

**Date: 20030404**

**Docket: CMAC-467**

**Neutral citation: 2003 CMAC 5**

**CORAM: LÉTOURNEAU J.A.  
DURAND J.A.  
S. NOËL J.A.**

**BETWEEN:**

**PRIVATE JEAN-GUY BARIL**

**Appellant**

**And**

**HER MAJESTY THE QUEEN**

**Respondent**

Hearing held at Montréal, Quebec, April 4, 2003.

Judgment delivered at Montréal, Quebec, April 4, 2003.

**REASONS FOR JUDGMENT OF THE COURT:**

**LÉTOURNEAU J.A.**

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**REASONS FOR JUDGMENT OF THE COURT**  
**(Delivered from the bench at Montréal, Quebec**  
**April 4, 2003.)**

**LÉTOURNEAU J.A.**

[1] The accused, who held the rank of corporal at the time he was charged, was convicted of sexual assault, unlawful confinement and an act prejudicial to good order and military discipline, this act consisting in harassment of the complainant.

[2] He also pleaded guilty to another charge of conduct prejudicial to good order and discipline, the latter emanating from a disruption provoked by his conduct after the incidents that

gave rise to the three aforementioned counts. This appeal does not involve the conviction for this offence.

[3] As a result of this plea and the conviction by the Standing Court Martial, three other charges were withdrawn by the prosecution: one for drunkenness and two for behaving in contempt of a superior.

[4] The accused was sentenced to a term of imprisonment of 60 days, the execution of which was suspended. He was also demoted to the rank of private. He is appealing the convictions by Court Martial in relation to the sexual assault, unlawful confinement and harassment.

[5] The appellant criticizes the trial judge for four errors of law:

- (a) for choosing between the complainant's version and the appellant's version;
- (b) for applying different standards in his assessment of the complainant's and the appellant's testimony;
- (c) for rejecting the appellant's testimony by basing himself on findings that are unsupported by the evidence; and
- (d) for failing to consider the evidence as a whole by skipping over steps 2 and 3 in the test laid down by the Supreme Court of Canada concerning the benefit of reasonable doubt when the accused's credibility is opposed to that of the complainant: *R. v. W. (D.)*, [1991] 1 S.C.R. 742.

[6] Notwithstanding the commendable efforts of Mr. Lachance, we are of the opinion that none of these criticisms is justified.

[7] The judge had been alerted by the parties to the procedure dictated by this decision of the Supreme Court and the need in the last analysis to be convinced beyond a reasonable doubt of the guilt of the accused after an assessment of all the evidence admitted at trial.

[8] First, he considered the testimony of the accused, which he did not believe because the latter's version had been contradicted:

- (a) by independent and credible witnesses (for example, the accused testified that he was not drunk while Corporal Bernier and Corporal Dalphond said the accused was in a state of advanced drunkenness and was staggering from time to time: see Appeal Books, vol. 1, pp. 232, 249 and vol. 2, p. 161);
- (b) by the complainant's version corroborated by an independent witness who was a good friend of the accused (for example, the accused said the complainant ran her hand through his hair while Sergeant Castonguay confirmed that the accused had put his hand around the complainant's waist and that she had removed it, rejecting the accused's advances on the ground that she had a boyfriend: *ibid.*, pp. 186, 188 and 189);
- (c) by the physical and emotional state of the complainant corroborated by Corporal Bernier (for example, the accused claimed that the complainant was consenting although Corporal Bernier found her in tears in the stairway leading to the washrooms, went to get some assistance and, upon his return, found the accused in

the entrance to the women's washroom where the complainant was: *ibid.* pp. 158 to 160);

- (d) by the testimony of the complainant, which was compatible with the evidence as a whole.

[9] At page 311 of the Appeal Book, the judge concluded:

[TRANSLATION] The Court, having considered the evidence as a whole, does not believe the accused concerning his version of the events in regard to the actions he took at the mess and the events that occurred in the gymnasium locker.

[10] As to the complainant's version, which was corroborated on some essential points, it is not surprising that he believed her, her testimony being compatible with the evidence as a whole notwithstanding a few contradictions and weaknesses that the judge discussed in his verdict and that he considered without real impact on credibility. As in the case of the accused, he conducted the analysis of the complainant's credibility in terms of the evidence as a whole.

[11] The evidence established that on at least three occasions the complainant expressed her refusal to consent to the accused's advances. The judge was not mistaken in finding that, in the circumstances, the accused had at best displayed a profound lack of concern or willful blindness in regard to these refusals: see the decision at p. 315.

[12] With the exception of the actions taken by the accused in the gymnasium cupboard, which constitute the culminating point in his conduct, the evidence adduced in support did not consist simply and solely of two contradictory versions, that of the complainant and that of the accused. Other witnesses came forward to support what the complainant said about some

important aspects of the charges that had been laid, thereby reinforcing her credibility. The trial judge considered all of the testimony that he heard. After assessing its probative value, he stated that he was persuaded beyond a reasonable doubt of the guilt of the accused. He had the benefit of seeing and hearing the witnesses, including the accused. Failing any error that would warrant our intervention, which the appellant has not managed to establish, we cannot substitute our assessment of the evidence for that of the trial judge.

[13] For these reasons, the appeal will be dismissed.

“Gilles Létourneau”

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J.A.

Certified true translation

Suzanne Gauthier, C. Tr., LL.L.

**COURT MARTIAL APPEAL COURT OF CANADA**

**SOLICITORS OF RECORD**

**DOCKET:** CMAC-467

**STYLE OF CAUSE:** PRIVATE JEAN-GUY BARIL  
**and** Appellant  
HER MAJESTY THE QUEEN  
Respondent

**PLACE OF HEARING:** Montréal, Quebec

**DATE OF HEARING:** April 4, 2003

**REASONS FOR JUDGMENT OF THE COURT (LÉTOURNEAU, DURAND, S. NOËL)**

**DELIVERED FROM THE BENCH BY:** LÉTOURNEAU J.A.

**DATED:** April 4, 2003

**APPEARANCES:**

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Lieutenant-Commander Martin FOR THE RESPONDENT  
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