

Citation: *R. v. Corporal J.R.P.M. Gendron*, 2005CM15

Docket: V200515

**STANDING COURT MARTIAL
AREA SUPPORT UNIT ST-JEAN
ST-JEAN-SUR-RICHELIEU
(5 GENERAL SUPPORT BATTALION)**

Date: May 19, 2005

PRESIDING: LIEUTENANT-COLONEL M. DUTIL, M.J.

**THE QUEEN,
v.
CORPORAL J.R.P.M. GENDRON,
(Accused)**

**JUDGMENT
(Rendered orally)**

OFFICIAL ENGLISH TRANSLATION

Introduction

[1] Corporal Gendron is charged with having committed the following offences:

First, with having behaved in a disgraceful manner, contrary to section 93 of the National Defence Act, in that he masturbated in a military vehicle in the presence of another person, Sub-Lieutenant Doddridge;

Second, but in the alternative to the first count, that he behaved in a disgraceful manner, contrary to section 93 of the National Defence Act, but

in this case in that he pretended to masturbate in the same military vehicle in the presence of the same person;

Third, and in the alternative to the first count, that he did an indecent act by masturbating in a public place, to wit a military vehicle, in the presence of Sub-Lieutenant Doddridge, an offence punishable under section 130 of the National Defence Act, contrary to paragraph 173(1)(b) of the Criminal Code;

Fourth, he is charged with engaging in conduct to the prejudice of good order and discipline, in that he engaged in harassment contrary to Defence Administrative Order and Directive (DAOD) 5012-0 (Harassment Prevention and Resolution), contrary to section 129 of the National Defence Act.

Those charges involve the same people: Corporal Gendron, the accused in this case, and Sub-Lieutenant, or Acting Sub-Lieutenant Doddridge, since this is a Navy rank, against whom the acts charged were alleged to have been committed.

The Evidence

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

- (a) the testimony heard: in the order in which they appeared before the Court, the testimony of Acting Sub-Lieutenant Doddridge and the testimony of Corporal Gendron, the accused in this case;
- (b) the judicial notice taken by the Court of the facts and issues that fall within section 15 of the Military Rules of Evidence, including the substance of DAOD 5012-0 (Harassment Prevention and Resolution);
- (c) the defence admission that DAOD 5012-0 (Harassment Prevention and Resolution) had met the standards of publication or sufficiency of notification for the purposes of subsection 15(2) of the Military Rules of Evidence;
- (d) Exhibit 3, an account statement for the accused's cellular phone dated August 17, 2004, for the calls made during the preceding month;
- (e) Exhibit 4, a document containing a quantity of information regarding times and places in connection with the travel on July 24

and 25, 2004, during which the acts charged are alleged to have taken place;

- (f) Exhibit 5, a document showing copies of two gasoline bills: a bill from the Shell self-service station located in Val d'Or, dated July 24, 2004, and a bill from a Petro-Canada service station located in Cadillac, dated July 25, 2004.

The Facts

[3] The facts surrounding this case essentially revolve around events that allegedly took place near Saint-Adèle, Quebec, on the return leg of a trip between Montréal and Rouyn-Noranda on July 24, and 25, 2004. It should be noted from the outset that there have been diametrically opposed accounts given of the acts and words alleged against the accused by Acting Sub-Lieutenant Doddridge, the complainant in this case, with regard to the essential issues in relation to the charges.

[4] According to the evidence heard, Acting Sub-Lieutenant Isabelle Doddridge is a young officer in the reserve force who has been a member of the Cadet Instructors Cadre (CIC) since June 2003 as a band officer and PHASE instructor, after being a member of the cadet movement from 1998 to 2002. She was 20 years old when the alleged acts that the accused is charged with took place, and she was employed on Class B reserve. Corporal Gendron is a member of the military with more than 17 years' service in the regular force, and is a driver by trade. At the time of the acts with which he is charged, he was assigned to Saint-Jean-sur-Richelieu, to the "bus" section. His duties involved driving individuals or groups of people to various locations, as required. His duty orders were not limited to transporting personnel in the regular or reserve forces. In this case, Corporal Gendron's duty order required that he drive a bus transporting young cadets from the Longue Pointe garrison, located in Montreal, to their homes. The purpose of the trip scheduled for July 24 and 25, 2004, was to escort cadets home who had been living there home, to Rouyn-Noranda via Ottawa, Maniwaki, Mont-Laurier and Val d'Or, among other places. Acting Sub-Lieutenant Doddridge was acting as escort officer on the trip, and was responsible for escorting the young cadets. In that function, she had a professional relationship with the driver, which included giving the driver instructions to stop the vehicle, as needed by the cadets. The vehicle used for the trip was a Canadian Forces bus with a capacity of 15 passengers, to which a trailer was hitched for carrying luggage. Corporal Gendron was driving the vehicle, and Acting Sub-Lieutenant Doddridge was in the front passenger seat. The cadets were spread around the four rear benches during the first leg of the trip, while the only occupants of the vehicle on the return leg were Corporal Gendron and Acting Sub-Lieutenant Doddridge, who was sitting in the same place. It should be noted that Corporal Gendron and Acting Sub-Lieutenant had not known each other before this trip. Corporal Gendron said that he exhibited respect toward Acting Sub-Lieutenant Doddridge at all times and that he addressed her in French as "*vous*" at all times because he is a professional and she is an officer.

[5] The trip began on the morning of Saturday, July 24, when they left Montréal. They were both in military uniform. In mid-route between Montréal and Ottawa, Corporal Gendron learned that Acting Sub-Lieutenant Doddridge was returning with him the next morning, contrary to what he had thought. The evidence is that Corporal Gendron told her that if that was the case, she should make a hotel reservation in Rouyn-Noranda just in case. He gave her the contact information for the Hôtel des Gouverneurs there, where he was going to spend the night, and a quarter to use a public telephone. According to Corporal Gendron, she then made a reservation from the highway service centre located between Montréal and Ottawa. Acting Sub-Lieutenant Doddridge said that she made the reservation from Ottawa, but did not give any further details, and was not cross-examined on that question. She added that she had received a directive to stay at the same hotel as the driver if the driver was staying in Rouyn-Noranda.

[6] The trip to Rouyn-Noranda went quite well. They ate lunch in Maniwaki and the trip then continued, going through Val-d'Or and Senneterre and on to the final destination. Acting Sub-Lieutenant Doddridge testified that they arrived at the Rouyn-Noranda Armoury at about 8:00 p.m. The Armoury was the designated location for parents to come and pick up their young cadets. They then discovered that the parents of one young female cadet was not at the appointed place. As Corporal Gendron recounted it, there was then a discussion with Acting Sub-Lieutenant Doddridge and they agreed to go by bus to the city bus terminal, together with the young cadet, to locate her parents. It seems that the young cadet was particularly worried. They drove through the streets of Rouyn-Noranda for 20 to 30 minutes, and ultimately returned to the Armoury, because that was the location shown on Corporal Gendron's duty order. Corporal Gendron then told Acting Sub-Lieutenant Doddridge that he was going to the hotel to have supper, because his job was done and it was not his job to look after the cadets. Acting Sub-Lieutenant Doddridge said that there had been no attempt made to locate the girl's parents in the streets of the city. She said, however, that she had asked Corporal Gendron to stay at the Armoury with her until the young cadet's parents came to pick her up. She testified that he told her that it was not his job to look after cadets and that he did not want to hear anything about staying on the scene. She said that he then left to have supper, after telling her to walk to the hotel which was a few blocks away. Acting Sub-Lieutenant Doddridge acknowledged that she had been angry at Corporal Gendron's words and attitude toward her. Corporal Gendron justified that behaviour by explaining that he had been extremely tired and giddy, and that he had not yet eaten. According to Corporal Gendron, everyone but him had had supper earlier that evening at the McDonald's restaurant in Rouyn before going to the Armoury, including the escort officer. He said that he, however, had stayed on the bus at that stop, and had not seen her eat. On cross-examination, Corporal Gendron said that he had used his judgment, and that he would have remained on the scene, waiting for the cadet's parents, in other circumstances, such as if it had been raining or in winter. It appears from the testimony of Acting Sub-Lieutenant Doddridge that she had in fact accompanied the cadets into the restaurant, but she too had not eaten there.

[7] Corporal Gendron testified that once he got to the hotel, he completed the check-in formalities. He then went to the hotel restaurant to eat. He started his meal, and used the time to telephone his spouse, using his mobile phone, and told her that he had arrived safe and sound. As he recounted it, that call lasted a few minutes before he was interrupted by Acting Sub-Lieutenant Doddridge arriving at the hotel and asking him for the keys to the vehicle, so she could get her luggage. Exhibit 3 indicates that the interrupted call lasted a little over six minutes. A second discussion between the two individuals then took place. According to the accused, Acting Sub-Lieutenant Doddridge demanded three times that he give her his room number. Claiming that he saw no point in giving her that information and that he had never been asked for such a thing before, he refused to comply with the escort officer's request and told her that she could rest easy and he would be in the hotel lobby the next morning. He said that he then saw panic in the escort officer's eyes and that his refusal to comply with her request was not Acting Sub-Lieutenant Doddridge's business. Corporal Gendron then called his spouse back to tell her about what he called this "bizarre" situation. Acting Sub-Lieutenant Doddridge did not recall that such a discussion had taken place, but she did not deny it. The next morning, July 25, 2004, they met in the hotel lobby at about 8:30 a.m. Corporal Gendron was in battle dress while Acting Sub-Lieutenant Doddridge was in civilian dress. They left Rouyn-Noranda shortly thereafter for the return trip, but not before stopping at the Tim Hortons restaurant in Rouyn to buy their breakfast and take it with them. Corporal Gendron claimed that at that time he apologized to the escort officer for his conduct when he left the Armoury the day before. Contrary to what the accused said, the escort officer had no bad feelings toward him. The trip passed without problem, but according to the accused there was still some discomfort, which he attributed to the events of the previous day.

[8] Acting Sub-Lieutenant Doddridge had no precise recollection of the return trip, except that she remembered arriving in Mont-Laurier to eat at about 1:00 or 2:00 p.m. According to her, the trip between Rouyn and Saint-Adèle was long and the road was not busy. The accused said that she even slept for some time, and he added that she had told him not to stop because she had a meeting in Montréal that evening. Corporal Gendron said that he got gasoline in Cadillac, as shown in Exhibit 5, but that he also took that opportunity to clean his vehicle, as was his custom, and throw out the garbage from their stop at the Tim Hortons. That point was not mentioned by Acting Sub-Lieutenant Doddridge, but that possibility was not put to her; however, it is of little importance, once the whole of the evidence is assessed.

[9] On the evidence heard, the two occupants of the vehicle talked during the return trip on highway 117, discussing various subjects ranging from the weather to family and children and other topics. In fact, the accused is the father of two teenaged girls, one of whom is a member of the cadet movement. Somewhere around Saint-Adèle — in the context of the discussion about family and having children — Corporal Gendron disclosed that he had solved that problem in 1995. He said that he never used the word "vasectomy", but there is no doubt, on the evidence before the Court, that he referred to surgery of that

nature. From the point where that discussion took place, the accounts of it are totally different.

[10] At the outset, it must be noted that Corporal Gendron firmly denied that he had stopped anywhere at all between Mont-Laurier and Montréal. He also said that he had done nothing and said nothing that could be associated with the account of the facts given by Acting Sub-Lieutenant Doddridge regarding the indecent acts and words that she said were directed to her by Corporal Gendron somewhere around Saint-Adèle. According to Acting Sub-Lieutenant Doddridge, it was in the context of their discussion about family and children that she understood that Corporal Gendron had had a vasectomy earlier. He then told her that he still felt twinges in his genitals when he was late in getting sexual relief, from what she understood.

[11] Corporal Gendron then asked her whether he could stop to relieve his urges. She understood that he wanted to be able to relieve the twinges he was feeling, for medical reasons, by masturbating. While she was surprised, to say the least, she did not object. According to her, she trusted him and she sincerely believed that this was genuinely a medical situation that did not jeopardize her own safety, and that if Corporal Gendron wanted to masturbate, he would do it somewhere off to the side. Corporal Gendron then left highway 117 to take a small wooded road along which there were small residential properties, a lake and a golf course. Corporal Gendron followed the route he had chosen and she then saw a sign reading [TRANSLATION] “Lac Caché, three kilometres”. They did not go all the way to the lake. Corporal Gendron then slowly drove back toward highway 117, and they passed a man who was walking slowly toward their vehicle. It seems that this meeting was something that had not been disclosed by Acting Sub-Lieutenant Doddridge before she testified in this Court. Although the defence argued that this was a major inconsistency in the complainant’s testimony, the Court does not share that opinion, when we consider the whole of the evidence, and more specifically because of the fact that they merely crossed paths with that person shortly after they left highway 117, and no words seem to have passed between them and that person.

[12] That was when Corporal Gendron continued on his way and stopped his vehicle a little farther on, and got out. When he came back a few moments later, he informed his passenger that he had gone to urinate. She then saw a piece of brown paper, that she thought might have been a Tim Hortons bag. He told her at that point that he was going to go to the rear of the bus to relieve his urges, without being seen. He sat down directly behind Acting Sub-Lieutenant Doddridge on the first bench. According to her testimony, she was frozen in her seat and embarrassed, but she did not object. She listened to the radio. She heard a noise that she associated with the act of unbuckling a belt. Acting Sub-Lieutenant Doddridge told us that Corporal Gendron informed her that he was having difficulty getting an erection and asked her to participate by talking dirty to him and touching him so that he could succeed in this. She told him no, or she said [TRANSLATION] “Well really!” to indicate her exasperation. She reported that he then went on touching himself and she heard sounds and faster breathing, which she associated with satisfaction.

Corporal Gendron then asked her whether she wanted to take the paper so that, as Acting Sub-Lieutenant Doddridge said, it would not [TRANSLATION] “fly off” all over. She said “No!” once again and she asked him to get out of the vehicle. He then wanted to go to the front of the vehicle to stretch his legs, and she said [TRANSLATION] “Get out!” As she reported the facts, Corporal Gendron then let out some little cries of satisfaction and finished what he had started. During that period of time, she said, she had turned up the volume on the radio. Corporal Gendron got out of the vehicle a few moments later. He then threw the paper that he had used on the ground and got back on the bus. Acting Sub-Lieutenant Doddridge testified that she was frozen in her seat. As she recounted it, she was afraid that if she had got out of the vehicle Corporal Gendron would have left with her things. She said that she was very uncomfortable and she should have got out of the vehicle. It appears from the testimony of Acting Sub-Lieutenant Doddridge that during the act committed by Corporal Gendron, which lasted approximately 10 minutes, on the vehicle, she never looked at him or saw him engaging in masturbation. On cross-examination, she said that she had stayed there and said nothing, frozen in her seat, paralyzed and embarrassed, and had never turned around. The only objections she had made were limited to asking Corporal Gendron to go and do that somewhere else. In answer to the defence’s suggestion as to considering getting out of the vehicle, she replied that she had been afraid to annoy him, that she had taken off her shoes and that to put them back on, she would have had to turn around to get them and so come face to face with Corporal Gendron.

[13] According to Acting Sub-Lieutenant Doddridge, Corporal Gendron asked her whether she was going to make a complaint against him, when he got back into the vehicle. She told him then that she would not do that.

[14] According to the complainant’s testimony, they got back on highway 117 shortly thereafter and stayed on it until they reached their final destination in Montréal, where they arrived at about 5:30 p.m. Corporal Gendron called his spouse to let her know he had arrived. Acting Sub-Lieutenant Doddridge and Corporal Gendron did not see each other after that. The next day, July 26, Acting Sub-Lieutenant Doddridge confided in a colleague. On Tuesday morning, July 27, she made a sexual harassment complaint and met with the police in the afternoon.

[15] Corporal Gendron said that on the return trip he had noticed that there was still some discomfort between them, up until they arrived in Longue Pointe. He said that during that trip, Acting Sub-Lieutenant Doddridge introduced topics of conversation that he considered to be personal, like the fact that she had homosexual friends and that some cadets had confided in her concerning their menstrual periods. He testified that, at the time, those comments had not attracted his attention, and he attributed that openness to the fact that she trusted him. He maintained on cross-examination that he had started to distrust her at that point. On cross-examination, he added that he had also felt distrustful the previous evening when she asked him for his room number for the third time. That concludes the summary of the events on which the charges in this case are based.

The Applicable Law and the Essential Elements of the Charges

The 1st and 2nd counts (section 93 of the National Defence Act)

[16] The first three counts are in the alternative. With respect to the essential elements of the 1st and 2nd counts, behaving in a disgraceful manner, contrary to section 93 of the National Defence Act, the prosecution had to prove, beyond a reasonable doubt, in addition to the identity of the accused and the date and place of the offence as they are alleged in those counts, that:

- (a) Corporal Gendron masturbated in a military vehicle in the presence of Sub-Lieutenant Doddridge, in the case of the 1st count, and that he pretended to masturbate in a military vehicle in the presence of Sub-Lieutenant Doddridge, in the case of the 2nd count;
- (b) the act of masturbating or pretending to masturbate in the circumstances of this case constituted disgraceful conduct; and
- (c) Corporal Gendron had guilty intent at the time of the commission of the acts with which he is charged.

The 3rd count (section 130 of the National Defence Act, contrary to paragraph 173(1)(a) of the Criminal Code — indecent act)

[17] In addition to the essential elements relating to the identity of the accused and the date and place where the alleged offence was alleged to have been committed, the essential elements of the 3rd count (in the alternative to the first count), an indecent act, are as follows:

- (a) Corporal Gendron committed an indecent act by masturbating;
- (b) Corporal Gendron acted voluntarily when he committed the act alleged;
- (c) the act took place in a public place, in this instance a military vehicle; and
- (d) the act was committed in the presence of one or more people.

The 4th count (section 129 of the National Defence Act)

[18] The prosecution's final task was to prove the essential elements of the 4th count beyond a reasonable doubt. In addition to the elements of the identity of the accused

and the date and place, the offence of conduct to the prejudice of good order and discipline, contrary to section 129 of the National Defence Act must include proof beyond a reasonable doubt of:

- (a) the conduct with which the accused is charged, in this case that he harassed Sub-Lieutenant Doddridge;
- (b) the prejudice to good order and discipline that resulted from that conduct. It should be noted that the 4th count refers to the contravention of DAOD 5012-0 (Harassment Prevention and Resolution). In this case, the prosecution intends to rely on the presumption in subsection 129(2) of the National Defence Act, the effect of which is to make a contravention of an order or instruction an act, conduct, disorder or neglect to the prejudice of good order and discipline. To have the benefit of that presumption, the prosecution must, however, prove beyond a reasonable doubt the nature and existence of the order in question, knowledge of that order on the part of the accused, and that the accused's conduct contravened that order; and
- (c) the accused's guilty intent at the time the offence is alleged to have been committed.

Presumption of innocence and reasonable doubt

[19] Before applying the law to the facts of the case, we should consider the presumption of innocence and the standard of proof that consists of proof beyond a reasonable doubt, which is an essential component of the presumption of innocence. Whether the charges are laid under the Code of Service Discipline before a military court or are proceedings before a civilian criminal court involving criminal charges, an accused person is presumed innocent until the prosecution has proved his or her guilt beyond a reasonable doubt.

[20] The prosecution has that burden of proof throughout the trial. An accused person has no duty to prove his or her innocence. The prosecution must prove each of the essential elements of the charge beyond a reasonable doubt.

[21] Proof beyond a reasonable doubt does not apply to individual pieces of evidence or to various parts of the evidence; it applies to the entirety of the evidence on which the prosecution relies to prove guilt. The burden of proof is on the prosecution throughout the trial, and never shifts to the accused.

[22] A court will have to acquit an accused if it has a reasonable doubt as to his or her guilt after assessing the evidence as a whole. The expression "beyond a reasonable

doubt” has been used for a very long time. It is part of the history and traditions of our judicial system. In *R. v. Lifchus* [1997], 3 S.C.R. 320, the Supreme Court of Canada laid down the way that reasonable doubt is to be explained in a charge to the jury. The principles in *Lifchus* have been applied in a number of subsequent appeals. At bottom, a reasonable doubt is not an imaginary or frivolous doubt. It cannot be based on sympathy or prejudice. Rather, it must be based on reason and common sense. It must logically be derived from the evidence or absence of evidence.

[23] In *R. v. Starr* [2000] 2 S.C.R. 144, at para. 242, Iacobucci J., writing for the majority, said, and I quote:

... an effective way to define the reasonable doubt standard for a jury is to explain that it falls much closer to absolute certainty than to proof on a balance of probabilities.

It should be noted, however, that it is virtually impossible to prove something with absolute certainty and that the prosecution is not required to do this. There is no such standard of proof in law. The prosecution must prove the guilt of the accused, in this case Corporal Gendron, only beyond a reasonable doubt.

[24] As I said earlier, the appropriate approach to take to the standard of proof consists of assessing the evidence as a whole, and not assessing individual pieces of evidence taken separately. It is therefore essential to assess the credibility and reliability of the testimony having regard to the evidence as a whole.

[25] The standard of proof that consists of proof beyond a reasonable doubt also applies to questions of credibility. The Court need not make a definitive determination as to the credibility of a witness or group of witnesses. Moreover, the Court need not believe the testimony of a person or group of people in its entirety.

[26] If the Court has a reasonable doubt as to the guilt of Corporal Gendron that arises out of the credibility of the witnesses, it must acquit him.

[27] In those circumstances, the law requires that the Court find the accused not guilty, first, if the Court believes the accused’s account, and second, even if the Court does not believe the accused, if it has a reasonable doubt arising out of the accused’s testimony after considering that testimony in the context of the evidence as a whole. In addition, if, after assessing the evidence as a whole, the Court does not know whom to believe or has a reasonable doubt as to whom to believe, it must give the accused the benefit of that doubt and acquit him or her.

[28] Counsel both submitted that the principles laid down by the Supreme Court in *R. v. W.(D.)* apply in the circumstances of this case. It should be noted that it was in *R. v. W.(D.)* [1991], 1 S.C.R. 742, at page 757, that Cory J. proposed a three-pronged

approach when the trial judge might have give the jurors instructions regarding credibility, in the context of the standard of proof consisting of proof beyond a reasonable doubt, and I quote:

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

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

c 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.

[29] With these comments regarding the presumption of innocence and the standard of proof consisting of proof beyond a reasonable doubt, including when it applies to questions of credibility, the Court will now consider the facts established by the evidence having regard to the applicable law.

Decision

Analysis of the witnesses' credibility

[30] The evidence before this court, as a whole, and the discrepancies there are between the accounts given by the accused and by Acting Sub-Lieutenant Doddridge on the essential questions on which the charges are based, call for a careful consideration of the credibility of the witnesses heard.

[31] The Court has carefully considered the testimony of the accused and the complainant, having regard to the evidence as a whole. There is no magic formula for deciding whether testimony is credible, or what weight must be assigned to it. The Court paid attention to, among other things, the integrity and intelligence of each of the witnesses, their capacity for observation and their ability to report their observations to the Court. The Court considered their ability to remember events, taking into consideration the fact that some events or some facts may affect every person differently. The Court observed the witnesses, paying attention to factors such as whether the witness tried honestly to tell the truth, whether he or she was sincere and candid, or biased, hesitant and evasive. In assessing the credibility of each of the witnesses, the Court asked itself a number of questions. Did the witness appear honest? Did the witness have any particular reason not to tell the truth? Did the witness have an interest in the outcome of the case or a reason to present evidence that favoured one party rather than the other? Was the witness able to present accurate and complete observations concerning the event? Did he or she had the opportunity to do so? In what circumstances were the observations made? What was the witness's state of mind? Was this an ordinary or extraordinary event? Did the

witness give the impression of having a good memory? Did the witness have any reason to remember the events about which he or she testified? Did the witness's inability to remember or difficulty in remembering the events seem to be genuine, or was it used as an excuse to avoid answering questions? Was the testimony internally consistent, and consistent with other testimony? Had the witness previously said or done anything different? Were inconsistencies in the testimony so serious that they made the main aspects of it less credible or less reliable? Was the inconsistency significant or minor? Was it a mistake made in good faith or a deliberate lie? Did the inconsistency arise out of a different statement by the witness or an omission on the witness's part? Could it be explained? Did the explanation make sense? How did the witness behave while testifying? — without placing too much weight on this, because appearances are sometimes misleading.

[32] Testifying is not an everyday experience. People react and present themselves differently. They have different abilities, values and life experiences. There are simply too many variables for the behaviour of a witness to be the only factor, or the most important factor, in making a decision.

Corporal Gendron

[33] Corporal Gendron testified before this Court. Based on the evidence as a whole, the Court cannot conclude that Corporal Gendron's testimony must be rejected in its entirety. Apart from the series of events that are the subject of the charges before this Court, his account of the facts is consistent with the complainant's, although the relative weight placed on certain details differs somewhat from one version to the other. With respect to the incident at the Armoury where Corporal Gendron allegedly did not want to stay on the scene with Acting Sub-Lieutenant Doddridge, he said that he had participated in a search that lasted between 20 and 30 minutes, in the streets of Rouyn-Noranda, which the complainant denied. With respect to the complainant's repeated requests that he give her his room number, the complainant did not recall them. If we consider the whole of the evidence and the importance of some pieces of evidence in relation to others, a discrepancy of that nature is not important, if we recall that the facts in issue took place the following day. It must be noted that Corporal Gendron demonstrated that he has an excellent memory of the trip, which, according to his version of the facts, was relatively boring, apart from the two incidents that were the subject of the disagreement referred to by the Court. The Court cannot rely on Exhibits 3, 4 and 5 to assign more credibility to the accused, in support of his version of the facts, and that evidence is entirely consistent with the plaintiff's version with respect to the events that took place on the evening of July 24, 2004, the day preceding the acts charged. The accused was very careful to justify his decision not to stay at the Armoury despite the request made by the escort officer. He also stressed the importance of protecting himself against the escort officer's request that he give her his room number, and went so far as to say that this was the first time he had been asked for such a thing. The Court is prepared to believe him on the fact that this was the

first time he had been asked for such a thing, but in the opinion of this Court, that is not an excessive or improper request by the officer responsible, in the circumstances. Corporal Gendron testified with conviction as to the importance he places on professionalism and the respect with which he treats the people with whom he performs his job. Although he is an experienced member of the forces, and he knows or should know, after 17 years' service in the regular forces, that officers take precedence over non-commissioned members, he did what he felt like, despite the requests made to him by a young officer of the reserve forces. His sudden insistence, on cross-examination, on testifying as to the distrust he felt toward Acting Sub-Lieutenant Doddridge was simply not supported by his own version of the facts. It is one thing that he found her insistent, but to go from there to feeling distrustful of her is simply not credible. The Court finds it difficult to understand why in fact Corporal Gendron systematically refused to agree with prosecution counsel's suggestion that Acting Sub-Lieutenant Doddridge was cordial on the first leg of the trip when there was nothing in that trip that suggested the contrary. He also made a particular point of buttressing his credibility when he alluded to the procedure he has to follow when he stops for a break, for a meal, for gasoline or for other reasons. Those points added nothing. In fact, it seems improbable that a person in the situation that the accused is charged with having been in would have been careful to note in his log book a half-hour break during which he engaged in unlawful acts. The Court also places no weight on the fact that Corporal Gendron was careful to call his wife to tell her that he had arrived at his destination or that he had arrived safe and sound. Calls like that have no impact on the account given by Corporal Gendron or by the complainant in relation to the acts the accused is charged with committing on July 25, 2004, near Saint-Adèle, when they are assessed having regard to the evidence as a whole. Having regard to that evidence, the Court does not believe Corporal Gendron's account on the essential questions concerning the events described by Acting Sub-Lieutenant Doddridge in which the accused, on July 25, 2004, in or near Saint-Adèle, engaged in an indecent act in her presence by masturbating or pretending to masturbate in a military vehicle.

Acting Sub-Lieutenant Doddridge

[34] The analysis of Acting Sub-Lieutenant Doddridge's testimony must be just as rigorous. In fact, the defence made much of the fact that the complainant gave few details in her examination-in-chief. The Court agrees with the defence comments that when Acting Sub-Lieutenant Doddridge testified before this Court the details she offered were doled out drop by drop, and she remained vague. The defence submitted that she had left out important facts, such as the episode at the Armoury and the request for the room number, which, in the defence theory, explained the discomfort between them that was referred to by the accused, and his distrust of the complainant on the evening of July 24, 2004, which distrust heightened the next day when she allegedly talked to Corporal Gendron about rather private matters. The defence seemed to be arguing that the disagreements between the accused and the complainant on the evening of July 24, 2004, explained her antagonism toward Corporal Gendron and the fact that this story about an indecent act, told by Acting Sub-Lieutenant Doddridge in her testimony, had been made

up out of whole cloth.

[35] With respect to the complainant's account of the events that preceded the incident, until the culmination of that incident, the defence pointed out that she was vague as to the exact location where it allegedly took place. The defence impugned the complainant's credibility on the alleged ground that she was in a clear position of authority, by virtue of her status as an officer, and argued that this entire scenario fails to stand up because she was careful, during the investigation and during her testimony before the Court, to omit details that might have made it possible to contradict her.

[36] The Court does not share the opinion stated by the defence regarding the credibility of Acting Sub-Lieutenant Doddridge. She is a young reserve officer, a member of the Cadet Instructors Cadre. She was 20 years old at the time of the acts alleged, and she had little or no experience in the Canadian Armed Forces. It must be observed that she had been, for many years, an active member of the Cadet Corps, while she was a teenager, but that cannot be said to be the same as, or even similar to, experience in the Canadian Forces. Contrary to the defence's argument, she testified candidly and honestly. There is no doubt that she was profoundly embarrassed when the incident occurred. She said that she had believed the accused when he told her he was experiencing twinges in his genitals and had to masturbate to relieve them. A report like that is characterized by extreme naivety, in the circumstances, but it must still not be rejected when the Court considers her testimony in its entirety.

[37] The Court noticed that she was particularly nervous when she testified. That kind of nervousness is to be expected in the circumstances, and it may be even more to be expected when the topics addressed are delicate. While she did provide more details on cross-examination, it is also correct to say that she gave direct answers to the questions put to her. The defence was able to elicit additional details, but she gave them coherently and politely in direct answer to the questions put to her. It must be understood that witnesses react differently to questions. Some witnesses need only an introductory question and are then able to go off for minutes at a time down a path comprised of innumerable details, while on the other hand counsel sometimes have to resort to numerous small, short questions in order to elicit evidence from a different witness. In the case of the testimony given by Acting Sub-Lieutenant Doddridge, the Court is satisfied that she answered to the best of her abilities and that she tried to perform her duties as a witness with honesty and sufficient clarity. She was never evasive and she promptly admitted that she did not remember when that was the case. When a witness's behaviour that inspires confidence it means that it may be tempting to believe him or her, but it would be a mistake to think that such behaviour is a guarantee of reliability and accuracy, and to make findings on that basis alone, especially when there are important pieces of evidence that are inconsistent with the witness's testimony. It was with this caveat in mind, in fact, that the Court has considered her testimony, having regard to the evidence as a whole. The Court does not accept any theory based on revenge for the accused annoying her several times during the evening of July 24, 2004, which allegedly prompted her to fabricate this

scenario. There is no support for that theory, having regard to the evidence as a whole. The Court accepts the entirety of the evidence given by Acting Sub-Lieutenant Doddridge.

Analysis of the law having regard to the facts

[38] As the Court noted earlier, the first three counts were laid in the alternative. With respect to the essential elements of the 1st and 2nd counts, that he engaged in disgraceful conduct contrary to section 93 of the National Defence Act, the prosecution had to prove beyond a reasonable doubt — in addition to the identity of the accused and the date and place, as they are alleged in those counts — that Corporal Gendron masturbated in a military vehicle in the presence of Sub-Lieutenant Doddridge, in the case of the 1st count; and that he pretended to masturbate in a military vehicle in the presence of Sub-Lieutenant Doddridge, in the case of the 2nd count. The prosecution also had to prove beyond a reasonable doubt that the act of masturbating or pretending to masturbate, in the circumstances of this case, constituted disgraceful conduct. In addition, the prosecution had to prove beyond a reasonable doubt that Corporal Gendron had guilty intent at the time the acts charged were committed.

[39] The Court has already said that it did not believe the accused on the essential questions relating to the acts with which he is charged. Does the Court have a reasonable doubt as a result of the accused's testimony, after considering his testimony in the context of the whole of the evidence? The Court must answer that question in the negative. Ultimately, after assessing the whole of the evidence, the Court believed Sub-Lieutenant Doddridge when she testified as to the accused's acts inside the military vehicle on the country road near Saint-Adèle during the afternoon of July 25, 2004.

[40] Although Sub-Lieutenant Doddridge was not able to state positively that she had seen Corporal Gendron masturbating in her presence, because she never wanted to look at it being done, the Court accepts, *inter alia*, and without reiterating all the details of her testimony, the description given by Sub-Lieutenant Doddridge in her testimony regarding the noises made by the accused, of a belt being unbuckled when he sat down behind her on the bench; the sounds that she heard come out of his mouth, and the words spoken to her, and in particular the requests that she talk dirty to him and touch him to help him get an erection; Corporal Gendron's request to her that she hold the paper so that it didn't fly off; and up to the point when he finally got out of the vehicle and she saw him throw the paper on the ground — this is all particularly persuasive circumstantial evidence that not only supports the inference that Corporal Gendron masturbated inside the vehicle in the presence of Acting Sub-Lieutenant Doddridge, but also leaves no room for any other logical and rational interpretation.

[41] In the circumstances of this case, the commission of the act of masturbating that took place right inside a military vehicle, in the presence of a young reserve forces officer who was fully entitled to be in the vehicle as a passenger, who was not a participant

and who expressly refused to participate in that activity, the Court is satisfied beyond a reasonable doubt that this was extremely blameworthy and disgraceful conduct and is contemplated by section 93 of the Act. The evidence also was that the accused's acts and words during the events establish beyond a reasonable doubt that he knew what he was doing and that he had the requisite *mens rea* for committing the offence. Having regard to all of the evidence accepted by the Court, the Court is satisfied that the prosecution has proved each of the essential elements of the 1st count and that it has discharged its burden of proof.

Disposition

[42] Corporal Gendron, please rise. For the reasons stated by this Court, the Court finds you guilty of the first count and orders a stay of proceedings in respect of the 2nd and 3rd counts. On the 4th count, the Court also orders a stay of proceedings, under the rule regarding multiple convictions, as requested by the prosecution, because, first, the facts in support of the 4th count are exactly the same as the facts on which the 1st count is based, and second, the prosecution had to go beyond what it was required to do to establish the offence under section 129 of the National Defence Act.

LIEUTENANT-COLONEL M. DUTIL, M.J.

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