. Sergeant Quinn and Corporal Arias made some comments and she left the modular.

[42] Sergeant Quinn confirmed that during the night in the modular jokes on sex were made, but nothing was said in order to insult Private Kaur when she was there. He denied, as Corporal Arias did, that money was offered to Private Kaur to have sex with her. Concerning the incident of the glove, he said that some days before this party, while Private Kaur was serving the meal, Corporal Ferguson told her to put a glove on her hand for hygienic purposes because she was touching the food with her fingers. Sergeant Quinn said that she was referring to that specific incident in her testimony and that no glove was involved in any way the night she came in the modular.

*The assault with a weapon by Sergeant Quinn*

[43] On the last night of the exercise, further to the alleged incident in the modular at the time of the party involving Private Kaur and Sergeant Quinn, Private Kaur went back to her modular where she was usually sleeping. When she entered, she passed over Private Chahal who was sleeping beside her own bed. While doing this, she accidentally hit him on the head with her boot. She heard somebody outside the modular yelling "they're making out." She did not really pay attention to this and she tried to find out if she hurt Private Chahal. While she was beside him talking to him, Sergeant Quinn showed up in the modular pointing his flashlight on them and yelling "they're making out." He was with some other corporals. Private Chahal and her were lying down while Sergeant Quinn was standing up and talking to them. Sergeant Quinn said to them "Oh, pillow talk." Then he said to Private Chahal, "I don't like you. I have ten rounds and I was court martialled before and I don't care." She knew that he had a pistol, but did not know at the time where it was. She thinks that he shook the magazine. She started to cry.

[44] Private Chahal confirmed that Sergeant Quinn had words to the same effect as related by Private Kaur, however, he added that Sergeant Quinn waved his pistol in front of them with his flashlight. Private Chahal confirmed that Private Kaur started to cry. When Sergeant Quinn left he would have said that he did not mind if they were having sex because the morning after they were all soldiers.

[45] Corporal Arias testified that after Private Kaur left the modular he had to go out. He then heard some noise coming from the modular where Private Kaur and Private Chahal were sleeping. He lifted up a part of that modular and saw them kissing each other. Then he went back to the modular where the party was and told Sergeant Quinn "they are making out." Both modulars are very close and it took less than

seconds for Sergeant Quinn to go see what was really happening. When he entered in the modular, he turned on his flashlight and pointed it toward Private Kaur and Private Chahal. Private Kaur was lying over Private Chahal. According to Sergeant Quinn he admonished them for what they were doing and asked them to stop, then he left the modular. Corporal Arias entered in the modular with Sergeant Quinn, however, he left rapidly the modular and did not hear if Sergeant Quinn said something to both privates.

### **THE APPLICABLE LAW AND THE ESSENTIAL ELEMENTS OF THE CHARGES**

[46] Section 93 of the *National Defence Act* reads as follow:

Every person who behaves in a cruel or disgraceful manner is guilty of an offence and on conviction is liable to imprisonment for a term not exceeding five years or to less punishment....

[47] Then, the prosecution had to prove the following essential elements for this offence beyond a reasonable doubt: the prosecution had to prove the identity of the accused, the date and place as alleged in the charge sheet.

[48] Concerning this specific offence, the prosecution would have to prove beyond a reasonable doubt an additional essential element of the offence, which is the fact that the behaviour of the accused was disgraceful. In order to make this determination, the prosecutor suggested to apply the test enunciated by Military Judge Carter in the court martial of *ex-Second Lieutenant D.S. Short*. Basically, concerning the applicable test for this essential element she said, at pages 295-296 of the transcript:

... and, that in each of these situations, his behaviour in so doing was disgraceful; that is to say, a reasonable person, viewing the matter objectively, would conclude that his behaviour was so outside community norms – and I use that term here in the sense that by definition a reasonable person viewing the matter objectively would be inherently reflecting community norms – that the behaviour was shockingly unacceptable ...

[49] This test, I would say, is aiming to reflect the level of tolerance of the military community. What is shockingly unacceptable for the military community becomes disgraceful.

[50] The court suggested that the Supreme Court of Canada decision in *R. v. Labaye*, [2005] 3 S.C.R. 728, may have application in this case with the necessary adaptations. In that decision, Chief Justice McLachlin, on behalf of the majority, developed a different approach for assessing criminal indecency in the context of the application of the *Criminal Code of Canada*. Basically, the Supreme Court has evolved

from the community standard of tolerance test to the one involving the assessment of the harm done to the community.

[51] However, after further analysis, it appears to the court that the test enunciated by Judge Carter does meet the requirements contained in the definition of the concept of behaving in a disgraceful manner. Then, the court considers that this essential element has to be proven as she enunciated it above.

[52] Section 95 of the *National Defence Act* reads as follow:

Every person who strikes or otherwise ill-treats any person who by reason of rank or appointment is subordinate to him is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment....

[53] Then, the prosecution had to prove also for this offence the following essential elements beyond a reasonable doubt: the prosecution had to prove the identity of the accused, the date and place as alleged in the charge sheet. The prosecution also had to prove the following additional elements: that the accused ill-treated the complainant, which means that he acted cruelly; i.e., in disregarding or taking pleasure in the pain or suffering of the complainant, and that the complainant was subordinate to the accused by rank or appointment.

[54] Section 267(a) of the *Criminal Code* reads as follows:

Every one who, in committing an assault,

(a) carries, uses or threatens to use a weapon or an imitation thereof ...

...

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....

[55] The definition of assault can be found at section 265(1) of the *Criminal Code* and it reads as follows:

(1) A person commits an assault when

(a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly;

(b) he attempts or threatens, by an act or a gesture, to apply force to another person, if he has, or causes that other person

to believe on reasonable grounds that he has, present ability to effect his purpose; or

(c) while openly wearing or carrying a weapon or an imitation thereof, he accosts or impedes another person or begs.

[56] Here the prosecutor relies on the definition at paragraph (c) to prove his case.

[57] Then, the prosecution had to prove, also, for this offence the following essential elements beyond a reasonable doubt: the prosecution had to prove the identity of the accused, the date and place as alleged in the charge sheet. The prosecution also had to prove the following additional elements in this specific case: that the accused was openly wearing or carrying a weapon and that while he was doing so he accosts or impedes another person or begs, and that a weapon was involved in the assault.

[58] Before this court provides its legal analysis, it's appropriate to deal with the presumption of innocence and the standard of proof beyond a reasonable doubt, a standard that is inextricably intertwined with the principle fundamental to all criminal trials. And these principles, of course, are well known to counsel, but other people in this courtroom may well be less familiar with them.

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

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

[61] A court must find an accused person not guilty if it has a reasonable doubt about his guilt or after having considered all of the evidence. The term "beyond a reasonable doubt" has been used for a very long time. It is part of our history and traditions of justice. In *R. v. Lifchus*, [1997] 3 S.C.R. 320, the Supreme Court of Canada proposed a model charge on reasonable doubt. The principles laid out in *Lifchus* have been applied in a number of Supreme Court and appellate courts subsequent

decisions. In substance, a reasonable doubt is not a far-fetched or frivolous doubt. It is not a doubt based on sympathy or prejudice, it is a doubt based on reason and common sense. It is a doubt that arises at the end of the case based not only on what the evidence tells the court, but also on what that evidence does not tell the court. The fact that a person has been charged is in no way indicative of his or her guilt, and I will add that the only charges that are faced by an accused person are those that appear on the charge sheet before the court.

[62] In *R. v. Starr*, [2000] 2 S.C.R. 144, at paragraph 242, the Supreme Court of Canada 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....

[63] On the other hand, it should be remembered that it is nearly impossible to prove anything with absolute certainty. The prosecution is not required to do so. Absolute certainty is a standard of proof that does not exist in law. The prosecution only has the burden of proving the guilt of an accused person, in this case Sergeant Quinn, beyond a reasonable doubt. To put it in perspective, if the court is convinced or would have been convinced that the accused is probably or likely guilty, then the accused would have been acquitted since proof of probable or likely guilt is not proof of guilt beyond a reasonable doubt.

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

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

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

[67] 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, a court will assess a witness' opportunity to observe, a witness' reasons to remember, like, were the events noteworthy, unusual and 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 that accused chooses to testify.

[68] Another factor in determining credibility is the apparent capacity of the witness to remember. The demeanour of the 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' testimony consistent with itself and with the uncontradicted facts?

[69] Minor discrepancies, which can and do innocently occur, do not necessarily mean that the testimony should be disregarded. However, a deliberate falsehood is an entirely different matter. It is always serious and it may well tint a witness' entire testimony. The court is not required to accept the testimony of any witness.

[70] As the rule of reasonable doubt applies to the issue of credibility, the court is required to definitely decide in this case, first on the credibility of the accused and to believe or disbelieve him. It is true that this case raises some important credibility issues, and it is one of those cases where the approach on the assessment of credibility expressed by the Supreme Court of Canada in *R. v. W.(D.)*, [1991] 1 S.C.R. 742, can strictly be applied because the accused, Sergeant Quinn, testified. As established in that decision, at page 758, the test goes as follows:

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

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

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

[71] 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. In a case such as this one where the accused testified on his own behalf, the law requires that a court find the accused person not guilty, first, if the court believes the accused, and, second, even if the court does not believe the accused, but the court still has a reasonable doubt as to the accused's guilt after considering the accused's evidence in the context of the evidence taken as a whole. Finally, if, after a

careful consideration of all the evidence, the court is unable to decide whom to believe, the court must find the accused not guilty.

[72] Having instructed myself as to the onus and standard of proof, I will now turn to the questions in issue put before the court and address the legal principles.

### **ANALYSIS**

[73] In this case, the identity of the accused, the date and the place are not in issue on the four charges. However, the court intends to proceed with a separate analysis of each charge, considering that the question in issue for each of them is different.

[74] The nature of the evidence in this case requires this court to make certain findings as to the credibility of the accused and the witnesses as stated above on each charge separately in order to determine properly if it has been proven beyond a reasonable doubt by the prosecution that the accused is guilty of one, many, or all of them.

[75] Starting with the offence of behaving in a disgraceful manner contrary to section 93 of the *National Defence Act*. It appears to the court that the accused testified on that issue in a clear and straightforward manner. He provided a coherent testimony in order to explain in which context the words “whore,” “harlot,” or “trollop” were pronounced in presence of Private Kaur. In fact, in her testimony, she confirmed the existence of the conversation Sergeant Quinn was referring to in his own testimony.

[76] Staying on the topic about sexual behaviour, it appears clear to the court that the accused must be believed on the fact that he did not offer money at any time during the exercise to Private Kaur in order to have sex with her. Such conduct in the presence of many members of his own staff at two different times during the exercise would have been incoherent with the fact that he did want to perform well enough as a group leader to be considered for a promotion at the rank of warrant officer. Moreover, he never denied that, in the context of the exercise, jokes on sex were made, but without any intent to insult or aiming directly at Private Kaur or anybody else.

[77] Concerning the use of the expression “ungrateful bitch.” The court has no reason to disbelieve the accused on that issue. The explanation he provided to the court about the context and the exact words used, which are “ungrateful thing,” according to him, does make his testimony on this specific issue credible and reliable. He had a clear recollection of this event, did provide additional information without being prompted. The event was noteworthy enough to him that he felt necessary to explain to the court the expression he used by referring to his Irish background.

[78] Concerning the use of the word “princess” by Sergeant Quinn toward Private Kaur. The court has a difficulty to believe the complete denial of the accused on that issue. The accused, in his testimony, clearly stated that he asked Private Kaur about the fact if the word “rani” in Hindi was really meaning “queen.” Moreover, he asked her if she was okay with the use of it, which she positively confirmed pursuant to his testimony. It is difficult to reconcile the fact that he asked about that issue and that he denied at the same time having used it. On that specific issue, the court must disbelieve the accused because his testimony is not reliable and credible. The prosecution has proved beyond a reasonable doubt that the word “princess” or its equivalent was used by the accused as a descriptive word for Private Kaur. He called her by using this word sometimes. How many and in which context the court does not know much about it. No specific example of its use can be found in the evidence adduced by the prosecution on that issue. Was the behaviour of Sergeant Quinn shockingly unacceptable? Does a person viewing the matter objectively, that would be inherently reflecting community norms, would find this shockingly unacceptable? Without a more specific context other than it was used in some repetitive manner, it is very difficult for the court to conclude that it is the case.

[79] On the issue of the use by Sergeant Quinn of the words “weak and pathetic” to qualify Private Chahal at his arrival at the CQ location, the court does believe the accused on that issue. The accused was quite clear that he never said that. Considering the reliability and credibility of his testimony for the reasons mentioned above, and considering the evidence as a whole, the court does not see why he should be disbelieved on that issue.

[80] Concerning the racist comments he would have made during a conversation with Private Chahal, the court does believe the clear, straightforward, coherent explanation he provided. His unit, and more importantly his CQ staff, is composed of people of multiple origins. The subject of the conversation and the very coherent explanation for raising it does make the testimony of the accused very reliable. Moreover, on this issue he clearly remembered the conversation he had because it appeared to be a noteworthy event for him. His behaviour that week in a working multicultural context, as it was described to the court, makes his version of the events credible.

[81] Consequently, having regard to the evidence as a whole, the prosecution has failed to prove beyond a reasonable doubt all the essential elements of the offence of the third charge, which is behaving in a disgraceful manner contrary to section 93 of the *National Defence Act* toward Private Kaur and Private Chahal.

[82] Now turning to the fourth charge, which is an alternate one to the third charge. In addition to the identity, date and place, the essential element of subordination of the complainants by rank to the accused is not in issue.



[83] Considering the conclusion of the court that the accused has no reason to be disbelieved, as stated above in its analysis of the previous charge, on the different verbal abuses raised by the complainants other than the use of word “princess,” the court has to deal only with the latter in order to determine if he ill-treated Private Kaur.

[84] Other than knowing that it was used in some repetitive way, the court has no other evidence to determine if Sergeant Quinn used this word in a disinterested or cruel way toward Private Kaur. Probably it was an inappropriate conduct for Sergeant Quinn. However, in order to conclude that he was ill-treating Private Kaur would have requested the prosecution to prove it beyond a reasonable doubt, which it failed to do.

[85] Consequently, having regard to the evidence as a whole, the prosecution has failed to prove beyond a reasonable doubt all the essentials elements of the offence of the fourth charge, which is ill-treating a person who by reason of rank was subordinate to him contrary to section 95 of the *National Defence Act*.

[86] Finally, on the charge of assault with a weapon contrary to section 267(a) of the *Criminal Code*, the legal issue is if Sergeant Quinn committed an assault as defined at section 265(1)(c) of the *Criminal Code*.

[87] Was a weapon involved in the assault? According to all those involved in that specific matter, including Sergeant Quinn, when he entered the modular where were Private Kaur and Private Chahal, he was carrying his pistol in his holster on him as it was required for the purpose of the exercise and as it was normal for all those who had a pistol that night.

[88] Was the accused openly carrying a weapon?

[89] The court finds difficult to believe the accused when he said that he limited his action toward Private Kaur and Private Chahal by only admonishing them that night. The court finds this very inconsistent with some other facts reported by the accused in his testimony:

- A. That he clearly said at the beginning of his testimony that fraternization was a serious concern for him to the extent that he asked both privates if they were involved in a relationship with each other before authorizing Private Chahal to sleep in the same modular than Private Kaur.
- B. That knowing that most of the CQ staff members were suspecting Private Kaur and Private Chahal to be in a relationship, it would have been normal for a supervisor, as Sergeant Quinn was, to take an immediate action when he found out about their relation

by obliging them to sleep in separate quarters that night. Isn't it surprising to note that Sergeant Quinn had no problem some time before to offer Private Kaur to sleep in a different modular when he heard her having an argument with Private Chahal, but he was unable to proceed the same way with her when he found out about their relationship which was potentially contrary to the Canadian Forces' fraternization policy?

- C. That Sergeant Quinn never reported to anybody, as it was his duty to do so, the fact that both soldiers were fraternizing during an exercise. However, the court must say that this behaviour is more consistent with the fact that he had three cans of beer that last night while he was carrying on him separately a weapon and live ammunition.

[90] Those very important inconsistencies in his testimony make his version of this part of the events not credible and reliable. The court does disbelieve his testimony on this specific incident.

[91] Going to the second step of the analysis, the court still has to answer the question about the accused carrying openly a weapon.

[92] During his testimony, Private Chahal was nervous and very argumentative. When he was cross-examined by the defence counsel, he was evasive in his answers, sometime entering in a semantic or philosophical debate with him and was very inconsistent in what he could remember or not. He told the court that he might have deliberately chosen to forget some things. He found ways to contradict himself. He had a hard time to remember what he had said three hours earlier during his testimony, and was the one who told the court that memory may improve with the passage of time. Even though this individual is very educated, it is clear for the court that his testimony is not credible and reliable on most of the facts he related to the court, including the incident about the alleged assault with a weapon committed by Sergeant Quinn.

[93] Private Kaur testified in a straightforward, but very mechanistic manner. When questioned about her own behaviour during the exercise, she was sometimes evasive and demonstrated, once a while, to the court a selective memory. The efforts she made to hide her relationship with Private Chahal to the CQ members, her deep interest in the work and lifestyle of strippers, the exchange she made in giving her bra to a German soldier in order to get his German hat, does make the court agree on one point with the accused's testimony; Private Kaur seems to enjoy her new freedom. She was much more inclined to talk about the actions of others instead of her own actions during

that specific week where the alleged incidents occurred. The court finds her testimony not credible and reliable on that specific incident.

[94] Moreover, both privates contradicted themselves on the very issue of Sergeant Quinn wearing openly a weapon. One told the court he was waving his weapon and the other said that he was shaking a magazine. It has to be reminded that Private Chahal helped Private Kaur to write her initial complaint, that they are still in a relationship since the incident, that they discussed the events for the last two years. This contradiction put more confusion than anything else on their testimony concerning this specific incident. In this context, the credibility and the reliability of their testimony is affected.

[95] Was Sergeant Quinn angry when he found out about their relationship? Certainly. Did he try to have a deterrent attitude in order to make them think and stop what they were doing? Would have been normal in the context.

[96] Has the prosecution proved beyond a reasonable doubt that Sergeant Quinn was openly wearing or carrying a weapon? As illustrated in the decision of the Ontario Court of Justice in *R. v. Snoek*, (2002) O.J. No. 5327, at paragraph 16, and in the decision of the British Columbia Court of Appeal in *R. v. Briscoe*, 76 C.C.C. (3d) 563, at page 567, openly wearing or carrying a weapon was factually described as a knife being pulled or by pointing a weapon. In the present case, the court does consider that the prosecution did not prove such a thing beyond a reasonable doubt, especially in light of Sergeant Quinn's evidence and in light of the evidence considered as a whole.

[97] Would the court have been convinced beyond a reasonable doubt that Sergeant Quinn really referred to the fact that he has live ammunition and that he did not care about the fact that he was court martialled earlier, it would have considered, as suggested by the prosecutor, that he accosted the complainants as worded at section 265(1)(c) of the *Criminal Code*. However, the lack of credibility and reliability of Privates Kaur and Chahal's testimony in light of Sergeant Quinn's evidence and the evidence as a whole on that issue left the court with a reasonable doubt.

[98] Consequently, having regard to the evidence as a whole, the prosecution has failed to prove beyond a reasonable doubt all the essentials elements of the offence of the first and second charges, which is assault with a weapon contrary to section 267(a) of the *Criminal Code*.

## **CONCLUSION**

[99] Sergeant Quinn, stand up please. The court finds you not guilty of the four charges on the charge sheet.

Lieutenant-Colonel L -V. d'Auteuil, MJ

Counsel:

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