

**Citation:** *R. v. Corporal J. Wells*, 2004CM10

**Docket:** F200410

**STANDING COURT MARTIAL  
CANADA  
ONTARIO  
CANADIAN FORCES BASE BORDEN**

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**Date:** 14 January 2004

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**PRESIDING: COMMANDER P.J. LAMONT, M.J.**

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**HER MAJESTY THE QUEEN**

**v.**

**CORPORAL J. WELLS  
(Accused)**

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**FINDING**

**(Rendered orally)**

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[1] Corporal Wells, this court finds you guilty on charge number one and enters a stay of proceedings with respect to charge number two. You may break off and be seated beside your counsel.

[2] The accused, Corporal James Wells, is charged with two charges under the Code of Service Discipline. One charge of willfully or negligently making a false entry in a document signed by him and required for official purposes and one charge of knowingly furnishing false information in relation to his enrolment. The particulars of the two offences are identical and allege that at the time of his enrolment in the Regular Force in May of 2002, he indicated on a form CF92, that he had no involvement with the police that might require him to appear in court, whereas, in fact, he had outstanding charges dating from December 6th, 2001, that required him to appear before a civilian court.

[3] Corporal Wells testified in his own defense. He stated that at the time he made and signed the document CF92, he did not believe that he was required to disclose the existence of the outstanding charges.

[4] The prosecution at courts martial, as in a criminal prosecution in any Canadian court, assumes the burden to prove the guilt of the accused beyond a

reasonable doubt. In a legal context this is a term of art with an accepted meaning. If the evidence fails to establish the guilt of the accused beyond a reasonable doubt the accused must be found not guilty of the offence. That burden of proof rests upon the prosecution and it never shifts. There is no burden upon the accused to establish his or her innocence. Indeed, the accused is presumed to be innocent at all stages of a prosecution unless and until the prosecution establishes by evidence that the court accepts, the guilt of the accused beyond a reasonable doubt.

[5] Reasonable doubt does not mean absolute certainty, but it is not sufficient if the evidence leads only to a finding of probable guilt. If the court is only satisfied that the accused is more likely guilty than not guilty that is insufficient to find guilt beyond a reasonable doubt and the accused must therefore be found not guilty. Indeed the standard of, beyond a reasonable doubt, is much closer to absolute certainty than it is to a standard of probable guilt. But reasonable doubt is not a frivolous or an imaginary doubt. It is not something based upon sympathy or prejudice. It is a doubt based upon reason and common sense that arises from the evidence or the lack of evidence. The burden of proof beyond a reasonable doubt applies to each of the elements of the offence charged. In other words, if the evidence fails to establish each element of the offence charged beyond a reasonable doubt the accused is to be found not guilty.

[6] The elements of the offence of willfully or negligently making a false entry in a document required for official purposes are agreed by counsel before me to be as follows: one, the identification of the accused as the offender; two, the date and place of the offence as particularized; three, jurisdiction over the accused; four, a false entry in a document; five, that the document is signed by the accused; six, that the document is required for official purposes; seven, an intention on the part of the accused to author the document; and eight, a culpable state of mind, either willfulness or negligence, with respect to the falsity of the document.

[7] Corporal Wells attended the Canadian Forces Recruiting Office in Hamilton, Ontario, in January of 2001. He had previous service in the Regular Force and at the time of his attendance was a member of the Reserve Force. He wished to rejoin the Regular Force as a military policeman having previously served as an MP between 1991 and 1995.

[8] As part of the enrolment process, Corporal Wells re-attended the recruiting office on February 15, 2001, and was interviewed by Captain Muth. Captain Muth made an assessment of Corporal Wells' suitability for enrolment into the Regular Force and his competitiveness for his chosen program. In addition to the various tests, including medical and fitness, as well as record checks all made as part of the enrolment process, Captain Muth conducted an interview of Corporal Wells concerning his personal circumstances. Captain Muth asked Corporal Wells at the February 15, 2001, interview whether he currently had any legal obligations that would preclude his

enrolment in the Canadian Forces. In order to explain to Corporal Wells what he was talking about, Captain Muth gave the following examples of items that might preclude the enrolment of Corporal Wells; such as, outstanding charges, pending court appearances, jury duty or duties as a witness. Corporal Wells replied that he had no such obligations and at the time he made this statement to Captain Muth the statement was accurate.

[9] Corporal Wells' application to rejoin the CF appears to have languished for many months for reasons that are not detailed in evidence before me. Then, on December 6 of 2001, Corporal Wells was charged by the Waterloo Regional Police with impaired operation of a motor vehicle and operating a motor vehicle with a blood alcohol level exceeding 80 milligrams per cent contrary to the *Criminal Code*. As a result, he was required to appear before the criminal court in Waterloo, Ontario.

[10] Corporal Wells persisted with his application to rejoin the CF. Indeed, as appears from Exhibit 4, an information form logging the enrolment process, some five days after he was charged with impaired driving and driving over .08, Corporal Wells telephoned the recruiting office inquiring as to the status of his file.

[11] On May 15th 2002, the recruiting process finally concluded with a meeting between Corporal Wells and Corporal Letemplier at the recruiting office in Hamilton. On that date, Corporal Wells completed a form, CF92, entitled "PRE-ENROLMENT/TRANSFER STATEMENTS OF UNDERSTANDING AND UPDATE," Exhibit 6. Corporal Wells signed this document in several places. Under the portion headed "UPDATE", Corporal Wells was asked to, "Indicate below any changes in the information which you have previously provided to the Recruiting Unit or medical personnel in the categories listed. If no changes simply mark N/C (for no change) beside each item."

[12] The update sought any new information concerning several areas: education; medical fitness; change in marital status; debts; and "INVOLVEMENT WITH POLICE - (Any event that might require you to appear in court or be called as a witness)". Beside each item, the accused indicated in handwriting "N/C" for no change and then he signed the update portion of the document.

[13] On May 15th, 2002, at the time Corporal Wells dealt with Corporal Letemplier and completed the CF92 form, the criminal charges were still outstanding. They were finally disposed of in September of 2003. As a consequence, I have no difficulty concluding that the statement of Corporal Wells in the CF92 form that there was "no change" in the information he had previously given to Captain Muth concerning his legal obligations was a false entry by Corporal Wells in a document signed by him that was required for official purposes; that is, the enrolment of Corporal Wells into the CF.

[14] As to the matter of jurisdiction, the evidence is clear that Corporal Wells was a member of the Reserve Force at the time he attended the recruiting office in Hamilton for the purpose of enrolling in the Regular Force. Section 60 of the National Defense Act provides, at paragraph 60(1)(c)(viii), that a member of the Reserve Force is subject to the Code of Service Discipline when the member is "in or on any ... defense establishment ..." such as the Canadian Forces Recruiting Center in Hamilton.

[15] I agree with counsel for Corporal Wells that if jurisdiction exists with respect to charge number one it is also present in respect of charge number two.

[16] Corporal Wells gave evidence in this trial. He has a good memory of his meeting with Captain Muth in February of 2001 and he agrees that Captain Muth's evidence as to their conversation at the meeting is accurate. Corporal Wells recalls taking an aptitude test as part of the enrolment process and discussing the results with Captain Muth. He also recalls discussing with Captain Muth his prior service in the Canadian Forces and the reasons why he wished to rejoin the CF. The fact that Corporal Wells presently has a good recollection of his meeting with Captain Muth in February of 2001 leads me to believe that he must have had a good recollection of the substance of that meeting, including the discussion of the circumstances, such as legal obligations to the civilian courts, that might preclude his enrolment when he completed the CF92 form with Corporal Letemplier on May 15 of 2002.

[17] Corporal Wells testified that he considered Captain Muth's discussion of legal obligations to relate to his legal obligations with respect to the financial support of his children as a result of his divorce. He testified that he does not recall Captain Muth giving examples of circumstances that might preclude his enrolment in the Regular Force, such as outstanding charges before the civilian courts.

[18] I accept the evidence of Captain Muth that he did, indeed, explain to Corporal Wells what he meant by legal obligations that might preclude the enrolment of Corporal Wells and I conclude that Corporal Wells understood, as of February 2001, the importance of full disclosure of outstanding legal obligations as part of the enrolment process. I do not accept the evidence of Corporal Wells that he was not required to disclose his pending charges because he intended to fight the charges in court and he had not yet been found guilty. The CF92 form refers to "INVOLVEMENT WITH POLICE" in general terms and is not limited to convictions made since the matter of legal obligations was last discussed with the recruiting officer. Corporal Wells himself now appears to accept that the CF92 form was clear as to what was required of him. His evidence, both standing by itself and in the context of all the evidence, does not raise a reasonable doubt as to the falsity of the entry in the CF92 form.

[19] I am not satisfied that the accused willfully made the false entry. He testified and I accept that he was excited about rejoining the CF at the time of completing the CF92 form and he signed quickly. But I am satisfied beyond a

reasonable doubt that he was negligent in that he fell short in a marked and substantial way of the standard expected of a reasonable person in the circumstances of the accused in completing the CF92 form. Corporal Wells testified that he now understands that the CF92 form was clear in requiring the disclosure of his pending charges. I find nothing in the evidence to support a reasonable conclusion that he has only recently come to this realization. He must have appreciated at the time, if he had given the matter the thought and attention that it deserved, that the CF92 form required him to disclose the existence of his civilian charges. He was therefore at least negligent when he indicated on the CF92 form that there was "no change" from the information that he had previously given to Captain Muth concerning outstanding legal obligations.

[20] As a result, I am satisfied beyond a reasonable doubt that the false entry made by the accused in the form CF92 was done negligently and the accused is therefore guilty of charge number one. As regards charge number two, of knowingly furnishing false information on enrolment, this offence has one element that is not an element of the offence in charge number one and that is that the false information must be in relation to enrolment. There is no doubt on the evidence in this case that the false information was furnished in the course of the enrolment of Corporal Wells into the Regular Force and was therefore furnished in relation to enrolment. Corporal Wells is accordingly guilty of the offence in charge number two, but since it is charged in the alternative to charge number one on which I have already made a finding of guilty, I direct a stay of proceedings with respect to charge number two in accordance with QR&O 112.05(19)(f)(i)(A).

COMMANDER P.J. LAMONT, M.J.

Counsel:

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