



COURT MARTIAL

Citation: *R. v. Lawless*, 2024 CM 3006

Date: 20240425

Docket: 202313

Standing Court Martial

4th Canadian Division Support Base Petawawa
Petawawa, Ontario, Canada

Between:

His Majesty the King

- and -

Corporal T. Lawless, Accused

Before: Lieutenant-Colonel L.-V. d'Auteuil, D.C.M.J.

REASONS FOR FINDING

(Orally)

Introduction

[1] Corporal (Cpl) Lawless is charged with one offence for having fought, on or about 24 November 2022, with a person subject to the Code of Service Discipline (CSD), namely Private (Pte) Lirette, while being in the military quarters at Garrison Petawawa, contrary to section 86 of the *National Defence Act* (NDA).

[2] This decision is about the finding, guilty or not guilty, regarding this charge following a trial that lasted a total of six days.

The procedure

[3] The Court held two *voir dire*. The first one was made on a request by the prosecution to the Court to decide on the admissibility of an unofficial confession made by Cpl Lawless to a person in authority pursuant to article 42 of the *Military Rules of*

Evidence (MRE) and the common law confession rule. The prosecution had to proceed in this way because Cpl Lawless, through his counsel, expressed explicitly to the Court that he did not admit the free and voluntary nature of the statement he had made to the military police (MP) on 24 November 2022.

[4] The Court declared that the statement was made in a voluntary manner, and that it was admissible as evidence in this trial.

[5] A second *voir dire* was held by the Court further to a request made by Cpl Lawless to exclude that same statement as evidence in this trial pursuant to subsection 24(2) of the *Charter*, considering an alleged violation of his right to be informed of the reason of his detention and of his right to counsel prior making such statement to the MP pursuant to paragraphs 10(a) and 10(b) of the *Charter*. The Court concluded that Cpl Lawless' *Charter* rights were infringed and ordered that the statement be excluded as evidence in this trial.

The evidence

[6] The prosecution called five witnesses: Gunner (Gnr) Kuly, Bombardier (Bdr) Radford, Cpl Poste, Cpl Giacomelli and Pte Lirette who is now Cpl Lirette. In addition, it introduced a bundle of seven photos taken by Cpl Giacomelli concerning two spots of blood he observed in the hallway of building P-102 where the alleged fight between Cpl Lirette and Cpl Lawless would have taken place.

[7] Finally, the Court took judicial notice of the facts and matters contained and listed in article 15 of the *MRE*.

The facts

[8] At this stage, it would be appropriate for the Court to provide a summary of the circumstances relevant to this matter.

[9] On the evening of 24 November 2022, Gnr Kuly was in his room in building P-102 on Garrison Petawawa, when he made the decision to go outside the building to smoke a cigarette.

[10] On his way, while going down the stairs inside the building, he heard a loud noise and a loud commotion coming from a hallway, near where the showers and the laundry room are located. He walked toward the place where the noise was coming from, and he observed two military members making sounds, physically and intensively involved with each other. They were yelling, aggressive and they did not seem sober. He concluded that they were fighting.

[11] Fearing that this battle would go wrong, Gnr Kuly decided to go find someone higher in rank to help him intervene and separate both belligerents before something

worst happens. He turned around and went up the stairs to get the nearest bombardier he could find.

[12] He found Bdr Radford who was in the room next to his. He explained to Bdr Radford that he saw military members fighting and asked him to come with him to stop it. Bdr Radford accepted, and he walked down the stairs with Gnr Kuly toward the place where the latter saw both military members fighting.

[13] While on his way back, Gnr Kuly saw one of the two military members involved in the fight lifting the other one into the air, turning him upside down and dropping him down on his head. The member who hit his head on the floor had blood coming profusely from the head. He also saw both members having blood on themselves. When Gnr Kuly got closer to them, they had stopped their fight. He saw some blood on the floor of the hallway and on the walls. They were sitting beside each other, and they appeared to him as being drunk.

[14] He concluded that they were drunk because he smelled the odour of alcohol coming from them, they had slurred speech, and he observed after that they were unstable on their feet.

[15] He asked both military members if they were okay. It is at that moment that he realized that the member injured on the head would need some medical assistance. He asked them what they were doing, to which one of them replied that they were doing Viking stuff. They appeared to him as having a “buddy-buddy” attitude. They were joking around, and they seemed pretty happy. They appeared like being friends to Bdr Radford.

[16] Cpl Lirette was the military member injured on the head during the incident. During his testimony before the Court, he identified the person sitting beside the defence counsel as being Cpl Lawless. He told the Court that some time prior to this incident, they became good friends, and have been since then. He told the Court that Cpl Lawless had become one of his best friends.

[17] Cpl Lirette explained to the Court that when he came back from a field exercise on 24 November 2022, he went out for dinner with some members of his unit, including Cpl Lawless. After dinner, he went with the people he was at the restaurant to Cpl Lawless’ room located in building P-102 where they played a game of Dungeons and Dragons. When the game was over, people went back to their rooms, but he stayed in the room with Cpl Lawless and his roommate, Cpl Viderique Nunez.

[18] He said that people at the dinner and who played the game of Dungeons and Dragons drank alcohol at both places. He said that he had two beers at the restaurant and some others during the game. He assumed that Cpl Lawless drank alcohol too.

[19] He told the Court that while they were in the room together, the three of them emptied a bottle of rum of an unknown size within about thirty minutes.

[20] They smoked outside and listened to music for some time. Then, Cpl Lawless and him decided to have a friendly wrestling match, which involves no punch or no kick, and only submission moves that they had learned previously in the context of military training. It took place in the hallway of building P-102.

[21] Cpl Lirette affirmed that Cpl Lawless and him took part previously to a trade course where they learned hand-to-hand combat in a safe and secured environment with the supervision of a qualified instructor. They were used to train extra hours on their own with other candidates in the same safe and secured environment.

[22] They could use a triangular choke or an armlock until someone would tap out. As an example, there was shoving involved to try catching the arm of the other person for putting it in armlock position until the other person gives up.

[23] Cpl Lirette stated to the Court that Cpl Lawless and him consented to get into this wrestling match and there was no intent to harm anybody.

[24] Cpl Lirette indicated that he got a black eye because his face accidentally hit the elbow or the knee of Cpl Lawless while making a move with his own head.

[25] He told the Court that he got injured on the head by accidentally falling on the wall or the floor. It is after a while that they both realized that he had an open wound bleeding on his head. From his perspective, it was not hurting much, and the cut was about one inch long. He confirmed that Cpl Lawless never deliberately hit him during the consensual wrestling match they had.

[26] Cpl Lirette's head injury looked pretty bad from Gnr Kuly's perspective. He said that Cpl Lirette had a cut on the head of about six inches. However, Bdr Radford told the Court that he thought that the cut on Cpl Lirette's head was about one inch. Both witnesses said that it was bleeding a lot.

[27] According to Gnr Kuly, Bdr Radford and him helped both military members to go to the shower to clean themselves. While both members were in the shower, he went out of the room to get a first-aid kit, while Bdr Radford went out to call 911 to get an ambulance. When he came back in the shower room, both military members were in the shower, one member helping the other to clean the injury he got to the head.

[28] According to Cpl Lirette, it is Cpl Lawless who helped him to go to the shower room where he helped to clean his wound.

[29] Cpl Lirette said that he noticed the presence of another military member running down and up the stairs while he was wrestling with Cpl Lawless, but he did not know why he did that.

[30] Cpl Lirette told the Court that this same member came back with somebody else, and he was met by them in the shower room. He understood that one of them feared that Cpl Lawless and him were fighting to the extent that they were trying to kill each other. Cpl Lirette let them know that it was a friendly wrestling match, and that he had a bad fall to explain his injury.

[31] After this conversation, Cpl Lirette cleaned up his head. Cpl Lawless and himself congratulated each other for the good moves they made during the wrestling match.

[32] Cpl Giacomelli, who is an MP patroller, showed up in the shower room and asked Bdr Radford and Gnr Kuly to go outside the building, while he met with the two military members involved in the fight. He saw Cpl Lirette who was injured on the head, and he observed that profuse bleeding was coming from his head. Later, Cpl Giacomelli had a chat with the emergency medical personnel, and it was recommended that Cpl Lirette be brought to the hospital, considering the seriousness of the wound. Cpl Giacomelli talked with Cpl Lirette, who eventually accepted to be brought in an ambulance to the hospital.

[33] Cpl Lirette confirmed that he was offered to go to the hospital, and that he initially declined this proposition. However, because he was told that if things for him got worse because of his injury, and that Cpl Lawless may feel bad for what happened if he did not go, he made the decision to go to the hospital. He told the Court that his wound was starting to clot when the emergency medical personnel arrived.

[34] Cpl Poste, who is also an MP patroller, arrived at the building P-102 at 11:25 p.m., which it is few minutes after Cpl Giacomelli. His other MP colleague, Cpl MacInnis, showed up a short time after he arrived on the scene. MPs patrollers were sent at that location further to a call made to the MP dispatcher by the Renfrew County Ambulance who was sent at that location earlier further to a call it received from 911 services, reporting that somebody was injured during a fight.

[35] As a matter of courtesy, it is common practice for the Renfrew County Ambulance, when an ambulance is dispatched to the base, to call the MP detachment dispatcher to let him know that an ambulance is going on the base. Sometimes, the Renfrew County Ambulance makes such call to request assistance because there is uncertainty concerning the circumstances of the incident being at the origin of the call. For this specific situation, the Renfrew County Ambulance requested the presence of MPs patrollers, probably because of the nature of the incident, which involved a fight.

[36] When Cpl Poste arrived at the building, he was met outside the building by Gnr Kuly and Bdr Radford. He learned that it is Bdr Radford who called the ambulance.

[37] The emergency medical services arrived at the building at about the same time as Cpl Poste. The emergency personnel went inside the building to meet with the injured military member, while Cpl Poste was talking with Gnr Kuly and Bdr Radford.

[38] After talking to Gnr Kuly and Bdr Radford, Cpl Poste went inside building P-102 with Cpl MacInnis to meet with Cpl Lawless.

[39] When he met Cpl Lawless, he called him by his last name, and he confirmed at that time that it was him. However, he could not identify the accused in the courtroom as he had no recollection of who he was. Cpl Poste said to the Court that Cpl Lawless seemed intoxicated when he met him. He observed that he had slurred speech and seemed unsteady on his feet.

[40] Cpl Poste waited for emergency medical services to transport Cpl Lirette to the hospital. He learned from Cpl Giacomelli that Cpl Lirette had an open wound on the head and a black eye, and that it was better for him to be brought to the hospital.

[41] Cpl Lirette told the Court that he was transported by ambulance to the hospital. He did not receive any treatment other than being put in a bed where he slept for the night.

[42] It is once Cpl Lirette left the premises in the ambulance that Cpl Poste proceeded with the arrest of Cpl Lawless because he wanted Cpl Lawless to have some conditions being imposed on him for his release, considering that he had no legal authority himself to do such thing. Cpl Poste specifically wanted that Cpl Lawless be ordered to abstain from communicating with Cpl Lirette, as it is a condition normally imposed in such circumstances.

[43] At 11:59 p.m., Cpl Lawless was then formally informed that he was suspected of having committed the offence of fighting with a member subject to the CSD, he was cautioned on his constitutional right to remain silent, and he was provided with his constitutional right to counsel. He was brought by Cpl Giacomelli to the MP detachment and placed in an interview room at 00:10 a.m. on 25 November 2022. Cpl Lawless was given the opportunity to exercise his right to counsel at that place, which he did. The custody review officer (CRO) of 2 Combat Engineer Regiment was informed of the arrest of Cpl Lawless.

[44] Cpl Giacomelli went back to building P-102 just before 01:00 a.m. on 25 November 2022, and he took pictures of the two spots of blood he saw in the hallway where the fight allegedly took place.

[45] At 03:35 a.m. on that same day, Cpl Lawless was released from custody with conditions by the CRO.

[46] Later, an investigation report was provided to the unit and Cpl Lawless was charged in January 2023.

[47] The charge sheet before the Court was signed on 10 March 2023 by a representative of the Director of Military Prosecutions and the charge was preferred on 13 March 2023.

Some legal principles

Presumption of innocence, burden of proof and proof beyond a reasonable doubt

[48] Before this Court provides its legal analysis, it is 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 CSD and criminal trials. These principles, of course, are well known to counsel, but other people in this courtroom may well be less familiar with them.

[49] The first and most important principle of law applicable to every CSD and criminal case is the presumption of innocence. Cpl Lawless entered these proceedings presumed to be innocent and the presumption of innocence remains throughout the case unless the prosecution, on the evidence put before the Court, satisfies it beyond a reasonable doubt that he is guilty.

[50] Two rules flow from the presumption of innocence: one is that the prosecution bears the burden of proving guilt, and the other is that guilt must be proven beyond a reasonable doubt. These rules are linked with the presumption of innocence to ensure that no innocent person is convicted.

[51] The burden of proof rests with the prosecution and never shifts. There is no burden on Cpl Lawless to prove that he is innocent. He does not have to prove anything.

[52] Now, what does the expression “beyond a reasonable doubt” mean? A reasonable doubt is not an imaginary or frivolous doubt. It is not based on sympathy for or prejudice against anyone involved in the proceedings. Rather, it is based on reason and common sense. It is a doubt that arises logically from the evidence or from an absence of evidence.

[53] It is virtually impossible to prove anything to an absolute certainty, and the prosecution is not required to do so. Such a standard would be impossibly high. However, the standard of proof beyond a reasonable doubt falls much closer to absolute certainty than to probable guilt. The Court must not find Cpl Lawless guilty unless it is sure he is guilty. Even if the Court believes that he is probably guilty or likely guilty, that is not sufficient. In those circumstances, the Court must give the benefit of the doubt to Cpl Lawless and find him not guilty because the prosecution has failed to satisfy the Court of his guilt beyond a reasonable doubt.

[54] The important point for the Court is that the requirement of proof beyond a reasonable doubt applies to each of those essential elements. It does not apply to individual items of evidence. The Court must decide, looking at the evidence as a

whole, whether the prosecution has proven Cpl Lawless's guilt beyond a reasonable doubt.

Testimonies' credibility and reliability

[55] Reasonable doubt applies to the issue of credibility. On any given point, the Court may believe a witness, disbelieve a witness, or not be able to decide. The Court need not fully believe or disbelieve one witness or a group of witnesses. If this Court has a reasonable doubt about Cpl Lawless's guilt arising from the credibility of the witnesses, then it must find him not guilty.

The evidence

[56] Regarding the evidence, it is important to say that the Court must consider only the one presented in the courtroom. Evidence is the testimony of witnesses and things entered as exhibits, including documents and pictures. It also comprises admissions. The evidence includes what each witness says in response to questions asked. Only the answers are evidence. The questions are not evidence unless the witness agrees that what is asked is correct.

The essential elements of the offence of having fought with a person subject to the CSD

[57] Cpl Lawless is charged one count for having fought with a person subject to the CSD pursuant to section 86 of the *NDA*. This provision reads as follows:

Every person who

- (a) quarrels or fights with any other person who is subject to the Code of Service Discipline, or
- (b) uses provoking speeches or gestures toward a person so subject that tend to cause a quarrel or disturbance,

is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

[58] The Court must find Cpl Lawless not guilty of having fought with a person subject to the CSD unless the prosecution proves beyond a reasonable doubt that Cpl Lawless is the person who allegedly committed the offence at the time and the place alleged in the particulars of the charge.

[59] In addition to these essential elements of the offence, the prosecution must prove specifically each of the following additional ones beyond a reasonable doubt:

- (a) that Cpl Lawless fought with a person;

- (b) that the other person who Cpl Lawless was fighting with was a person subject to the CSD; and
- (c) that Cpl Lawless had the requisite blameworthy state of mind.

[60] The offence is set out in article 86 of the *NDA* and it is included in a section of the Act related to minor insubordination offences. This offence is specifically titled as an offence related to quarrels and disturbances.

[61] This specific provision aims to sanction the behaviour of any person subject to the CSD who, because of their comments, attitude, or gestures, provoke or participate to a quarrel or a disturbance that may impact the discipline, the morale and the cohesion at any level of the Canadian Armed Forces (CAF).

[62] The purpose of this offence is also to ensure minimal respect which each military member must demonstrate, and that must exist between military members at all ranks, for avoiding any kind of behaviour that would ultimately lead any of them to a state of disobedience that would affect discipline, cohesion, and morale of CAF members.

[63] In other words, this type of offence aims at encouraging members of the CAF to demonstrate self-discipline in a context where emotional or physical violence is involved in order to refrain from and prevent any disruption of the discipline that must exist in a military environment within a group of soldiers, sailors, airmen/airwomen or any mixture of some of these groups.

[64] The prosecution must prove beyond a reasonable doubt that Cpl Lawless fought with a person. To properly understand the common meaning of the verb “fight”, the Court must first refer to the *Concise Oxford English Dictionary*, as indicated at article 1.04 of the *Queen's Regulations and Orders for the Canadian Forces*. Then, “to fight” means:

“Take part in a violent struggle involving physical force or weapons.”

[65] As mentioned in the *Report of the Commission of Inquiry into the Deployment of Canadian Forces to Somalia*, 1997, volume 1, at pages 23 and 24:

“Discipline, for the military, has at least two important meanings. The first, discussed by the Chief Justice, applies the same connotations to the term that the larger society would: namely, that discipline entails the enforcement of laws, standards and mores in a corrective and, at times, punitive way. The second, and arguably more important meaning from a military perspective, entails the application of control to harness energy and motivation to a collective end. Discipline, thus conceived, is more positive than negative. It seeks actively to channel individual efforts into a collective enterprise. Where that enterprise is the waging of war or armed

conflict, it permits the application of force in a controlled and focused manner. Controlling aggressivity so that the right amount of force is applied in exactly the right circumstances is of primary significance to the military. Discipline is the means of achieving such control.”

[66] The contextual analysis of the words used in section 86 of the *NDA* clearly indicates to the Court that Parliament wanted that any angry argument, disagreement, gestures, violent struggles involving physical force, and having a disruptive effect on other members of the CAF be sanctioned for assuring the maintenance of discipline, efficiency, and morale of the military.

[67] Because of the potential or real disruptive effects such conduct may have, it leads this Court to conclude that this element of fault shall be assessed objectively, because it calls for an assessment by a reasonable observer that persons subject to the CSD were involved in a fight, which if it is, is considered by Parliament as causing a quarrel or a disturbance that threatens discipline in a military environment.

[68] The Court was inspired by the decisions of the Supreme Court of Canada in *R. v. Lohmes*, [1992] 1 S.C.R. 167, and *R. v. Hinchey*, [1996] 3 S.C.R. 1128 to conclude that an objective assessment must be done. Despite that these decisions were dealing with the offence of causing a disturbance in the public place at section 175 of the *Criminal Code*, there is some similarity with the offence charged in the present matter as it dealt with a behaviour that has a serious disruptive effect on the environment of some other people.

[69] It is the conclusion of the Court regarding this essential element of the offence that what is important for the Court to determine is the meaning that a reasonable person, in all the circumstances, would give to the physical interaction that occurred.

[70] The prosecution must also prove beyond a reasonable doubt that the other person who Cpl Lawless was fighting with was a person subject to the CSD. All persons subject to the CSD are listed at section 60 of the *NDA*.

[71] Finally, the prosecution must also prove beyond a reasonable doubt that Cpl Lawless had the requisite blameworthy state of mind. It means that it must be proven that Cpl Lawless intended to fight. Whether he intended that his conduct be disruptive or not is of no consequence in the circumstances.

Position of the parties

The prosecution

[72] The prosecution affirmed that it proved beyond a reasonable doubt that Cpl Lawless fought, on or about 24 November 2022, with a person subject to the CSD, contrary to section 86 of the *NDA*.

[73] The prosecution did not share the view of the accused that he did not fight with his friend. To the contrary, wrestling is a type of fight that can be subject to the offence the accused is charged with. The fact that he was consenting to wrestle, that he was injured, even if it was an accident, is not determinative for establishing or not the commission of the offence, from the prosecution's perspective.

[74] Consequently, the prosecution suggested to the Court that Cpl Lawless must be found guilty as charged.

Cpl Lawless

[75] Cpl Lawless submitted to the Court that he participated in a friendly, consensual wrestling match with a person close to him. He considered that he was not fighting, as this verb is defined in the *Concise Oxford English Dictionary*, and he suggested that such behaviour, and the circumstances surrounding it, do not support and demonstrate the commission of an offence by him pursuant to section 86 of the *NDA*.

[76] He affirmed that it was established before the Court that he and his friend did not intend to hurt each other, which reflect their lack of intent to fight with each other.

[77] Accordingly, Cpl Lawless asked the Court to acquit him of the charge.

Analysis

[78] This case is one which does not rely on the credibility of the witnesses, considering that it was established by the prosecution beyond a reasonable doubt that a physical altercation took place between Cpl Lawless and Cpl Lirette. It is normal that there is a difference of appreciation on the extent and consequences of it, considering the different perspective each of the witnesses had when they witnessed this event.

[79] Considering the evidence as a whole, especially the testimony of Cpl Lirette, the Court has no difficulty to conclude that the prosecution proved beyond a reasonable doubt many essential elements of the offence:

- (a) that Cpl Lawless is the person who allegedly committed the offence of fighting with a person subject to the CSD;
- (b) that the alleged fighting took place at building P-102 on Garrison Petawawa, province of Ontario, as mentioned in the particulars of the charge; and
- (c) that the other person whom Cpl Lawless was allegedly fighting with, which is Cpl Lirette, was a person subject to the CSD.

[80] Concerning the date as alleged in the particulars of the charge, there is no indication that it is material to the offence to be proven by the prosecution. Both MPs

patrollers, Cpl Poste and Cpl Giacomelli, and other witnesses like Gnr Kuly and Cpl Lirette, confirmed that the alleged fight took place on the evening of 24 November 2022.

[81] Then, the Court concludes that the date does not constitute an element of the offence to be proven by the prosecution, as it is not critical in the circumstances of this case and does not cause any prejudice to the accused defence.

[82] The Court is left with two matters to discuss and decide:

- (a) that Cpl Lawless fought with a person; and
- (b) that Cpl Lawless had the requisite blameworthy state of mind.

[83] Concerning the essential element of the offence related to Cpl Lawless having fought with a person, the Court concludes that he was fighting with Cpl Lirette, even though they were wrestling.

[84] To wrestle, as defined in the *Concise Oxford English Dictionary*, is to “take part in a fight that involves close grappling with one’s opponent, either as sport or in earnest.” Here, it was done as a sport between these two friends. The description made by Cpl Lirette of the physical altercation he had with Cpl Lawless brings this Court to conclude that the latter was involved in a violent struggle involving physical force, even if it occurred with the consent of both persons. Cpl Lawless was fighting with a person.

[85] However, as the Court expressed it earlier, fighting in the context of an offence pursuant to section 86 of the *NDA* means to threaten discipline in a military environment such as causing a quarrel or disturbance, or even having the potential of doing such thing. Such appreciation must be done objectively.

[86] The Court is of the opinion that a reasonable person must consider the following circumstances to determine whether Cpl Lawless was fighting with a person within the meaning of section 86 of the *NDA*:

- (a) both members involved in the fight were making sounds, were physically and intensively involved with each other;
- (b) one member was injured on the head and was bleeding while he was fighting with the other;
- (c) the fight occurred in the hallway of a building used as military quarters where other military members were living;
- (d) Cpl Lawless and Cpl Lirette were living on the base;

- (e) Cpl Lawless and Cpl Lirette were under the influence of alcohol when they fought; and
- (f) this fight was not part of an authorized military training, and no measures were put in place to ensure the safety of those who participated.

[87] It is easy to conclude that considering all the circumstances, a reasonable person could have concluded that the fight between Cpl Lawless and Cpl Lirette was a disruptive event that could cause a disturbance within the military quarters.

[88] Gnr Kuly, who did not know the members involved in the fight, confirmed the disruptive impact such fight had on him and Bdr Radford. He thought they were trying to hurt each other, and maybe kill each other, because the intensity of the fight was so high.

[89] It is the conclusion of the Court that the prosecution proved beyond a reasonable doubt that Cpl Lawless fought with a person.

[90] Finally, the prosecution must prove beyond a reasonable doubt that Cpl Lawless had the requisite blameworthy state of mind, meaning that he intended to fight with Cpl Lirette. As the Court mentioned previously, whether he intended that his conduct be disruptive or not is of no consequence in the circumstances.

[91] The testimony of Cpl Lirette is determinative on this issue. He clearly stated in his testimony that Cpl Lawless and him agreed to wrestle together. The Court considers that the prosecution has discharged its burden of proof beyond a reasonable doubt that Cpl Lawless intended to fight with Cpl Lirette, and he intentionally did it.

[92] Consequently, considering the evidence as a whole, the Court concludes that the prosecution proved beyond a reasonable doubt all the essential elements of the offence of fighting with a person subject to the CSD pursuant to section 86 of the *NDA*.

FOR ALL THESE REASONS, THE COURT:

[93] **FINDS** Cpl Lawless guilty of the charge of having fought with a person subject to the Code of Service Discipline contrary to section 86 of the *NDA*.

Counsel:

The Director of Military Prosecutions as represented by Major B.J. Richard

Lieutenant-Commander F. Gonsalves, Directorate of Defence Counsel Services,
Counsel for Corporal T. Lawless