Court Martial Appeal Court of Canada

Cour d'appel de la cour martiale du Canada

Date: 20180910

Docket: CMAC-591

Citation: 2018 CMAC 3

CORAM: **BELL C.J.**
MCCAWLEY J.A.
MCVEIGH J.A.

BETWEEN:

HER MAJESTY THE QUEEN

Appellant

and

CORPORAL CADIEUX

Respondent

Heard at Ottawa, Ontario, on March 12, 2018.

Judgment delivered at Ottawa, Ontario, on September 10, 2018.

REASONS FOR JUDGMENT BY: BELL C.J.

CONCURRED IN BY: MCCAWLEY J.A.
MCVEIGH J.A.

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REASONS FOR JUDGMENT

BELL C.J.

I. Overview

[1] This is an appeal from the acquittal of Corporal S. Cadieux [Cpl Cadieux] by the military judge [the Judge] presiding at a Standing Court Martial [Court Martial] on May 12, 2017. The Judge found Cpl Cadieux not guilty of the two offences with which he was charged, namely,

sexual assault contrary to section 271 of the *Criminal Code*, R.S.C., 1985, c. C-46 [*Criminal Code*], punishable under paragraph 130(1)(*b*) of the *National Defence Act*, R.S.C., 1985, c. N-5 [*NDA*], and drunkenness under section 97 of the *NDA*. Her Majesty the Queen [the appellant] appeals the acquittal in relation to both charges pursuant to section 230.1 of the *NDA*. For the reasons that follow, I would allow the appeal in relation to both charges and order a new trial.

II. Summary of the Facts Relevant to the Sexual Assault Charge

[2] While little turns on the facts leading up to the very moment of the alleged sexual assault, context is important. It is particularly important in this case given the assertions made by Cpl Cadieux during the hearing of this appeal that it was the complainant who sexually assaulted him and not the reverse. I will therefore outline the facts as found by the Judge or as agreed upon by the parties.

[3] In November 2015, the Canadian Armed Forces [CAF] led a mentoring training exercise in Jamaica known as operation Tropical Dagger [the Operation]. The Operation involved troops from Jamaica, Belize, and Canada. The CAF implemented a no-alcohol policy for the whole of the Operation except for the last two days, by which time the formal military exercise had been completed.

[4] In addition to the no-alcohol policy, the CAF briefed all Canadian participants on the components of Operation HONOUR, which constitutes part of the CAF policy to combat sexual assault and harassment in the workplace. As found by the Judge, the briefing on Operation HONOUR was intended to prevent harmful and inappropriate sexual behaviour throughout the exercise.

[5] To further implement Operation HONOUR, the CAF set up an all-female tent. Access to that tent by males was restricted to only those who knocked, stated their reason for wanting to gain entry, and were permitted entry by the person in charge of the tent.

[6] These efforts appeared to have been successful, as the parameters of Operation HONOUR were fully respected until the end of the exercise, when commanders decided to abandon the no-alcohol policy and organize a barbecue for the evening of November 27, 2015. The barbecue was to be followed by a day of activities on November 28. According to the Judge's findings, the purpose of lifting the no-alcohol policy, holding the barbecue, and scheduling a day of activities before returning to Canada was to allow members to decompress and relax.

[7] On the evening of November 27, 2015, while at the barbecue, the complainant and Cpl Cadieux were consuming alcohol with others who were participating in the Operation. The CAF had set no specific limits on the amount of alcohol that could be consumed. However, the expectation was that no one would become drunk and injure themselves or others, nor would they fraternize inappropriately with one another. Each person was to acquire his or her own alcohol.

[8] For the purposes of the barbecue, a bonfire had been lit between the kitchen and the tents. People were drinking and partying. The festivities slowly came to an end between 24h00 on November 27 and 01h30 on November 28. Although there is uncertainty about the exact hour the complainant left the party, it is clear she left earlier than several others, including Cpl Cadieux.

Although intoxicated, the complainant made her way to the sleeping area in the all-female tent and put herself to bed. She was wearing a shirt and pyjama pants with nothing underneath.

[9] As the party was "winding down", Cpl Cadieux and some friends decided to try to revive the party atmosphere by waking up some of those who had left, including the complainant. Cpl Cadieux knocked on the door of the all-female tent. Master Corporal [MCpl] Hébert answered. Cpl Cadieux asked MCpl Hébert where he could find the complainant's cot. She showed him. Cpl Cadieux approached the complainant's cot, knelt beside it and called her name quietly in an effort to awaken her without disturbing the other women sleeping. When Cpl Cadieux called the complainant's name, she grabbed his head, pulled him toward her and began kissing him passionately. He reciprocated her kiss. During the kissing, the complainant mumbled the name "Steve", to which Cpl Cadieux replied, "It's not Steve, its Simon". The complainant then pushed him off, telling him to "stop" or "stop it". MCpl Hébert yelled at them to be quiet. Cpl Cadieux stood up and left the tent.

[10] The respondent testified that the complainant appeared awake the entire time of the kissing, which lasted a few seconds. Cpl Cadieux admits the kissing constituted contact of a sexual nature. Crucially, the Judge described what occurred in the following manner:

> It appears that the complainant was sleeping in her sleeping bag under an unzip [sic] bug net. The accused called the complainant's name to wake her up. Then, according to Master Corporal Hébert, a sloppy kiss started between the accused and the complainant.

[11] The complainant testified that she was awakened by a touch to the pelvic area. It is important to note here that Cpl Cadieux testified the touch to the pelvic area was either

accidental or to balance himself as he leaned over the complainant in his attempt to awaken her. The Judge accepted this explanation. As a result, the sexual nature of the touching, for the purposes of his analysis, is limited to the kissing. With respect to the evidence related to consent or lack thereof, the Judge concluded:

> Cpl. Cadieux appeared to the Court as straightforward and with nothing to hide. He clearly described the incident, which was surprising for him.
>
> The same could be said of the complainant. She was right to be shocked by what happened. Her story was straightforward and the Court believed her when she said that she never consented to any of the act [sic] made by the accused. [Emphasis added]
>
> […]
>
> The complainant was woken [sic] up by the fact that she was touched in a specific area by the accused. [Emphasis added]
>
> […]
>
> Also, the Court concludes that the complainant did not consent to that use of force against her by the accused. She was clearly not awake and could not consent to the use of such force. [Emphasis added].

[12] The Judge concluded Cpl Cadieux entered the tent without any intention of kissing the complainant or committing any other act of a sexual nature. The Judge also concluded that the complainant initiated the kiss and Cpl Cadieux subjectively believed the complainant had consented to the kiss. The Judge concluded Cpl Cadieux lacked the requisite *mens rea* to commit the offence. Given the Judge's conclusion regarding the lack of *mens rea*, he decided it was unnecessary to consider the defence of honest but mistaken belief in consent. This defence had been specifically raised by Cpl Cadieux.

III. Analysis with respect to the Sexual Assault Charge

[13] In addition to proving the routine elements of the offence, such as time, date, place, identity of the accused and identity of the complainant, the Crown must prove: (1) Cpl Cadieux applied force against the complainant; (2) Cpl Cadieux applied the force intentionally; (3) the complainant did not consent to the application of force; (4) Cpl Cadieux knew the complainant did not consent to the force that he applied; and, (5) the force Cpl Cadieux applied was of a sexual nature (*R. v. Ewanchuk*, [1999] 1 S.C.R. 330, 169 D.L.R. (4th) 193 at paras.25, 41, 46-49; *R. v. Chase*, [1987] 2 S.C.R. 293, 45 D.L.R. (4th) 98).

[14] Cpl Cadieux admitted to elements 1, 2, and 5 enumerated above as they related to the kissing. The Judge made a finding in favour of the Crown in relation to element number 3; clearly the complainant could not consent if she was asleep. While the remaining evidence believed by the Judge might strongly suggest there was a reasonable doubt as to Cpl Cadieux's knowledge about whether the complainant consented to the kissing, a judge errs when he or she reaches such a conclusion without a proper analysis of the accused's belief in consent. Both the relevant jurisprudence and section 273.2 of the *Criminal Code* require more.

[15] The defence of honest but mistaken belief in consent is essentially an assertion by an accused that he or she lacked the *mens rea* required to commit the alleged sexual assault. In *R. v. Gagnon*, 2018 CMAC 1, [2018] C.M.A.J. No. 1 [*Gagnon*], this Court unanimously held that a defence of honest but mistaken belief in consent cannot exist without specifically considering

evidence relating to each of the statutory preconditions set out in section 273.2 of the *Criminal Code* (paras. 12, 59; see also *R v. Barton*, 2017 ABCA 216, 354 C.C.C. (3d) 245).

[16] Although the Judge stated he would not consider the defence of honest but mistaken belief in consent, he addressed the first element of that defence. He concluded there was an air of reality to the defence. Having made that conclusion, the Judge was required to reach two other conclusions before acquitting Cpl Cadieux, namely: (1) that the defence was available, it not having been vitiated by self-induced intoxication, recklessness, wilful blindness or the fact that Cpl Cadieux failed to take reasonable steps, in the circumstances known to him at the time, to ascertain that the complainant was consenting to the sexual touching; and (2) that the prosecution had not proven beyond a reasonable doubt that Cpl Cadieux did not have an honest but mistaken belief in consent. Admittedly, the Judge appears to have addressed this last question. However, as noted above, the complete section 273.2 analysis (*Gagnon*) is required.

[17] Should this Court conclude that the Judge misdirected himself on the issue of honest but mistaken belief in consent, Cpl Cadieux requests it apply the saving provision found at section 241 of the *NDA* (the equivalent of section 686 of the *Criminal Code*), which reads as follows:

Special power to disallow appeal	**Pouvoir spécial de rejet**
241 Notwithstanding anything in this Division, the Court Martial Appeal Court may disallow an appeal if, in the opinion of the Court, to be expressed in writing, there has been no substantial miscarriage of justice.	**241** Malgré les autres dispositions de la présente section, la Cour d'appel de la cour martiale peut rejeter un appel lorsque, à son avis, formulé par écrit, il n'y a pas eu d'erreur judiciaire grave.

[18] Cpl Cadieux contends no miscarriage of justice flows from the acquittal, even if the Judge erred. While I have some sympathy for the position advanced by Cpl Cadieux given the Judge's conclusion the complainant unexpectedly started kissing him, the following factors militate against applying the curative provisions of section 241: (1) Cpl Cadieux admits he knew the complainant was initially asleep; (2) he admits he tried to awaken her from her sleep; (3) he admits he was intoxicated; (4) he admits to the sexual nature of the kissing; (5) he admits it was dark in the tent and he was whispering so as not to wake any other sleeping members; and, (6) he admits there was no romantic relationship between the two of them before or during the exercise or on the evening in question. In other words, and stated rather bluntly, the complainant had no reason to kiss Cpl Cadieux, he had no reason to believe she wanted to kiss him, and, importantly, immediately prior to the actual kissing, he had no reason to believe she wanted him to kiss her. The appropriateness of Cpl. Cadieux's actions, given this context, may have been perceived differently by the Judge had he conducted a fulsome section 273.2 analysis. Given these observations, I cannot conclude how a trier of fact, properly instructed, would decide this case.

[19] While other grounds of appeal are raised by the appellant, I consider it unnecessary to address them. The error committed by the Judge with respect to the defence of honest but mistaken belief in consent is sufficient to dispose of this appeal. I would allow the appeal from the acquittal on the charge of sexual assault and order a new trial.

IV. Summary of the Facts Relevant to the Drunkeness Charge

[20] During the daylight hours of early November 28, 2015, Cpl Cadieux was seen by witnesses who described him as either intoxicated or hungover. Cpl Cadieux testified that he was

hungover. Prior to getting on the bus for the day's planned social excursion, Cpl Cadieux entered the all-female tent looking for food and alcohol without respecting the proper protocol. Warrant Officer [WO] Moureau, the Canadian Company Sergeant- Major, saw him enter the tent and ordered him to leave. Another soldier escorted him out. Cpl Cadieux testified he did not recall WO Moureau ordering him to leave.

[21] Upon boarding the bus, Cpl Cadieux sat in the driver's seat and honked the horn. This upset WO Moureau and the Jamaican Defence Force Sergeant-Major, who both told him to leave the driver's seat. He complied. WO Moureau then noticed that Cpl Cadieux had brought a bottle of vodka onto the bus and instructed him to remove it. Cpl Cadieux again complied.

[22] The original plan for the excursion was to spend the day at a Sandals resort. WO Moureau explained that, although he had concerns about Cpl Cadieux's condition, he was prepared to give him permission to visit Sandals because he was still "manageable". As events unfolded, the group was not permitted access to Sandals.

[23] A new plan was made to attend Margaritaville, a strip of bars along the Jamaican beach front. At this point, WO Moureau considered it may become too difficult to manage Cpl Cadieux and ordered him back to camp. Cpl Cadieux complied, albeit somewhat reluctantly.

[24] After leaving the bus, Cpl Cadieux attempted to drive himself back to the camp in a rental vehicle. WO Moureau, having seen Cpl Cadieux in possession of a bottle of vodka earlier

that day and being unsure of when he had last consumed alcohol, stopped him, took the keys, and told him to walk to the camp. Cpl Cadieux complied.

[25] The Judge concluded the prosecution had failed to prove the offence of drunkenness. He stated it was unclear whether Cpl Cadieux's conduct on the morning of November 28th was due to the consumption of alcohol or because he was hungover. The Judge further concluded that, although Cpl Cadieux demonstrated disturbing behaviour, there was no evidence the conduct was disorderly or that it harmed the reputation of Her Majesty's service.

V. Analysis with respect to the Drunkeness Charge

[26] The Charge Sheet relating to the charge of drunkenness reads simply:

> *Section 97 National Defence Act* Particulars: in that he, on or about 28 November 2015, while deployed on exercise Tropical Dagger, at or near Paradise Park, Savannah LA Mar, Jamaica was drunk. [Emphasis added]

[27] Very importantly, I note that being intoxicated from alcohol or a drug is not, in and of itself, an offence under the *NDA* (*R. v. Simard*, 2002 CMAC 6, (2002), 6 C.M.A.R. 270 at para. 3 [*Simard*]; *R. v. Yanchus J.A. (Commander)*, 2016 CM 1014 at para. 60; *R. v. Barkley R.E. (Master Corporal)*, 2006 CM 23 at paras. 7-8). Drunkenness, as an offence defined in the *NDA*, is proven only where one of the means set out in subsection 97(2) is established beyond a reasonable doubt. That section reads:

Drunkenness	**Ivresse**
[…]	[…]
When committed	**Existence de l'infraction**
97 (2) For the purposes of subsection (1), the offence of drunkenness is committed where a person, owing to the influence of alcohol or a drug,	**97 (2)** Pour l'application du paragraphe (1), il y a infraction d'ivresse chaque fois qu'un individu, parce qu'il est sous l'influence de l'alcool ou d'une drogue :
(a) is unfit to be entrusted with any duty that the person is or may be required to perform; or	a) soit n'est pas en état d'accomplir la tâche qui lui incombe ou peut lui être confiée;
(b) behaves in a disorderly manner or in a manner likely to bring discredit on Her Majesty's service.	b) soit a une conduite répréhensible ou susceptible de jeter le discrédit sur le service de Sa Majesté.

[28] It is incumbent upon the Crown to prove beyond a reasonable doubt that, owing to the influence of alcohol or a drug, the accused is unfit to be entrusted with any duty that the accused is or may be required to perform, behaves in a disorderly manner, or behaves in a manner likely to bring discredit on her Majesty's service.

[29] The appellant has not seriously argued that Cpl Cadieux was unfit for duty. The exercises conducted in relation to the Operation had concluded by the time of the alleged offence. Commanders had agreed to lift the no-alcohol ban and there was no limit on the amount of alcohol soldiers were permitted to consume. It would appear commanders did not expect anyone to be called for duty on or about the relevant date. I therefore do not intend to conduct any further analysis into this component of the offence. This leads me to focus on the Judge's

assessment of the other two means by which the offence may be committed, namely, behaviour that constitutes disorderly conduct or behaviour likely to bring discredit to her Majesty's service.

[30] As noted at paragraph 21, above, Cpl Cadieux's conduct of sitting in the driver's seat and honking the horn clearly upset WO Moureau and the Jamaican Defence Force Sergeant-Major. They both ordered Cpl Cadieux to leave the driver's seat and he complied. In fact, each time Cpl Cadieux was asked to change his behaviour on November 28, he complied. This willingness to change behaviour appears to have led the Judge to misinterpret the law related to the offence of drunkenness. In addition, in my view the Judge further erred by concluding that conduct that would otherwise meet the definition of drunkenness, is not culpable conduct if committed because of a hangover as opposed to intoxication. I briefly discuss these errors below.

[31] First, the Judge concluded that, while Cpl Cadieux exhibited "disturbing" behaviour, he was "manageable", an apparent reference to his compliance with lawful orders. Here, the Judge appears to conclude that one cannot be guilty of "disorderly" behaviour if one is manageable. With respect, that is not the appropriate legal test. In my view, the Judge identified the appropriate test, as set out in *R. v. Sloan*, 2014 CM 4004, but failed to apply it. The offence of drunkenness is meant to address fitness for duty or behaviour that is disorderly or discredits Her Majesty's service. Based on this test, I am of the view that one can be disorderly but still manageable. Manageability is not a curative factor.

[32] Second, the Judge appears to conclude that the state of being "hungover" can never be considered conduct owing to the influence of alcohol. At paragraph 76 of his analysis, the Judge

stated “it is not clear if it [Cpl Cadieux’s conduct] was because he consumed alcohol or because he had a hangover […]” [emphasis added]. He then identified some of Cpl Cadieux’s conduct as “disturbing”, but conducts no further analysis of that conduct given the Crown’s failure to prove whether the cause of the behaviour was drunkenness or a hangover.

[33] It is common knowledge that excessive drunkenness may lead to a state of being “hungover”. Conduct which otherwise meets the definition of drunkenness cannot, in my view, be disregarded because it might arise from the state of being hungover. The causal link between drunkenness and the state of being hungover is simply too direct for any other approach. Although I do not base my conclusion on this appeal on the unfitness for duty component of subsection 97(2), it is evident that some degree of being “hungover” may result in one being unfit for duty. In my view, such situations would clearly arise “owing to the influence of alcohol” (see *Simard* at para. 3).

[34] In my view, these errors are sufficient to warrant the granting of the appeal. As a result, I would allow the appeal on the charge of drunkenness as well, quash the acquittal and order a new trial.

“B. Richard Bell”
Chief Justice

“I agree
Deborah McCawley J.A.”

“I agree
Glennys McVeigh J.A.”

ANNEX

National Defence Act, **R.S.C., 1985, c. N-5**	**Loi sur la défense nationale, L.R.C. (1985), ch. N-5**
Drunkeness	**Ivresse**
97 (1) Drunkenness is an offence and every person convicted thereof is liable to imprisonment for less than two years or to less punishment, except that, where the offence is committed by a non-commissioned member who is not on active service or on duty or who has not been warned for duty, no punishment of imprisonment, and no punishment of detention for a term in excess of ninety days, shall be imposed.	**97** (1) Quiconque se trouve en état d'ivresse commet une infraction et, sur déclaration de culpabilité, encourt comme peine maximale un emprisonnement de moins de deux ans, sauf s'il s'agit d'un militaire du rang qui n'est pas en service actif ou de service — ou appelé à prendre son tour de service — , auquel cas la peine maximale est un emprisonnement de quatre-vingt-dix jours.
When committed	**Existence de l'infraction**
(2) For the purposes of subsection (1), the offence of drunkenness is committed where a person, owing to the influence of alcohol or a drug,	(2) Pour l'application du paragraphe (1), il y a infraction d'ivresse chaque fois qu'un individu, parce qu'il est sous l'influence de l'alcool ou d'une drogue :
(a) is unfit to be entrusted with any duty that the person is or may be required to perform; or	a) soit n'est pas en état d'accomplir la tâche qui lui incombe ou peut lui être confiée;
(b) behaves in a disorderly manner or in a manner likely to bring discredit on Her Majesty's service.	b) soit à une conduite répréhensible ou susceptible de jeter le discrédit sur le service de Sa Majesté.

Service trial of civil offences

130 (1) An act or omission

(a) that takes place in Canada and is punishable under Part VII, the Criminal Code or any other Act of Parliament, or

(b) that takes place outside Canada and would, if it had taken place in Canada, be punishable under Part VII, the Criminal Code or any other Act of Parliament,

is an offence under this Division and every person convicted thereof is liable to suffer punishment as provided in subsection (2).

Procès militaire pour infractions civiles

130 (1) Constitue une infraction à la présente section tout acte ou omission :

a) survenu au Canada et punissable sous le régime de la partie VII de la présente loi, du Code criminel ou de toute autre loi fédérale;

b) survenu à l'étranger mais qui serait punissable, au Canada, sous le régime de la partie VII de la présente loi, du Code criminel ou de toute autre loi fédérale.

Quiconque en est déclaré coupable encourt la peine prévue au paragraphe (2).

Special power to disallow appeal

241 Notwithstanding anything in this Division, the Court Martial Appeal Court may disallow an appeal if, in the opinion of the Court, to be expressed in writing, there has been no substantial miscarriage of justice.

Pouvoir spécial de rejet

241 Malgré les autres dispositions de la présente section, la Cour d'appel de la cour martiale peut rejeter un appel lorsque, à son avis, formulé par écrit, il n'y a pas eu d'erreur judiciaire grave.

***Criminal Code*, R.S.C., 1985, c. C-46**	**Code criminel, L.R.C. (1985), ch. C-46**
Assault	**Voies de fait**
265 (1) A person commits an assault when	**265** (1) Commet des voies de fait, ou se livre à une attaque ou une agression, quiconque, selon le cas :
(a) without the consent of another person, he applies force intentionally to that other person, directly or indirectly;	a) d'une manière intentionnelle, emploie la force, directement ou indirectement, contre une autre personne sans son consentement;
(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	b) tente ou menace, par un acte ou un geste, d'employer la force contre une autre personne, s'il est en mesure actuelle, ou s'il porte cette personne à croire, pour des motifs raisonnables, qu'il est alors en mesure actuelle d'accomplir son dessein;
(c) while openly wearing or carrying a weapon or an imitation thereof, he accosts or impedes another person or begs.	c) en portant ostensiblement une arme ou une imitation, aborde ou importune une autre personne ou mendie.
Application	**Application**
(2) This section applies to all forms of assault, including sexual assault, sexual assault with a weapon, threats to a third party or causing bodily harm and aggravated sexual assault.	(2) Le présent article s'applique à toutes les espèces de voies de fait, y compris les agressions sexuelles, les agressions sexuelles armées, menaces à une tierce personne ou infliction de lésions corporelles et les agressions sexuelles graves.

Consent

(3) For the purposes of this section, no consent is obtained where the complainant submits or does not resist by reason of

(a) the application of force to the complainant or to a person other than the complainant;

(b) threats or fear of the application of force to the complainant or to a person other than the complainant;

(c) fraud; or

(d) the exercise of authority.

Consentement

(3) Pour l'application du présent article, ne constitue pas un consentement le fait pour le plaignant de se soumettre ou de ne pas résister en raison :

a) soit de l'emploi de la force envers le plaignant ou une autre personne;

b) soit des menaces d'emploi de la force ou de la crainte de cet emploi envers le plaignant ou une autre personne;

c) soit de la fraude;

d) soit de l'exercice de l'autorité.

Accused's belief as to consent

(4) Where an accused alleges that he believed that the complainant consented to the conduct that is the subject-matter of the charge, a judge, if satisfied that there is sufficient evidence and that, if believed by the jury, the evidence would constitute a defence, shall instruct the jury, when reviewing all the evidence relating to the determination of the honesty of the accused's belief, to consider the presence or absence of reasonable grounds for that belief.

Croyance de l'accusé quant au consentement

(4) Lorsque l'accusé allègue qu'il croyait que le plaignant avait consenti aux actes sur lesquels l'accusation est fondée, le juge, s'il est convaincu qu'il y a une preuve suffisante et que cette preuve constituerait une défense si elle était acceptée par le jury, demande à ce dernier de prendre en considération, en évaluant l'ensemble de la preuve qui concerne la détermination de la sincérité de la croyance de l'accusé, la présence ou l'absence de motifs raisonnables pour celle-ci.

Where belief in consent not a defence

273.2 It is not a defence to a charge under section 271, 272 or 273 that the accused believed that the complainant consented to the activity that forms the subject-matter of the charge, where

(a) the accused's belief arose from the accused's

(i) self-induced intoxication, or

(ii) recklessness or wilful blindness; or

(b) the accused did not take reasonable steps, in the circumstances known to the accused at the time, to ascertain that the complainant was consenting.

Exclusion du moyen de défense fondé sur la croyance au consentement

273.2 Ne constitue pas un moyen de défense contre une accusation fondée sur les articles 271, 272 ou 273 le fait que l'accusé croyait que le plaignant avait consenti à l'activité à l'origine de l'accusation lorsque, selon le cas :

a) cette croyance provient :

(i) soit de l'affaiblissement volontaire de ses facultés,

(ii) soit de son insouciance ou d'un aveuglement volontaire;

b) il n'a pas pris les mesures raisonnables, dans les circonstances dont il avait alors connaissance, pour s'assurer du consentement.

COURT MARTIAL APPEAL COURT OF CANADA

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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CONCURRED IN BY:	MCCAWLEY J.A. MCVEIGH, J.A.
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APPEARANCES:

Major Dylan Kerr	FOR THE APPELLANT
Lieutenant-Commander Mark Létourneau and Lieutenant-Colonel Jean-Bruno Cloutier	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Canadian Military Prosecution Service Ottawa, Ontario	FOR THE APPELLANT
Defence Counsel Services Gatineau, Quebec	FOR THE RESPONDENT