**COURT MARTIAL**

**Citation:** *R v Wilks*, 2013 CM 3032

**Date:** 20131115
**Docket:** 201251

Standing Court Martial

Asticou Courtroom
Gatineau, Quebec, Canada

**Between:**

**Her Majesty the Queen**

- and -

**Petty Officer 2nd Class J.K. Wilks, accused**

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

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**RESTRICTION ON PUBLICATION**

**By court order made under section 179 of the *National Defence Act*, section 486.4 and 486.5 of the *Criminal Code of Canada*, information that could identify the complainants and victims, C.D., K.M., J.L., K.D., R.G., J.R., M.P., A.B., G.C., A.P., W.G., K.R., T.W., S.M., and A.W. shall not be published in any document or broadcast or transmitted in any way.**

**REASONS FOR FINDING**

(Orally)

INTRODUCTION

[1] Petty Officer 2nd Class Wilks is charged with ten service offences punishable under section 130 of the *National Defence Act* for sexual assault contrary to section 271 of the *Criminal Code*, and with sixteen offences punishable under section 130 of the *National Defence Act* for breach of trust contrary to section 122 of the *Criminal Code*.

[2] These charges are essentially about the behaviour of the accused while he conducted recruit medical examinations or physical health examinations on 16 different female complainants who were part, or about to be part, of the Canadian Forces as Reservists or Regular Force members. They relate to events that would have occurred between 2003 and 2007 in Thunder Bay, and the period of 2008 to 2009 in London, province of Ontario, while Petty Officer 2nd Class Wilks was acting in those locations as a medical technician.

THE PROCEEDINGS

[3] This trial started on 25 September 2013 and final addresses were heard on 18 October 2013. At the very beginning of the proceedings and prior to asking the accused to plead guilty or not guilty to the charges, the prosecution withdrew, pursuant to its authority under subsection 165(2) of the *National Defence Act*, the 4th, 12th and 13th charges on the charge sheet, leaving the court to deal with a total of 26 charges.

[4] Also, further to an application made by the prosecution pursuant to section 188 of the *National Defence Act*, the court made an order for the amendment of the 6th and 23rd charge, considering that it was a technical defect that would not affect the substance of the charge and that the accused would not be prejudiced by it.

[5] Proceedings began in Asticou Courtroom in Gatineau, province of Quebec, but further to a change of venue joint application, part of the proceedings was then done in London, province of Ontario. The prosecution presented a total of 19 witnesses, which included 16 complainants.

[6] While in London, on 9 October 2013, at the close of the prosecution's case, the accused presented a motion of *non-prima facie* with regard to three charges for sexual assault, 10, 14, and 17; and five charges for breach of trust, 9, 11, 15, 16, and 18 on the charge sheet on the basis that the prosecution had failed to introduce before this Standing Court Martial any evidence concerning the *mens rea* of both types of offences laid under section 130 of the *National Defence Act*. Also, the same motion was presented for a breach of trust charge concerning the 20th charge on the basis that the prosecution had failed to introduce any evidence concerning the fact that the accused breached the standard of responsibility and conduct demanded of him by the nature of the office. The day after, I dismissed this application.

[7] Petty Officer 2nd Class Wilks presented a defence and he testified on his own behalf, which makes this trial mainly a matter of credibility to be assessed by the court in accordance with the principles set out by the Supreme Court of Canada in the decision of *R. v. W.(D.)* [1991] 1 S.C.R. 742.

[8] Further to the close of its case, the prosecution contemplated the possibility of rebuttal evidence, then the trial was moved back to the Asticou courtroom where I heard and granted an application by prosecution to introduce rebuttal evidence. One addition-

al witness was heard, then on 18 October 2013, the court heard final addresses from both parties.

[9] At the beginning of the trial, and also throughout the proceedings, the court issued a publication ban order pursuant to its authority under section 179 of the *National Defence Act*. Then, pursuant to section 486.4 of the *Criminal Code*, the court issued an order involving nine complainants, and pursuant to section 486.5 of the *Criminal Code*, the court issued an order involving six complainants, leaving only one complainant not covered by such order.

THE EVIDENCE

[10] The evidence before this court martial is composed essentially of the following facts:

a. the 21 witnesses heard in the order of their appearance before the court, the testimony of K.R., C.D., R.G., S.M., Warrant Officer Robertson, J.R., M.P., K.M., G.C., A.B., Master Warrant Officer Thibeault, Major Netterfield, T.W., A.W., W.G., A.P., J.L., K.D., Miss Kristen Harms, Petty Officer 2nd Class Wilks, the accused in these proceedings, and Lieutenant-Colonel Burke;

b. Exhibits 3-1 to 3-16, a medical document concerning each of the 16 complainants involved in this matter. These documents were entered in evidence by consent;

c. Exhibit 4, Member's Personnel Record Resume (MPRR) of Petty Officer 2nd Class Wilks;

d. Exhibit 5, a copy of the Canadian Forces Health Services Instruction 4030-72 on Patients Right to Privacy Protection and Choice of Physician;

e. Exhibit 6, a copy of Chapter 27-02 of the Canadian Forces Medical Orders on Patients Right to Privacy Protection and Choice of Physician;

f. Exhibit 7, a copy of the Canadian Forces Health Services Instruction 4000-28 on Periodic Health Examination;

g. Exhibit 8, a copy of Chapter 27-18 of the Canadian Forces Medical Orders on Periodic Health Examination;

h. Exhibit 9, a copy of Chapter 27-17 of the Canadian Forces Medical Orders on Enrolment Medical Procedure;

i. Exhibit 10, a copy of the Medical Directive 3/91 dated 19 December 1991;

j. Exhibit 11, a copy of the Medical Assistant QL6 Course plan of the Canadian Forces Medical Service School, CFB Borden, dated January 2005;

k. Exhibit 12, a copy of pages 328 to 335 of, "A Guide to Physical Examination and History Taking," Fifth Edition, written by Barbara Bates, M.D.;

l. Exhibit 13, a copy of an email from Master Warrant Officer Thibeault, dated 2 November 2009, and for which the subject is Medical Examination/Examen medical;

m. Exhibit 14, a copy of an email from Master Warrant Officer Thibeault, dated 29 April 2009, and for which the subject is Genital exam/examen parties génitales;

n. Exhibit 15, a copy of an email from Master Warrant Officer Corriveau, dated 12 April 2007, and for which the subject is Medical Exam Procedure with a document attached to it;

o. Exhibit 16, eight Medical Examination Procedures forms signed by eight different complainants;

p. Exhibit 17, a copy of the Personnel Evaluation Report (PER) of Petty Officer 2nd Class Wilks for the reporting period of 1 April 2006 to 31 March 2007;

q. Exhibit 18, a copy of five PERs of Petty Officer 2nd Class Wilks going from the reporting period of 1 April 2001 to 31 March 2002 to the reporting period of 1 April 2005 to 31 March 2006;

r. admissions made by the accused in accordance with paragraph 37(b) of the *Military Rules of Evidence*, for the purpose of dispensing with proof, any fact the prosecutor must prove, and more specifically:

    i. the identity, the date and the place in regards of the 26 charges before the court;

    ii. Petty Officer 2nd Class Wilks completed the training plan that was put before the court (Medical Assistant QL6 Course plan, Exhibit 11) and was qualified as a medical assistant pursuant to that training plan.

s. the evidence provided by one complainant as being used as similar facts evidence toward charges involving other complainants, to the exclusion of the one provided by S.M., for the limited purpose on all charges before this court to infer specifically from that evidence that Petty Officer 2nd Class Wilks used his position of trust and authority as a medical technician in the context of a medical examination as an inducement to obtain consent from each complainant to proceed with a breast exam; and

t. the judicial notice taken by the court of the facts in issue under Rule 15 of the *Military Rules of Evidence*;

THE FACTS

[11] Petty Officer 2nd Class Wilks is now a former Canadian Forces member, who joined the Canadian Forces in April 1984 in the trade of medical assistant. He qualified first in that trade in 1987 by doing his Medical Assistant Qualification 5A Course and was promoted on the same year at the rank of leading seaman.

[12] Gaining experience in his trade through various medical environments and postings such as in Germany, Ottawa and Halifax, he was promoted to the appointment of master seaman in 1991.

[13] In 1998, he did his Medical Assistant Qualification 6A course, phase 1 and 2. He then was posted in 2000 to the 1 Canadian Field Hospital in Petawawa and promoted in 2001 to the rank of Petty Officer 2nd Class, which is the rank he is deemed to have for the purpose of these proceedings.

[14] In that same year, he was posted to the Canadian Forces Recruiting Center (CFRC) Detachment in Thunder Bay, province of Ontario, where it is alleged that 16 out of the 26 charges on the charge sheet involving ten complainants would have been committed.

[15] In the summer of the year 2007, he would have been posted to 32 Canadian Forces Health Services Center Detachment in London, province of Ontario, where it is alleged that ten out of the 26 charges on the charge sheet involving six complainants would have been committed.

[16] On 27 April 2011, he was released from the Canadian Forces Regular Force on medical grounds.

[17] While at CFRC Detachment Thunder Bay from the year 2001 to the year 2007, Petty Officer 2nd Class Wilks was there to conduct enrolment medical procedures for Regular Force and Primary Reserve Force applicants. It consisted of three parts, which were the preliminaries, Part I; the history and physical examination, Part II; and the approval, Part III. Essentially, Part I will be to ensure that appropriate portions of the

medical examination enrolment form be filled out by the candidate. Then a physician or a physician's assistant for candidates in good health would proceed with the review of the medical and family history, conduct the physical examination of the candidate and fill out the medical examination enrolment form in accordance with observations made. Finally, the Recruiting Zone Medical Officer will review the form and provide approval concerning the candidate's fitness for enrolment.

[18] Absent of any physician, physician's assistant or nurse at CFRC Detachment Thunder Bay, then it was the duty of Petty Officer 2nd Class Wilks to perform the history and physical examination of the candidates despite his trade as a medical assistant.

[19] According to applicable directives and orders, and pursuant to the testimony of Master Warrant Officer Thibeault, in the case of female applicants, breast examination shall not be done for enrolment medical procedure and more specifically while performing physical examinations for such purpose.

[20] Petty Officer 2nd Class Wilks clearly denied that while he was in Thunder Bay, he performed breast examinations on A.B., J.R. and C.D. and also visual examination of the breast on T.W., as those complainants reported it, while proceeding to their recruit medical examination. Concerning the latter, he specified that she accidentally lowered her gown and exposed her breast for few seconds but he did not perform on her any breast examination.

[21] Also, during his posting in Thunder Bay, he was tasked from the very beginning with the responsibility of the local medical detachment medical inspection room (MIR), which means that he would be in charge of the sick parade, the medical examination of serving members, verification of immunization and review of medical records.

[22] One of the things he had to perform was the periodic health examination (PHE) of serving members. Essentially, a system of periodic medical examinations in the Canadian Forces requires that an individual medical examination be conducted at regular intervals over the entire career of Canadian Forces members. A medical questionnaire must be filled out by the member and a history and physical examination will be performed by a medical officer (MO), unless delegated to a physician's assistant (PA). Despite being delegated to a PA, the final responsibility for the PHE remains with the MO.

[23] In accordance with applicable directives and orders, a breast examination during PHE is scheduled to be performed every two years from the age 40 onwards. Medical officers or suitably trained nursing officers shall teach a female member the technique of breast self-examination at the first PHE and verify during each physical examination that it is being carried out properly.

[24] Petty Officer 2nd Class Wilks considered that he was sufficiently trained as a medical assistant to conduct a breast examination during PHE, considering that it was a topic covered on his medical assistant QL6A course and that he did one under supervision and the mentorship of a physician in Halifax following his QL6A course.

[25] Mainly, he understood from his training and the mentorship he had during his training that it was permissible and advisable, especially in a context where a woman had never had a breast exam or was not conducting self-breast exam, and in order for an early identification of any issue related to a woman's breast, to perform in those circumstances a breast exam and also teach self-breast exam. Also, he was personally convinced that such thing had to be done, considering a personal family-related issue that occurred in late 1990s.

[26] In addition, he said to the court that he was authorized initially to conduct such examination by his supervisor at the end of 2002 or the beginning of 2003, further to his own request to do so, considering the context he was working in, i.e., the total absence of any physician, physician's assistant or nurse in Thunder Bay. The said supervisor testified in court and said that he did not recall authorizing Petty Officer 2nd Class Wilks to do such a thing at the time.

[27] Petty Officer 2nd Class Wilks acknowledged that while conducting PHEs in Thunder Bay, he did perform a breast exam on, and teach self-breast exams to, K.M., M.P. and J.L. He also did a visual check of the breast on, and teach self-breast exams to A.P., W.G., and K.R. He provided handouts on self-breast exams to them.

[28] Those six complainants told the court that they were uncomfortable, embarrassed, felt discomfort and intimidated when it came to the step of having their breasts examined or visually checked by Petty Officer 2nd Class Wilks. They all said that it was short in duration. They all thought it was part of the examination and if they would have been told that it was not, they all said that they would have not authorized him to do it. However, they all said that the medical examination was performed in a professional manner and that the breast examination appeared to them as being part of the entire medical examination.

[29] He denied that he performed breast examinations on A.B., J.R., C.D. and T.W. while he did their recruit medical examinations.

[30] In April or early May 2007, he was asked by his supervisor, Major Netterfield, to come to Winnipeg for a meeting with her. Various topics were discussed, and among them, was his gruff and burly nature that made some people he examined uncomfortable; the fact that no breast examination must be conducted on recruit examinations, which he acknowledged; and also the fact that breast examinations must stop while conducting PHEs.

[31] Petty Officer 2nd Class Wilks was posted to 32 Canadian Forces Health Services Center Detachment in London in July 2007. While he was there, he conducted recruit medical examinations.

[32] He clearly denied that, while he was in London, he performed breast examinations on K.D., K.H., R.G. and G.C., and also a visual examination of the breasts of

A.W. as those complainants reported it, while proceeding to their recruit medical examination, because he did not do it for recruit medical examinations as required by orders and directives.

[33] He specified that in the case of A.W., he acknowledged that he saw her breasts but it was done inadvertently, in the sense that A.W. had no bra and she lowered the top she was wearing on her own without being asked by him.

[34] These complainants told the court that they thought the breast exam or visual examination of their breasts was part of the recruit medical exam and if they would have been told that it was not, they all said that they would have not authorized him to do so. However, they all said that the medical examination was performed in a professional manner and that the breast examination appeared to them as being part of the entire medical examination.

[35] A recruit medical examination was also done on S.M., but no breast exam was conducted, as indicated by the complainant. However, she described that Petty Officer 2nd Class Wilks' behaviour made her very uncomfortable because during the examination of her legs while she was laying down on the table, he was looking between them. Also, when she bent over to touch her toes, while in a standing position as instructed, he was positioned behind her and the gown she was wearing opened by the back and let him see all her body from the back, while she was wearing only underwear and bra. However, he totally denied the fact that he had the intent and conduct as reported by the complainant while he was performing a physical examination on her. Except for those events, she stated that the medical examination was performed in a professional manner.

## THE APPLICABLE LAW

### *Presumption of Innocence, Standard of Proof and Evidence*

[36] Before this court provides its legal analysis, it's appropriate to deal with the presumption of innocence and the standard of proof beyond a reasonable doubt, a standard that is inextricably intertwined with the principle fundamental to all criminal trials, and these principles, of course, are well known to counsel, but other people in this courtroom may well be less familiar with them.

[37] It is fair to say that the presumption of innocence is perhaps the most fundamental principle in our criminal law and the principle of proof beyond a reasonable doubt is an essential part of the presumption of innocence. In matters dealt with under the Code of Service Discipline, as in cases dealt with under criminal law, every person charged with a criminal offence is presumed to be innocent until the prosecution proves his guilt beyond a reasonable doubt. An accused person does not have to prove that he is innocent. It is up to the prosecution to prove its case on each essential element of the offence beyond a reasonable doubt.

[38] The standard of proof beyond a reasonable doubt does not apply to the individual items of evidence or to separate pieces of evidence that make up the prosecution's case, but to the total body of evidence upon which the prosecution relies to prove guilt. The burden or onus of proving the guilt of an accused person beyond a reasonable doubt rests upon the prosecution and it never shifts to the accused person.

[39] A court must find an accused person not guilty if it has a reasonable doubt about his guilt or after having considered all of the evidence. The term "beyond a reasonable doubt" has been used for a very long time. It is part of our history and traditions of justice. In *R. v. Lifchus* [1997] 3 SCR., 320, the Supreme Court of Canada proposed a model charge on reasonable doubt. The principles laid out in *Lifchus* have been applied in a number of Supreme Court and appellate courts' subsequent decisions. In substance, a reasonable doubt is not a far-fetched or frivolous doubt. It is not a doubt based on sympathy or prejudice. It is a doubt based on reason and common sense. It is a doubt that arises at the end of the case based not only on what the evidence tells the court but also on what that evidence does not tell the court. The fact that a person has been charged is no way indicative of his or her guilt, and I will add that the only charges that are faced by an accused person are those that appear on the charge sheet before a court.

[40] In *R. v. Starr* [2000] 2 SCR, 144, at paragraph 242, the Supreme Court held that:

> "... 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."

[41] On the other hand, it should be remembered that it is nearly impossible to prove anything with absolute certainty. The prosecution is not required to do so. Absolute certainty is a standard of proof that does not exist in law. The prosecution only has the burden of proving the guilt of an accused person, in this case, Petty Officer 2nd Class Wilks, beyond a reasonable doubt. To put it in perspective, if the court is convinced or would have been convinced that the accused is probably or likely guilty, then the accused would have been acquitted since proof of probable or likely guilt is not proof of guilt beyond a reasonable doubt.

[42] Now, what is evidence? Evidence may include testimony under oath or solemn affirmation before the court by witnesses about what they observed or what they did; it could be documents, photographs, maps or other items introduced by witnesses; the testimony of expert witnesses; formal admissions of facts by either the prosecution or the defence; and matters of which the court takes judicial notice.

[43] It is not unusual that some evidence presented before the court may be contradictory. Often witnesses may have different recollections of events. The court has to determine what evidence it finds credible.

[44] Credibility is not synonymous with telling the truth and a lack of credibility is not synonymous with lying. Many factors influence the court's assessment of the credibility of the testimony of a witness. For example, a court will assess a witness' opportunity to observe; a witness' reasons to remember, like, were the events noteworthy, un-

usual and striking, or relatively unimportant and, therefore, understandably more difficult to recollect? Does a witness have any interest in the outcome of the trial; that is, a reason to favour the prosecution or the defence, or is the witness impartial? This last factor applies in a somewhat different way to the accused. Even though it is reasonable to assume that the accused is interested in securing his acquittal, the presumption of innocence does not permit a conclusion that an accused will lie where that accused chooses to testify.

[45] Another factor in determining credibility is the apparent capacity of the witness to remember. The demeanour of the witness while testifying is a factor which can be used in assessing credibility; that is, was the witness responsive to questions, straightforward in his or her answers or evasive, hesitant or argumentative? Finally, was the witness' testimony consistent with itself and with the uncontradicted facts?

[46] Minor discrepancies, which can and do innocently occur, do not necessarily mean that the testimony should be disregarded. However, a deliberate falsehood is an entirely different matter. It is always serious and it may well taint a witness' entire testimony.

[47] The court is not required to accept the testimony of any witness except to the extent that it has impressed the court as credible; however, a court will accept evidence as trustworthy unless there is a reason, rather, to disbelieve it.

[48] As the rule of reasonable doubt applies to the issue of credibility, the court is required to definitely decide in this case first on the credibility of the accused, and to believe or disbelieve his evidence. It is true that this case raises some important credibility issues and it is one of those cases where the approach on the assessment of credibility and reliability expressed by the Supreme Court of Canada in *R. v. W. (D.)* must be applied, because the accused, Petty Officer 2nd Class Wilks, testified.

[49] As established in that decision at page 758, the test goes as follows:

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

[50] This test was enunciated mainly to avoid for the trier of facts to proceed by establishing which evidence it believes: the one adduced by the accused or the one presented by the prosecution. However, it is also clear that the Supreme Court of Canada reiterated many times that this formulation does not need to be followed word by word as some sort of incantation (see *R. v. S (W D.)*, [1994] 3 SCR 521, at page 533).

[51] The pitfall that this court must avoid is to be in a situation appearing or in reality to choose between two versions in its analysis. As recently established by the Supreme Court of Canada in its decision of *R. v. Vuradin*, 2013 SCC 38, at paragraph 21:

> The paramount question in a criminal case is whether, on the whole of the evidence, the trier of fact is left with a reasonable doubt about the guilt of the accused: *W (D)*, at p. 758. The order in which a trial judge makes credibility findings of witnesses is inconsequential as long as the principle of reasonable doubt remains the central consideration. A verdict of guilt must not be based on a choice between the accused's evidence and the Crown's evidence: *R. v. C.L.K*, 2008 SCC 2, [2008] 1 S.C.R. 5, at paras. 6-8. However, trial judges are not required to explain in detail the process they followed to reach a verdict: see *R. v. Boucher*, 2005 SCC 72, [2005] 3 S.C.R. 499, at para. 29.

*Breach of Trust*

[52] Section 122 of the *Criminal Code* reads as follows:

> Every official who, in connection with the duties of his office, commits fraud or a breach of trust is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years, whether or not the fraud or breach of trust would be an offence if it were committed in relation to a private person.

[53] As confirmed by the Court Martial Appeal Court at paragraph 5 of its decision in *R v Bradt*, 2010 CMAC 2, the essential elements of breach of trust for an offence laid under section 122 of the *Criminal Code* are:

a. the identity of the accused as the offender;

b. the date and place of the offence;

c. the accused was an official;

d. the accused was acting in connection with the duties of his office;

e. the accused breached the standard of responsibility and conduct demanded of him by the nature of the office;

f. the conduct of the accused represented a serious and marked departure from the standards expected of an individual in the accused's position of public trust; and

g. the accused acted with the intention to use his or her public office for a purpose other than the public good, for example, for a dishonest, partial, corrupt or oppressive purpose.

[54] The purpose of this criminal offence was clearly stated by the Supreme Court of Canada in its decision of *R. v. Boulanger*, 2006 SCC 32, in the following terms at paragraph 52:

> The purpose of the offence of misfeasance in public office, now known as the s. 122 offence of breach of trust by a public officer, can be traced back to the early authorities that recognize that public officers are entrusted with powers and duties for the public benefit. The public is entitled to expect that public officials entrusted with these powers and responsibilities exercise them for the public benefit. Public officials are therefore made answerable to the public in a way that private actors may not be. This said, perfection has never been the standard for criminal culpability in this domain; "mistakes" and "errors in judgment" have always been excluded. To establish the criminal offence of breach of trust by a public officer, more is required. The conduct at issue, in addition to being carried out with the requisite *mens rea*, must be sufficiently serious to move it from the realm of administrative fault to that of criminal behaviour. This concern is clearly reflected in the seriousness requirement of *Sham Kwok Sher* and the *Attorney General's Reference*. What is required is "conduct so far below acceptable standards as to amount to an abuse of the public's trust in the office holder" (*Attorney General's Reference*, at para. 56). As stated in *R. v. Creighton*, [1993] 3 S.C.R. 3, "[t]he law does not lightly brand a person as a criminal" (p. 59).

[55] An official is a person who has a position or is employed in government or in a government department or ministry, or has been appointed to perform a public duty. The official may be elected to his or her position or appointed to the position. This last essential question has to do with the accused's state of mind; what he meant to do when he committed a breach of trust.

[56] Also, there must be some link between the breach of trust the accused committed and the duties that he performs in his employment. The accused must commit the breach of trust during the course of carrying out the duties he is required to perform as part of his employment.

[57] There is a breach of trust when the accused does or fails to do something contrary to a duty imposed upon him by law, regulation, his contract of employment, or by a directive given or guideline imposed for the performance of his duties. A duty imposed in any of these ways is enough.

[58] For there to be a breach of trust, the accused must receive a personal benefit either directly, as the payment of money, or other advantage, or indirectly as an advantage to an accused's spouse or other family member as an example. There does not have to be any real prejudice or loss to the public or the government because of an accused's conduct.

[59] Concerning the serious and marked departure required to be proved by the prosecution, the Supreme Court of Canada said in *Boulanger* at paragraph 54:

> The test to be met in the inquiry is analogous to the test for criminal negligence. As in cases of breach of trust by a public officer, it became necessary in criminal negligence cases to distinguish conduct sufficient to attract criminal sanction from less serious forms of conduct meriting civil or administrative sanction. ... Similarly, the public official's conduct must represent a "marked" departure from the standards expected of an individual in the accused's position of public trust.

[60] The prosecution must also prove beyond a reasonable doubt that the accused intended to commit a breach of trust in connection with his official duties.

[61] To determine an accused's state of mind, what he intended or meant to do, the court should consider what he did or did not do, how he did or did not do it, and what he said or did not say. It should look at an accused's words and conduct before, at the time, and after he committed the breach of trust. The court takes into account, for example, the nature of an accused's conduct, the accused's function with the government and the relationship between the accused's conduct and his duties, among other factors. All these things, and the circumstances in which they happened, may shed light on an accused's state of mind at the time he committed a breach of trust. They may help the court to decide what the accused intended; what he meant to do.

*Sexual Assault*

[62] Section 271 of the *Criminal Code* reads, in part, as follows:

> 271. (1) every one who commits a sexual assault is guilty of
>
> (*a*) an indictable offence and is liable to imprisonment for a term not exceeding ten years;

[63] In *R. v. Chase*, [1987] 2 SCR 293, at page 302, Judge Mclntyre provided the definition of a sexual assault:

> Sexual assault is an assault within any one of the definitions of that concept in s. 244(l) [now section 265(l)] of the *Criminal Code*, which is committed in circumstances of a sexual nature, such that the sexual integrity of the victim is violated.

[64] Paragraph 265(l) of the *Criminal Code* reads, in part, as follows:

> 265. (1) A person commits an assault when
>
> (*a*) without the consent of another person, he applies force intentionally to that other person, directly or indirectly;

[65] In *R. v. Ewanchuck*, [1999] 1 SCR 330, it was established that a conviction for sexual assault requires proof beyond reasonable doubt of two basic elements: that the accused committed the *actus reus*; and that he had the necessary *mens rea*.

[66] The *actus reus* of assault is unwanted sexual touching and is established by the proof of three elements: touching; the sexual nature of the contact; and, the absence of consent.

[67] Consent involves the complainant's state of mind. Is it the voluntary agreement of the complainant that the accused do what he did in the way in which he did it and when he did it? In other words, did the complainant want the accused to do what he did? A voluntary agreement is one made by a person, who is free to agree or disagree,

of his or her own free will. It involves knowledge of what is going to happen and voluntary agreement to do it or let it be done.

[68] Just because the complainant did not resist or put up a fight does not mean that she consented to what the accused did. Consent requires knowledge on the complainant's part of what is going to happen and a decision by her, without the influence of force, threats, fear, fraud or abuse of authority, to let it occur. Absence of such voluntary agreement may come from situations as the one illustrated at paragraphs 265 (3)(d) and 273.1(2)(c) of the *Criminal Code*, which both refer to the exercise or abuse of the authority by the accused.

[69] The *mens rea* is the intention to touch, knowing of, or being reckless of or wilfully blind to, a lack of consent, either by words or actions, from the person being touched and it contains two elements: intention to touch; and knowing of, or being reckless of or wilfully blind to a lack of consent on the part of the person touched.

[70] Then, the prosecution had to prove the following essential elements beyond a reasonable doubt: the prosecution had to prove the identity of the accused and the date and place as alleged in the charge sheet. The prosecution also had to prove to following additional elements: the fact that Petty Officer 2nd Class Wilks used force directly or indirectly against the complainant; the fact that he used intentionally the force against the complainant; the fact that the complainant did not consent to the use of force; that Petty Officer 2nd Class Wilks knew, or was reckless of or wilfully blind to, a lack of consent on the part of the complainant; and the fact that the contacts made by him on the complainant were of a sexual nature.

[71] Having instructed myself as to the presumption of innocence, the reasonable doubt, the onus and the required standard of proof and the essential elements of the offences, I will now turn to the questions in issue put before the court and address the legal principles.

## ANALYSIS

### *Common Essential Elements*

[72] As a matter of fact, through admissions by the defence counsel made on behalf of the accused in accordance with paragraph 37(b) of the *Military Rules of Evidence*, for the purpose of dispensing with proof any fact the prosecutor must prove, Petty Officer 2nd Class Wilks partially admitted some incriminating facts in respect of the 26 charges laid against him, and more specifically: his identity as the offender, the place and the date.

[73] Consequently, the court considers that the prosecution has discharged this burden of proof beyond a reasonable doubt in regard to the essential elements about the identity, date and place for the 26 charges on the charge sheet, except for the date concerning the 5th and 6th charge.

[74] The defence counsel said to the court that regarding those charges, he was not opposed to a special finding of the court pursuant to section 138 of the *National Defence Act* concerning the date on both charges. Essentially, the particulars of the 5th and 6th charge refer to the date of 13 May 2005, while the evidence adduced by the prosecution reveals something different for the date and the month, but not the year. The witness, J.R., testified that she had her recruit medical examination in the spring of 2005 and the report on physical examination on enrolment filed as Exhibit 3-3 indicates that the date of examination was 26 April 2005. The court recognizes that this fact differs materially from the facts alleged in the particulars of both charges and, as stated by defence counsel, the difference between the facts proved and the facts alleged in the statement of particulars has not prejudiced the accused person in his defence. Then, it is the court's conclusion that the court can make a special finding of guilty if other essential elements of both those charges are proved beyond a reasonable doubt.

[75] Now, the court is applying the test enunciated in the Supreme Court decision of *R. v. W. (D.)*, in order to determine if it can find any reason in the evidence considered as a whole to disbelieve the accused in his testimony. The court will make this assessment, first with the breach of trust charges and second with the sexual assault charges.

[76] Regarding the breach of trust charges, which involve 16 charges (2nd, 3rd, 6th, 8th , 9th, 11th, 15th, 16th, 18th, 19th, 20th, 22nd, 23rd, 25th, 27th and 29th charge), through the testimony of Petty Officer 2nd Class Wilks, confirming the evidence of the 16 complainants, Major Netterfield and Lieutenant-Colonel Burke, the essential elements concerning that the accused was an official and he was acting in connection with the duties of his office were established by the prosecution beyond a reasonable doubt.

[77] The terms "office" and "official" are defined at section 118 of the *Criminal Code*. Members of the Canadian Forces are not employed by a public department as public servants, but they performed their work under the management and direction of the Minister of the National Defence, as indicated at section 4 of the *National Defence Act*. Then, they are part of the federal government and they work for the Canadian government. Therefore, Canadian Forces member are officials since they are persons holding an office. Petty Officer 2nd Class Wilks was an official for the purpose of all breach of trust charges.

[78] Petty Officer 2nd Class Wilks said to the court in his testimony that he was acting in a recognized trade as a medical technician posted in a position where he had to conduct and perform recruit medical examinations and physical health examinations on potential and actual serving Canadian Forces members. He said that he did so, on many people, including the ten complainants while he was posted in Thunder Bay and on the six complainants while he was posted in London. The accused never denied in his testimony that he did so, and in fact, he confirmed he did. The court concludes from this evidence that Petty Officer 2nd Class Wilks was acting in connection with the duties of his office at the time of those 16 alleged offences of breach of trust.

[79] Then, what about the credibility and reliability of the testimony provided by Petty Officer 2nd Class Wilks on this trial concerning the other essential elements of this offence? It is important to remember that his testimony must be assessed within the context of the evidence as a whole.

[80] Petty Officer 2nd Class Wilks testified in a straightforward and calm manner. He was responsive to questions. He clearly denied that he performed breast examinations on ten out of sixteen complainants who were seen in the context of a recruit examination. He acknowledged that he conducted breast examinations on complainants who were met for their physical health examination in Thunder Bay.

[81] Essentially, the court understands that Petty Officer 2nd Class Wilks thought that it was permissible and advisable to perform breast examinations on women when he conducted examinations for various reasons, first, because of his training and experience, second because of his personal opinion of the necessity of such a thing, considering a personal family-related issue, and third, because of the professional situation he was put in by his chain of command when he was posted to Thunder Bay.

[82] Petty Officer 2nd Class Wilks recognized during his testimony that he knew the orders and directives. He was then aware that a breast examination will be performed every two years from age 40 onwards, and that a Medical Officer (MO) or suitably trained Nursing Officer (NO) shall teach the technique of breast self-examination at the first PHE and verify during each physical examination that it is being carried out properly. He went further by adding that he specifically asked his supervisor how he should proceed in regard to that requirement, not being listed as an authorize person to do so and being on his own at the CFRC Detachment Thunder Bay. He reported that he was told that if he was trained to do it, then he just had to do it at the appropriate time.

[83] Interestingly enough, the six complainants, A.P., K.M., M.P., J.L., W.G. and K.R., on whom he performed breast examinations, including visual inspections in the context of a PHE, were between 21 and 31 years old. Having respected the directive on that matter, there was no requirement at all to offer or suggest the performance of a breast examination on them. Moreover, there was no previous personal health condition that would have called for going against the applicable directive. Then, it makes it difficult to understand why he would then have to do so.

[84] According to "A Guide to Physical Examination and History Taking," Exhibit 12, the menstrual period may affect the result of the breast examination and must be conducted only after a week or two further to that period. Then, as a matter of logic, it would have been important to schedule accordingly the medical appointment. Being questioned by the court specifically on that matter, Petty Officer 2nd Class Wilks mentioned that he asked patients about that but he never mentioned that the appointment had to be scheduled in accordance with that factor.

[85] Also, the way to conduct the breast examination left the court perplexed. According to "A Guide to Physical Examination and History Taking," there are two parts

to such examination. First, there is an inspection and second the palpation. The book talked about performing the palpation in the laying down position because it helps to spread the breast more evenly across the chest and make it easier to find nodules.

[86] Petty Officer 2nd Class Wilks did three incomplete breast exams by proceeding only with a visual inspection on A.P., W.G. and K.R. and did the second part of the breast exam in the sitting position with K.M., M.P. and J .L., which is not in accordance with the reference.

[87] In the case of W.G., the uncontradicted evidence disclosed that a breast examination was performed on her by a civilian physician in a health clinic unit in Thunder Bay two months prior to the PHE and that there was no concern. Knowing that she was 29 years old at the time, that it was not her first PHE, and that she had a breast examination some time before, what would have been the necessity to proceed with a breast examination on her or to proceed with a visual inspection of her breasts only for five to ten seconds as he said? This situation remained today unexplained to the court by the accused.

[88] Petty Officer 2nd Class Wilks also told the court that he took patient's right to privacy very seriously. However, he had an inconsistent approach with patients in the way they were dressed. Usually, the women will keep their bra and underwear and should wear shorts and t-shirt. A gown was made available to replace the t-shirt.

[89] Some were dressed for the exam with shorts and t-shirt; some with underwear, bra and gown; some with underwear and gown only. As a medical assistant, dignity of a patient being of first concern, it is difficult to understand why he took different approaches with different patients and why he did not have a systemic approach on this issue. Also, sometimes the gown would be open by the back and some other times by the front.

[90] It is true that Petty Officer 2nd Class Wilks was posted at CFRC Detachment Thunder Bay without having the benefit of having a physician, a nurse or a physician's assistant to help him perform some part of his job. Being on his own, he was in a situation where he could be considered in some ways as a physician's assistant, having to perform medical exams of a different nature.

[91] The court understands that he was left on his own as a physician's assistant would be to perform the duties he had to do. In that way, it is true that he could perform medical exams. However, the court also understands from the evidence that he could do so on candidates and service members in good health only. His training and experience would not allow him to deal with situations where patients would present some problems. He had to refer them to a physician.

[92] It is hard to believe that because of some personal belief, it would allow medical personnel to approach, examine and treat patients in accordance with their own personal

belief. Such an attitude would not allow, also, to proceed contrary to the directives and orders in place.

[93] Petty Officer 2nd Class Wilks had some training on the examination of woman's breast on his Medical Assistant QL6A Course. However, this training was to provide some familiarization with the concept of breast examinations, not to prepare medical assistants to do so, knowing that they are not authorize to do it; nor the fact that having performed a breast examination once under the mentorship of a physician would constitute a valid authorization to perform such a thing. At the most, it provided a better understanding of that concept to the accused by having some practical knowledge of it.

[94] Those things make it very hard to believe Petty Officer 2nd Class Wilks' testimony that those factors would have authorized him to conduct a breast examination during PHE in contravention of directives and orders he knew.

[95] Also, the court does not believe him when he said that Major Burke authorized him to proceed to breast examinations during PHE. It is clear that he did not receive any direction on that matter by that person. It is hard to belief that such an important thing would have been settled during a quick meeting without any other formal approval. If the accused represented to Major Burke that he was trained to do so, then he misled that person who would have provided such authorization or delegation.

[96] The enrolment medical examination is done to determine suitability for enrolment and to assist in the initial military occupation assignment. The applicant should meet the common enrolment medical standards in order to be enrolled and begin his career with the Canadian Forces. It is clear from medical policies that women's breast and gynaecologic examinations are not part of that the recruit examination unless deemed necessary. If so, then the candidate will be referred to a physician.

[97] Petty Officer 2nd Class Wilks denied that he performed breast examinations, including just visual inspections, for enrolment medical examinations concerning nine of the complainants, A.B., J.R., C.D., T.W., K.D., K.H., R.G., G.C. and A.W., and that nothing unusual happened for one complainant, S.M., for which he did not perform any breast examination as confirmed by the latter. In his testimony before the court, he told that he followed the directives and orders on that issue.

[98] The court finds it difficult to believe that despite the fact that the accused knew that he could not perform breast examinations for PHE, except in specific circumstances that were not met in the present case, or recruit medical examinations, he relied on some reasons to have his own understanding to do it for PHE, but not for recruit medical examination. Essentially, the testimony of Petty Officer 2nd Class Wilks is to the effect that he had double standards. Such an approach does not make any sense. Why do breast examinations for women going through a PHE when they do not qualify for it because of their age and medical history pursuant the orders and directives, and not do it for women under the same circumstances going through a recruit medical examination?

Position, training, experience and personal belief would have been sufficient to do it in both types of medical examinations, according to the accused's logic.

[99] The court finds also hard to believe the accused when he said that T.W. and A.W. both inadvertently lowered their bra while undergoing their recruit medical examination and it looks more like a convenient thing to say that it happened in the circumstances than being a coincidence.

[100] The testimony of Petty Officer 2nd Class Wilks disclosed that he did not have a systemic approach with patients, except for one thing: the chaperone. Interestingly, his lawyer had to prompt the issue with all the complainants by reminding them that most of them signed an information form about it. The accused explained that he raised that issue with all of them, while the evidence disclosed that most of them did not remember about it, without denying that it could have been discussed. At the end, having considered the evidence as a whole, the testimony of the accused is not conclusive on that issue. It does not seem that he really raised the issue verbally but that he assumed that they knew about it.

[101] Then, applying the test enunciated in the Supreme Court decision of *R. v. W. (D.)*, and having considered the evidence introduced before this court as a whole, it is the opinion of the court that the accused's evidence must be disbelieved about the fact the he did not breach the standard of responsibility and conduct demanded of him by the nature of the office; the fact that his conduct did not represent a serious and marked departure from the standards expected of an individual in the accused's position of public trust; and, that he did not act with the intention to use his public office for a purpose other than the public good, for example, for a dishonest, partial, corrupt or oppressive purpose.

[102] However, regarding the charge involving S.M., the court must say that there is nothing in the testimony of the accused that makes the court disbelieved it. In fact, he did not say much about that charge other than commenting about the form used to report the examination.

[103] Now the court is turning itself to the second step of the test enunciated in the Supreme Court decision of *R. v. W. (D.)*. Despite the court's conclusion that the testimony of Petty Officer 2nd Class Wilks must be disbelieved, what is the impact of it on the evidence considered as a whole?

[104] There is nothing in his testimony that would leave the court in a reasonable doubt about any charge of breach of trust. Then, it would be necessary for the court to pass to the third step of the test enunciated in *R. v. W. (D.)*.

[105] As a matter of fact, there is nothing in each of the testimonies provided by each complainant to disbelieve their testimony. The court went through each of them and found nothing that would bring such a conclusion. For sure, some of them had a better memory on some issues than others, but the time elapsed explains such a situation.

Each complainant provided a consistent and coherent testimony. Each testimony provided by each complainant is, by itself, credible and reliable.

[106] Concerning the essential element that the accused breached the standard of responsibility and conduct demanded of him by the nature of the office, the court concludes that the prosecution discharged its burden on that essential element. It has been proven beyond a reasonable doubt that breast examinations in the context of a PHE must be done on women every two years from age 40 onwards, and in the context of an enrolment medical examination it could not be done. Canadian Forces Health Forces Services Group policies and procedures are clear on that matter and were well known by the accused.

[107] In the case of A.P., K.M., M.P., J.L., W.G. and K.R., there is no doubt that a breast examination took place by inspecting and touching the breasts of those women or by just visually inspecting them while the accused was not allowed or supposed to do it. The accused clearly admitted doing it.

[108] Concerning A.B., J.R., C.D., K.D., K.H., R.G. and G.C., all those women described how the accused touched their breasts for breast examinations. Each of them clearly provided a description on how the accused examined their breasts. He would use his fingers to pinch or squeeze nipples, and used his fingers to proceed with the exam of the surrounding area. In the case of T.W. and A.W., the accused did a visual inspection of the breasts and gave no choice to those women to proceed in that way. All those women told the court that they would not have allowed a breast examination in any way if they did not think it was part of the medical examination.

[109] The court found no reason to disbelieve any of those women. Nothing in their testimony has raised on the court's mind a doubt about this essential element of the offence.

[110] Now, concerning S.M., there is no breast examination that took place during her medical examination. The prosecution submitted that from a privacy perspective, the accused did not proceed in accordance with the applicable policies.

[111] The evidence of S.M. does not disclose such a thing. She was wearing her bra, her underwear and a gown. As a matter of privacy, she should have shorts but in the circumstances, it was the only missing part of the clothes in accordance with the policy. She described the accused has having an awkward behaviour some time. The court can understand that she was uncomfortable but she never felt that her privacy was violated and her dignity not respected. Consequently, it is hard for the court to come to the conclusion that the prosecution discharged its burden of proof on that essential element of the offence concerning the 20th charge.

[112] The testimony of all those women, except for S.M., have also established beyond a reasonable doubt that the conduct of the accused represented a serious and marked departure from the standards expected of an individual in the accused's position

of public trust. Privacy and dignity of the patient are essential and key components in the medical world, including in the Canadian Forces. Orders, directives, emails and the testimony of Master Warrant Officer Thibeault could not be clearer than that on that matter. In order to respect those essential principles, breast examinations on women are not permitted unless there is a clear need to do it or when they are over 40 years old. This directive is there to respect those principles and by proceeding with a breast examination, including a visual one, the accused clearly went beyond what was expected by those women. They all thought that it was part of the examination when it was not. They trusted him because of his function and the medical context. He saw the naked breast for all and touched them, for most of them, while he was not supposed to do such a thing. His conduct represented a serious and marked departure from the standard expected from an individual in the accused's position of public trust.

[113] Knowing that he could not do what he did, he pretended to those who were there for enrolment medical examinations that it was part of the examination. For the women that showed up for the PHE, he made it clear that it was something that he had to do and that it was part of the examination. He clearly intended to use the opportunity of the medical examination to see the breasts of those women and touched it for most of them. There was only a personal benefit he got with each of them by acting as he did and there was clearly no public good to those actions. He let them think, as they expressed it, that it was part of the examination, which was totally dishonest, in order to get a personal benefit.

[114] In addition, the similar fact evidence accepted by the court to the effect that Petty Officer 2nd Class Wilks used his position of trust and authority as a medical technician in the context of a medical examination as an inducement to obtain consent from each complainant to proceed with a breast exam constitutes an additional piece of evidence to prove the last essential element of this offence.

[115] Then, it is the conclusion of the court that the prosecution has proved beyond a reasonable doubt that the accused acted with the intention to use his public office for a purpose other than the public good, for example, for a dishonest, partial, corrupt or oppressive purpose.

[116] Consequently, having regard to the evidence as a whole, the prosecution has proved beyond a reasonable doubt all the essential elements of the offence of breach of trust concerning charges 2, 3, 6, 8, 9, 11, 15, 16, 18, 19, 22, 23, 25, 27 and 29.

*Sexual Assault Charges.*

[117] Now, regarding the charges for sexual assault involving ten charges, 1st, 5th, 7th, 10th ,14th, 17th, 21st, 24th, 26th and 28th,, the court comes to the same conclusion about the testimony provided by Petty Officer 2nd Class Wilks and for the reasons mentioned earlier, it finds that his testimony must be disbelieved.

[118] Also, on those charges, the testimony of the accused, despite being disbelieved by the court, does not leave the court with a reasonable doubt on any of the essential elements about any of those charges for sexual assault. Then, the court on the basis of the evidence which it does accept, must decide if it is convinced beyond a reasonable doubt by that evidence of the guilt of the accused on those charges.

[119] Comments previously made by the court concerning the testimony of A.B., J.R., C.D., K.M., M.P., J.L., K.D., K.H., R.G. and G.C. are still valid for those charges. Those complainants explained how they were touched by the accused and in what context he did that and the court finds their testimony credible and reliable.

[120] From the court's perspective, the prosecution has established, through those testimonies, beyond a reasonable doubt, that Petty Officer 2nd Class Wilks used force directly or indirectly against those complainants and that he used intentionally the force against each of those complainants.

[121] It has also been established that through his attitude, Petty Officer 2nd Class Wilks did not care about the fact that those complainants would consent, or not, to be touched, representing to them that the breast examination, including the visual inspection, was part of the examination. He clearly stated that only his point of view would count, thinking it was permissible and advisable from his perspective that a breast examination must be done. He never cared if complainant would have a say on that matter.

[122] Then, the court is satisfied that the prosecution discharged its burden to prove beyond a reasonable doubt that that the Petty Officer 2nd Class Wilks knew, or was reckless of or wilfully blind to, a lack of consent on the part of the complainants.

[123] The court is satisfied beyond a reasonable doubt that the prosecution has proved also that the complainants did not consent to the use of force. It has been submitted to the court that the consent provided by the complainants to be touched by the accused was vitiated. Essentially, the prosecution suggested that the consent for each complainant was fraudulently obtained in relation to the real nature of the act.

[124] In order to prove such a thing, the prosecution had to demonstrate, pursuant to subsection 265(3) and section 273 of the *Criminal Code* that there was a dishonest act made and that complainants were deprived from knowing, which would have caused them to refuse to be touched by the accused (see *R. v. Chen*, 2003 BCSC 1363, *R. v. Cuerrier*, [1998] 2 SCR 371 and *R. v. Mabior*, 2012 SCC 47).

[125] The complainants were subjected to a breast examination to find out later that they were facing in reality a sexual encounter. They were told or represented by the accused that a breast examination was part of the PHE or enrolment medical examination and consented to be touched on the breast only for that reason. Each of them told the court that if they would have known that a breast examination was not mandatory,

they would not have consented to the exam. Clearly, they expressed that their dignity and privacy were flouted.

[126] Obviously, the accused was dishonest with each of them and they were all deprived to know about the real purpose of what he did. In addition, the similar fact evidence accepted by the court to the effect that Petty Officer 2nd Class Wilks used his position of trust and authority as a medical technician in the context of a medical examination as an inducement to obtain consent from each complainant to proceed with a breast exam constitutes an additional piece of evidence to prove this essential element.

[127] Finally, the prosecution discharged its burden of proof beyond a reasonable doubt concerning the fact that the contacts made by the accused on the complainants were of a sexual nature.

[128] It is clear for the court that there was no medical requirement, pursuant to medical orders and directives, for Petty Officer 2nd Class Wilks to proceed with a breast exam of those complainants he touched and who were going through a PHE or an enrolment medical examination. In fact, he could not do it. Acting as he did, and absent any previous health condition for all of those complainants, the only inference that a reasonable observer could conclude is that he did that for his own personal sexual gratification, knowing that there was no clinical purpose for acting as he did. Then, from this evidence, the court concludes that the touching took place in the circumstances of a sexual nature.

[129] Consequently, having regard to the evidence as a whole, the prosecution has proved beyond a reasonable doubt all the essential elements of the offence of sexual assault concerning the 1st, 5th, 7th, 10th ,14th, 17th, 21st, 24th, 26th and 28th charges.

**FOR THESE REASONS, THE COURT:**

[130] **FINDS** Petty Officer 2nd Class Wilks guilty of the 1st, 2nd, 3rd, 7th, 8th, 9th, 10th, 11th, 14th, 15th, 16th, 17th, 18th, 19th, 21st, 22nd, 23rd, 24th, 25th, 26th, 27th, 28th and 29th charge on the charge sheet.

[131] **FINDS** Petty Officer 2nd Class Wilks guilty further to a special finding concerning the date, which is the 26th of April, 2005, for the 5th and 6th charge.

[132] **FINDS** Petty Officer 2nd Class Wilks not guilty of the 20th charge on the charge sheet.

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**Counsel:**

Major R.D. Kerr, Major A.C. Samson,
Canadian Military Prosecution Services
Counsel for Her Majesty the Queen

Major D. Hodson, Major E. Thomas,
Directorate of Defence Counsel Services
Counsel for Petty Officer 2nd Class J.K. Wilks