



COURT MARTIAL

Citation: *R. v. F.Pelland*, 2016 CM 1004

Date: 20160316

Docket: 201569

Standing Court Martial

Canadian Forces Base Valcartier
Quebec, Quebec, Canada

Between:

Her Majesty the Queen

- and -

Captain D.J.A. F.Pelland, Accused

Before: Colonel M. Dutil, C.M.J.

[OFFICIAL ENGLISH TRANSLATION]

REASONS FOR FINDING

(Orally)

[1] Captain F.Pelland is charged with wastefully expending public property under paragraph 116(a) of the *National Defence Act*. The particulars of the charge read as follows:

In that he, between 20 and 25 August 2014, at or near St-Léonard-de-Portneuf, Province of Québec, did wastefully expend public property, namely, diesel fuel.

[2] The facts of this case are simple and the evidence filed in Court is limited to a video recording of a statement made by the accused on 20 January 2015 (Exhibit 4), a joint statement of facts (Exhibit 3) and the testimony of Warrant Officer Tony Fortin.

[3] It appears that during the period leading up to the events described in the charge, Captain F.Pelland was the second-in-command of 53rd Squadron, 5th Combat Engineer Regiment in Valcartier. He therefore took part in planning and developing the training and operations plans for his unit in early 2014, alongside with Major Leclerc. More specifically, he also saw to it that the responsible persons from the 6th Troop, Warrant Officer Fortin and Sergeant Ross, prepared the summer 2014 off-base exercise. The accused made sure that the allocated budgets were taken into account by the exercise's planners. This exercise was supposed to be held in part on the property of Mr Gerry Joosten, whose farm is located in Saint-Léonard-de-Portneuf, Province of Québec, between 11 and 22 August 2014. Warrant Officer Fortin was responsible for, among other things, obtaining the rights to use or access the said property from Mr Joosten.

[4] A few weeks before the exercise began, in the evening of 17 July 2014, certain members of the 6th Troop went to scout out Mr Joosten's premises. Unfortunately, a regimental vehicle became stuck. The tow truck that came to pull it out also became stuck. Master Corporal Lepage, a former employee of Mr Joosten, asked him for his permission to use his farm tractor to tow the military vehicle. The farmer agreed, but the tractor sustained approximately \$1,249.17 in damage during the towing operation. Master Corporal Lepage therefore notified Warrant Officer Fortin of the damage at around 2200 hours, when he was at home.

[5] The following Monday, the persons responsible from the 6th Troop, led by Warrant Officer Fortin, discussed the incident regarding the damaged tractor and tried to find solutions to compensate the farmer for the value of the damage caused to the tractor and to do it the right way. They therefore came up with the idea to compensate the farmer by filling up his diesel fuel tank, which had an estimated capacity of between 1,000 and 1,500 litres. Master Corporal Lepage was asked to bring this compensation solution to Mr Joosten, who accepted this proposal. Warrant Officer Fortin and his colleagues notified Captain F.Pelland of this on Monday morning and asked him if this was possible. According to Warrant Officer Fortin's testimony, Captain F.Pelland told him that he did not know but would find out. A few hours later, Captain F.Pelland gave his approval, but without first consulting with his own superiors. According to him, this was an issue that he thought he could resolve at his level because he managed the off-base exercise budget, including fuel-related expenses for the 53rd Squadron. According to him, it was only after these events that he learned that he did not have the authority to approve such compensation, despite the powers that had been delegated to him under section 32 of the *Financial Administration Act*.

[6] Captain F.Pelland was never told about the actual quantity of diesel fuel that had been given to the farmer as compensation for the damage to the tractor. He relied on Warrant Officer Fortin for assurance that the quantities of diesel were used solely to adequately compensate the farmer. Moreover, Captain F.Pelland confirmed with Warrant Officer Fortin that this was done at the end of the exercise when he was on site. Warrant Officer Fortin confirmed everything to him, but again Captain F.Pelland was not told of the quantities involved. Prior discussions had dealt with the maximum capacity of a 1500-litre tank.

[7] Warrant Officer Fortin stated that he was the one who dealt with the Petroleum, Oils and Lubricants (POL) Section to have the diesel fuel transferred directly to the farmer's tank. When asked whether such an action was legitimate, he answered that it was. According to Warrant Officer Fortin, Master Corporal Lepage informed him near the end of the exercise that the diesel had not yet been given to the farmer because of an oversight. He made sure that this would be done and he was informed that 300 litres had already been delivered. Warrant Officer Fortin did not check the total quantity with the POL Section or with anyone else. He relied solely on the word of and the facts related by Master Corporal Lepage, the farmer's former employee.

[8] The prosecution submits that Captain F. Pelland wastefully expended public property because he was not authorized to use diesel fuel, the property of the Canadian Armed Forces, to provide compensation for the tractor damage and because he did not monitor or check the performance of the agreement with the farmer, thus giving Warrant Officer Fortin carte blanche. He is further alleged to be liable for this, because he breached his duty to consult his chain of command before giving his authorization.

[9] The defence submits that the accused did not wastefully expend public property and that he never intended to wastefully expend it. According to the defence, acting without authority by allowing compensation in the context of this case cannot anchor the charge of wastefully expending the public property in question, because the accused was entitled to expect that the authorization for reasonable and fair compensation would be implemented by his subordinates according to the information that they had passed on to him.

[10] Paragraph 116(a) of the *National Defence Act* reads as follows:

116. Every person who

(a) wilfully destroys or damages, loses by neglect, improperly sells or wastefully expends any public property, non-public property or property of any of Her Majesty's Forces or of any forces cooperating therewith ...

is guilty of an offence and on conviction is liable to imprisonment for less than two years or to less punishment.

[11] The dictionary *Le Petit Robert* tells us that the word "*dissiper*" means, among other things, to "spend wildly". It is associated with the terms "*gaspiller, dilapider*", that is, "to waste, squander". The Court cannot agree with the argument that authorizing a subordinate, without oneself being entitled to do so but while acting in good faith, to pay reasonable and fair compensation out of public funds to a third party for damage caused by his subordinates in the course of their duties constitutes a wasteful expense. If the terms of the agreement that he approved had been followed, there would not have been any unjust enrichment and the Crown would not have sustained any monetary losses. The applicable procedure for claims against the Crown would have been followed.

[12] The fact that the actual quantity of diesel fuel transferred to the farmer was totally disproportionate and excessive in light of what had been authorized by Captain F.Pelland in discussions with his subordinates does not make him the perpetrator of the alleged crime. As the prosecutor noted, it was an error in judgement. This error clearly warrants appropriate action to ensure that the accused never makes such an error again, but this does not make him in any way liable for wastefully expending public property in the circumstances.

[13] If there was fraud or theft of public property by one or more persons in the facts of this case, it cannot be attributed to the accused. Wanting to find him liable for one or more other criminal offences, committed by persons who may have taken advantage of his error in judgement, cannot be done through a charge under section 116 of the *National Defence Act*. The Court is therefore not satisfied that the prosecution has proved the essential elements of the charge beyond a reasonable doubt.

FOR THESE REASONS, THE COURT:

[14] **FINDS** Captain F.Pelland not guilty.

Counsel:

The Director of Military Prosecutions, as represented by Major A.J. Van der Linde

Lieutenant-Commander P.D. Desbiens, Directorate of Defence Counsel Services,
counsel for Captain D.J.A. F.Pelland