

CITATION: *Northern Territory Licensing Commission v Roberts* [2006] NTMC 065

PARTIES: NORTHERN TERRITORY LICENSING  
COMMISSION

v

MARION ROBERTS

TITLE OF COURT: Court of Summary Jurisdiction

JURISDICTION: Justices Act

FILE NO(s): 20528106

DELIVERED ON: 31 July 2006

DELIVERED AT: Darwin

HEARING DATE(s): 30 January 2006, 3 February 2006,  
21 February 2006 & 20 March 2006

JUDGMENT OF: Jenny Blokland CM

**CATCHWORDS:**

FORFEITURE – STATUTORY INTERPRETATION –

*Liquor Act* (NT), ss 95 – 101;

*Justices Act* (NT), s 130B

*Criminal Property Forfeiture Act* (NT), s 66

Pearce and Geddes *Statutory Interpretation in Australia*, 5<sup>th</sup> edition.

Gifford, *Statutory Interpretation*, The Law Book Company.

*Wulain Association Incorporated v Minister for Racing and Gaming* (1991) 104

NTR

*The Queen v The Chairman of the Liquor Commission of the Northern Territory: Ex parte Djuna*;

*The Queen v The Chairman of the Liquor Commission of the Northern Territory: Ex parte Central Land Council* (1984) 73 FLR 180

*Re Director of Public Prosecutions; Ex parte Lawler and another* (1994) 174 CLR 270

*Director of Public Prosecutions v Henning* [2005] NTSC 41

*Forbes v Trader's Finance Corporation Limited* (1972) 126 CLR 429

*Brophe v State of Western Australia* (1990) 93 ALR 207

*R v Lavender* [2005] HCA 521

*Deborah Petrice Otto* (1996) 90A CRIM R 492

*R v Uxbridge Justice; EP Commissioner of Police* [1981] 1 QB 829

**REPRESENTATION:**

*Counsel:*

Referring Party: Mr Lye/Mr Smyth  
Claimant: Ms Jones

*Solicitors:*

Referring Party: Department of Justice  
Claimant: North Australian Aboriginal Justice Agency

Judgment category classification: B  
Judgment ID number: [2006] NTMC 065  
Number of paragraphs: 28

IN THE COURT OF SUMMARY JURISDICTION  
AT DARWIN IN THE NORTHERN  
TERRITORY OF AUSTRALIA

No. 20528106

BETWEEN:

**NORTHERN TERRITORY LICENSING  
COMMISSION**  
Referring Party

AND:

**MARION ROBERTS**  
Claimant

REASONS FOR DECISION

(Delivered 31 July 2006)

Ms BLOKLAND CM:

**Introduction**

1. This is an unusual matter concerning a claim for the return of a seized item. The claim has been referred to the Court of Summary Jurisdiction by the Chair of the Licensing Commission pursuant to s 100 *Liquor Act (NT)* to be dealt with *in all respects as if it were made by a claimant of property under s 130B of the Justices Act (NT)*.
2. Ms Marion Roberts, (“the claimant”) seeks the return of her seized vehicle. The factual findings necessary to answer the point in question are largely agreed. First, Ms Marion Roberts was the owner of vehicle Registered No. NT 575 055 seized on 29 April 2005 in connection with an offence of “bring liquor into a restricted area” against the s 75(1)(a) *Liquor Act*. Ms Roberts, along with others, was a passenger in the vehicle when it was apprehended at a roadblock on the Ngukurr side of Roper River, 100 metres within the restricted area. Police searched the vehicle and found liquor. On 10 August

2005 arising out of this same incident, at Ngukurr Court, a Mr Edward Daniels was convicted of “bring liquor, namely, Victoria Bitter beer, Jim Beam bourbon and Bundaberg rum, into a restricted area, namely, Ngukurr alcohol restricted area contrary to s 75(1)(a) of the *Liquor Act*”. He was fined \$800.00 and a \$40 victim’s levy was imposed. The claimant was not charged with any offence in relation to the incident. It is common ground that the charge was laid against Mr Edward Daniels on 7 July 2005, 69 days after the seizure of the vehicle.

### **Primary Arguments Raised by the Parties**

3. The claimant argues that as the prosecution was not commenced within 30 days of the seizure of the vehicle, the Chair of the Licensing Commission was required to notify the owner (here, the claimant), to claim delivery of the property: (s 98 *Liquor Act*). In fact the Chair of the Licensing Commission did forward the Notice to the claimant now filed in these proceedings. The terms of that Notice state that if no claim is made within 30 days of service of the Notice, the thing seized is forfeited. Pursuant to s 100 *Liquor Act*, where a person makes a claim after being served with a s 98 *Liquor Act* Notice, the Chair must refer the claim to this Court and the Court is to deal with the claim “in all respects” as if it were a claim made by a claimant of property under s 130B *Justices Act*. The claimant argues that as she has made a claim under section 98 *Liquor Act*, and the Chair referred the claim to this Court under s 100 *Liquor Act*, the claim to the property must be dealt with summarily as if it were a claim under s 130B *Justices Act*.
4. On behalf of the Licensing Commission, (being the organisation charged by the *Liquor Act* with the responsibility to refer the claim to this Court), it is argued that by force of s 96 *Liquor Act* the vehicle is already forfeit to the Northern Territory. The Licensing Commission’s primary argument is that even though it has referred the matter to this Court to be dealt with pursuant to s 130B *Justices Act*, effectively, the only order this Court can make is to

confirm that the Northern Territory is the owner by virtue of the forfeiture provisions of s 96 *Liquor Act*, or, decline to return the seized vehicle.

5. This matter first came before the Court during the regular bail and arrest list and regrettably has been dealt with across a number of mention dates. At the mention date of 21 February 2006 I note I came to some interim conclusions about the matter but neither counsel at the time were aware of the previous decisions I referred to at that time dealing with the *Liquor Act (NT)*, (although not precisely on the same point): (*Wulain Association Incorporated v Minister for Racing and Gaming* (1991) 104 NTR and *The Queen v The Chairman of the Liquor Commission of the Northern Territory: Ex parte Djuna; The Queen v The Chairman of the Liquor Commission of the Northern Territory; Ex parte Central Land Council* (1984) 73 FLR 180). Both parties have made further written submissions since that hearing having regard to those authorities. I thank both counsel for their efforts as I have found this a difficult matter to deal with – both parties have raised significant and valid yet fundamentally competing points of principle and statutory interpretation.

## **Relevant Legislation**

### *Liquor Act*

#### *Division 3 – Seizure and Forfeiture*

##### **95. Powers of search and seizure**

(1) Where an inspector is satisfied that there is reasonable ground for suspecting that an offence against this Part has been, is being or is likely to be committed, he may, without warrant, and with such assistance as he thinks necessary –

- (a) enter, with such force as is reasonably necessary, at any time, any premises, vehicle, vessel, aircraft or place and for that purpose, stop and detain any vehicle, vessel or aircraft;
- (b) search the premises, vehicle, vessel, aircraft or place and any person found in or on them or it and any person whom he

reasonably believes to be about to enter or to have recently left the premises, vehicle, vessel, aircraft or place;

- (c) break open and search any cupboard, drawer, chest, trunk, box, cage, package or other receptacle, whether a fixture or not, in or on the premises, vehicle, vessel, aircraft or place;
- (d) seize, take, detain, remove and secure any vehicle, vessel or aircraft, or any receptacle containing liquor, or any receptacle that he reasonably believes to contain liquor, or any thing that he finds on any premises, vehicle, vessel, aircraft or place or on any person searched, if he has reasonable grounds to believe that it is evidence of or otherwise relates to any offence that has been or is being committed against this Part;
- (e) require the master or other person in charge of a vehicle, vessel or aircraft to cause it to stop or to bring it to a place in the Territory and to remain in control of it at that place until an inspector permits him to depart from that place;
- (f) stop, detain and search any person upon whom he believes, on reasonable grounds, that there is something that is evidence of or otherwise relates to an offence against this Part; and
- (g) take such action as is reasonably necessary to prevent the commission of an offence against this Part.

(2) Before commencing a search under subsection (1), if there is a person who is or appears to be in charge of the premises, vehicle, vessel, aircraft or place, an inspector shall produce his identity card, issued under section 18(3), to that person and to any person he is about to search.

(3) A person shall not refuse or fail to comply with a requirement made by an inspector under subsection (1)(e).

(4) A female shall not be searched under this section except by a female.

(5) This section, other than subsection (2), applies to and in relation to a member of the Police Force as if the member were an inspector.

(6) In this section "enter", in relation to a vehicle, vessel or aircraft, includes board.

## **96. Forfeiture**

(1) A thing seized under this Part and not released under section 100A is forfeited to the Territory if a person is found guilty of an offence in connection with which it was seized.

(2) A thing seized under this Part and not released under section 100A is forfeited to the Territory if –

- (a) the owner of the thing is charged with an offence in connection with which it was seized;
- (b) the owner fails to appear before the court at the trial in relation to that charge, a warrant to apprehend the owner is issued and the trial adjourned; and
- (c) the owner is not brought before the court within 30 days of the issue of the warrant to apprehend.

(3) A thing seized under this Part and not released under section 100A is forfeited to the Territory if –

- (a) a person other than the owner of the thing is charged with an offence in connection with which it was seized;
- (a) the person fails to appear before the court at the trial in relation to that charge; and
- (b) a warrant to apprehend the person is issued.

(4) A forfeiture under this section is in addition to and not part of a penalty imposed under this Part.

#### **97. Delivery of thing seized to Chairperson**

A thing seized under this Part shall, as soon as practicable, be delivered to the Chairperson by the inspector or member of the Police Force who seized it.

#### **98. Claim to be made to Chairperson**

Where a thing seized is delivered to the Chairperson, if no prosecution is instituted within 30 days in respect of the use or possession of the thing or, if the thing seized is liquor, in respect of the carriage, possession, control, sale or other disposal of the liquor, the Chairperson shall, by notice in writing, require the person from whom the thing was seized or a person appearing to the Chairperson to be the owner of the thing to claim delivery to him of the thing seized.

#### **99. Forfeit if no claim**

If no claim is made within 30 days of the date of service of the notice referred to in section 98, the thing seized is forfeited.

## **100. Claims to be dealt with summarily**

Where a person served with a notice under section 98 makes a claim for the delivery to him of a thing seized under this Part, the Chairperson shall refer the claim to a court of summary jurisdiction which may deal with the claim in all respects as if it were a claim made by a claimant of property under section 130B of the *Justices Act*.

### **100A. Release of seized vehicle, &c., pending prosecution**

(1) The owner or other person who, but for its being seized, would be entitled to possession of a vehicle, vessel or aircraft seized under this Part may, before the trial of a person for the alleged offence in connection with which it was seized, apply to the Minister for its release to the owner or that other person, as the case may be.

(2) The Minister may, in his absolute discretion, after considering the recommendations of the Chairperson and being satisfied that the applicant was not knowingly involved in the act constituting the alleged offence in connection with which it was seized and had no reason to suspect that the vehicle, vessel or aircraft might be used in connection with the commission of the alleged offence, release it to the applicant on such conditions relating to its production as evidence at the trial of the alleged offence as the Minister thinks fit.

## **101. Disposal of forfeited things**

All things forfeited under this Part may be destroyed or otherwise disposed of in such manner as the Chairperson thinks fit, including, with the approval of the Minister where, in the case of a vehicle, vessel or aircraft, the Minister is of the opinion that the person was not knowingly involved in the act constituting the offence as a result of which it was forfeited and had no reason to suspect that it might be used in connection with such an offence, by selling or otherwise returning it to a person who, immediately before the forfeiture, had a legal or equitable interest in the vehicle, vessel or aircraft.

## **Justices Act**

### **130B. Power of Court to order delivery of property**

- (1) Where any property –
- (a) has come into the custody or possession of a member of the Police Force in connection with a charge or prosecution under a law in force in the Territory or otherwise in the course of his duty; or
  - (b) has come into the custody or possession of the Court of Summary Jurisdiction, or a clerk of the Court, whether as an exhibit or otherwise in connection with a summary proceeding in the court,



the Court of Summary Jurisdiction may, on application either by a member of the Police Force of the Northern Territory or a clerk of the Court of Summary Jurisdiction or by a claimant of the property, make an order for the delivery of the property to the person appearing to the court to be the owner thereof, or, may make such order with respect to the property as to the Court may seem fit.

(2) No order made under this section shall be a bar to the right of any person to recover the property by action from the person to whom it is delivered by virtue of the order where that action is brought within 6 months after the order is made.

6. The view urged on behalf of the Licensing Commission is that s 96(1) *Liquor Act* is clear on its face. Once the car is seized and not released under s 100A *Liquor Act* it is forfeited to the Territory if a person (here, not the owner, but Mr Edward Daniels), is found guilty of an offence in connection with the seizure. Section 100A *Liquor Act* provides a procedure allowing an owner to apply to the Minister for release of the vehicle prior to the trial of a person who is charged with a relevant offence connected with the seizure. Section 100A(2) *Liquor Act* grants the Minister a discretion, (after considering the recommendations of the Chairperson and after being satisfied that the owner was not involved in the offence), to release the vehicle or other seized property on conditions as the Minister thinks fit.
7. The claimant argues the *Liquor Act* also sets out a procedure pursuant to s 98 *Liquor Act*. Section 98 has arguably become relevant in the circumstances of this case because no prosecution was instituted within 30 days. In these circumstances the section mandates that the Chair of the Commission write to the owner requiring them to claim the item seized. Clearly, that procedure was followed by the Licensing Commission in this case notwithstanding the Notice under s 98 was not issued until November 2005, some six and a half months after the seizure. The *Liquor Act* does not set a time limit for the Chair to issue the Notice, only that the notice *must* be issued if no prosecution is instituted within 30 days. There has been a deal of argument before me about the timing of the Notice. That may be relevant for administrative law purposes in a different forum and it may impact

negatively on the fairness of the procedure. I accept these steps should be taken within a reasonable time. It is not necessary however for me to make any findings on the matter in the resolution of the points before me. The s 98 Notice before the Court in these proceedings advises the recipient as follows:

“.....no prosecution has commenced within 30 days of the 29<sup>th</sup> April 2005 when Toyota Landcruiser, NT registration 575 055, was seized under the restricted area provisions of the *Liquor Act*. You appear to be a person from whom the vehicle was seized or a person who might be the owner of the vehicle. Pursuant to s 98 of the *Liquor Act*, I require you to make claim for the delivery of the vehicle.

**If no claim for delivery is made within 30 days of the date of service of this notice, then the vehicle is forfeited to the Territory by virtue of s 99 of the *Liquor Act*.**

If a person served with this notice makes a claim for the delivery of the vehicle to them then the Chairman will refer the claim to a Court of Summary Jurisdiction to be dealt with pursuant to s 100 of the *Liquor Act*. **The date of service shall be the date of posting.**

**Dated: 9<sup>th</sup> day November 2005”.**

### **Discussion of the Arguments**

8. Although the Licensing Commission’s arguments before the Court urge acceptance of a state of affairs that acknowledges that by the time of the s 98 Notice being issued the vehicle was well and truly forfeit to the Northern Territory, the Notice issued by the Commission advised Ms Roberts of a different procedure, namely, that by virtue of s 99 *Liquor Act* forfeiture would be achieved if Ms Roberts did not make her claim. It is accepted that she made her claim in a letter dated 10<sup>th</sup> November 2005, shortly after the issue of the s 98 Notice. There is something of an inconsistency in the Commission’s position as if the vehicle was already forfeit by virtue of the finding of guilt against Mr Daniels, there could be no purpose in the issue of the s 98 Notice but for the fact that the Commission is mandated to issue it. I accept the Liquor Commission is not bound by any previous position or

conduct for the purposes of these proceedings and ultimately that does not influence the legal position.

9. The Commission's primary submission relies on the clarity of s 96 *Liquor Act*. The first written submission on behalf of the Licensing Commission stated "We cannot ignore the clear words of the Act and we must give them their ordinary and natural meaning in the context in which they appear". The Commission's further argument was that as there had been a conviction, and the prosecution was not instituted within the contemplated time, "This Court not the Chairman must decide this claim under section 130B of the *Justices Act*". The submission was that the Court should return the vehicle to the Territory as the owner. As a secondary submission the Commission's view initially was that if the Court was not in favour of the Commission's forfeiture argument, then the Court needed to decide the question of the claim to the property by reference to the same considerations that the Chairperson is required to take into account under s 101 *Liquor Act*.
10. In considering this matter, I have kept in mind that this part of the *Liquor Act* is concerned with regulating, maintaining and enforcing "dry areas" within the Northern Territory. This part of the *Liquor Act* is concerned with placing significant obligations on residents of the Northern Territory not to undermine the dry area scheme. One must also bear in mind that *Liquor Act* offences are dealt with on complaint as simple offences, not crimes. The legislature effectively classifies them as offences that are not in the most serious category of offences. The *Liquor Act* does show an intention to not only penalise persons by way of offences who undermine the legislation but also to penalise by way of forfeiture. This includes parties not directly involved in the offending and conceivably may range from completely innocent to somewhat tainted. The legislation seeks to enforce positive compliance on citizens under pain of forfeiture. In *Re Director of Public Prosecutions; Ex parte Lawler and another* (1994) 174 CLR 270, it was noted that:

“Modern statutes which provide for the forfeiture of property owned by an innocent person are justified on the footing that the liability to forfeiture enlist the owner’s participation in ensuring the observance of the law and precludes future use of the thing forfeited in the commission of crime”. (Brennan J, para 7)

11. I mentioned “somewhat tainted” as in this matter Ms Roberts has not been charged, but the view of the Commission in its secondary submission was that even if her vehicle was not already forfeit to the Northern Territory, the Court should have regard to the fact that she was in the vehicle at the time of the seizure and she was intoxicated; in the view of the Commission it was inconceivable she did not have reason to suspect the commission of the offence; that as the owner of the vehicle she had an obligation to ensure compliance with the restricted area provisions of the *Liquor Act* and little or no effort had been made by her; that Mr Daniels had prior liquor related offences; that it was a substantial amount of liquor and that she had never provided any explanation regarding her involvement in the circumstances that lead to seizure of the vehicle. Those are clearly considerations that the Commission may take into account if required to determine the matter under s 101 *Liquor Act*, however it is argued on behalf of Ms Roberts that these are not relevant considerations when the Court considers the matter under s 130B *Justices Act*.

### **Principles Governing Interpretation of Forfeiture Provisions**

12. As well as the significant social imperatives concerning this part of the *Liquor Act*, there are also well established principles that provide that forfeiture provisions should be equated with penal provisions: any ambiguity should be construed in favour of the owner of the goods: (See Pearce and Geddes, *Statutory Interpretation in Australia*, 5<sup>th</sup> edition citing amongst other cases *Collector of Customs (NSW) v Traders Finance Corp* [1972] ALR 653 and *Cheatley v R* (1972) 127 CLR 291). Further, Her Honour Justice Thomas in *Director of Public Prosecutions v Henning* [2005] NTSC 41 dealing with a matter under the *Criminal Property Forfeiture Act (NT)* at

paragraph 42 adopts a number of statements illustrating this principle. For example, citing *Tuck & Sons v Priester* (1887) 19 QB 629 at 638:

“We must be very careful in constructing that section, because it imposes a penalty. If there is a reasonable interpretation which will avoid the penalty in any particular case we must adopt that construction. If there are two reasonable constructions we must give the more lenient one. That is the settled rule for the construction of penal sections”.

Further, Her Honour cites *Forbes v Trader’s Finance Corporation Limited* (1972) 126 CLR 429 at 47 per Gibbs J.

“Our duty is to give effect to the intention of the legislature as expressed in the statute, but since the statute imposes a forfeiture we must construe it strictly, in the sense that we must not extend its provisions to cases not clearly within their scope but must resolve any doubt or ambiguity in favour of the subject whose property is sought to be forfeited”.

These principles are all strongly endorsed by the High Court in *Brophe v State of Western Australia* (1990) 93 ALR 207 and *R v Lavender* [2005] HCA 521.

13. As indicated, I requested submissions on the relevance of previous Supreme Court decisions concerning this part of the *Liquor Act (NT)*. There are no cases directly on point as they primarily concern construction of the sections as are relevant to the exercise of the Minister’s discretion. There are, however some observations. In *The Queen v The Chairman of the Liquor Commission of the Northern Territory; Ex Parte Djana (“Djana”)* (1984) 73 FLR 180, two passengers in a vehicle in a “dry area” possessed alcohol in May 1983 and were convicted of *Liquor Act (NT)* offences in June 1983. The motor vehicle was seized in accordance with s 95 *Liquor Act* (as set out above) and a previous version of s 96 *Liquor Act*: “A thing seized under this Part is, by force of this section, on the conviction of a person for an offence in connection with which it was seized, forfeited to the Territory”. (I note the section at that time did not advert to s 100A *Liquor Act*). His Honour

Nader J noted that upon conviction of the passengers, the seized motor vehicle was forfeited to the Territory and immediately before the forfeiture the vehicle was the property of Mr Djana. Mr Djana's representatives wrote to the Chair of the Liquor Commission in July of 1983 seeking return of possession of the vehicle. A decision was made by the Commission not to return the vehicle. His Honour noted that the previous version of s 96 allowed a court to exercise a discretion on whether to forfeit property in the face of a conviction. His Honour noted ss 98-100 remained the same even though s 96 was amended. In describing the scheme, and as noted by counsel for the Commission in the matter at hand, Nader J stated (at page 186):

“It will be seen that before Act No. 93 of 1982 there was a discretion vested in a Court of Summary Jurisdiction whether or not to order forfeiture of a seized vehicle where there was a conviction (s 96), and a discretion, where a vehicle was not forfeited under s 96 or where a prosecution was not instituted, whether or not order the vehicle to be delivered to its owner or otherwise (ss 96(3), 98, 99 and 100). ....(and further at p 186....) it cannot have been intended by the Legislature that notwithstanding that a Magistrate had considered the questions of forfeiture and return under ss 96 and/or 100, and had come to a decision adverse to the owner, the Chairman, under a power to destroy or otherwise dispose of a vehicle given by s 101, had power to dispose of it by returning it to its former owner. Section 101 was not to be acted upon by the Chairman until the owner had had an opportunity to present a case to a Court of Summary Jurisdiction against forfeiture and, where forfeiture had not been ordered, in support of the return of the vehicle to him. When time came for the Chairman to decide whether to destroy or otherwise dispose of a vehicle, a full opportunity to recover the vehicle, affording natural justice to the owner, had already been given. In proceedings under ss 96 and 100, any matter that might bear on the owners claim should have been fully ventilated. Thereafter, the vehicle was no longer the former owner's vehicle”.

14. On behalf of the Licensing Commission it argued that firstly, this quote from *Djana* indicates the previous s 96 *Liquor Act* granted the Court a discretion to forfeit upon conviction and ss 98-100 *Liquor Act* only applied when there had been no forfeiture ordered. That situation, it was argued,

was treated as if no prosecution had been brought within 30 days. Counsel for the Licensing Commission referred to this as the “no conviction use” of ss 98-100 and submitted that His Honour Nader J’s reasoning favoured this interpretation. It was also argued ss 98-100 were used when no prosecution had been brought, “the no prosecution use”. Further, the Licensing Commission argued that there are indications in His Honour’s reasons as set out above that support the Commission’s secondary argument, namely that the Court is empowered to conduct a hearing essentially on the merits considering the same or similar issues that might be considered by the Commission. The Commission argued that the earlier amendments removing the discretion of a Court to order forfeiture in earlier versions of the *Liquor Act* also removed the provisions allowing a matter to proceed to ss 98-100 if a conviction was ordered but no forfeiture was ordered. It was argued on behalf of the Commission that it was no longer possible to speak of a conviction under the *Liquor Act* for this type of offence without forfeiture, therefore there is no longer any purpose related to the question of forfeiture in referring the matter to the Court in such circumstances. The Licensing Commission acknowledges that a number of different scenarios may emerge depending on the timing of the institution and progress of a prosecution and acknowledges there may be anomalies regarding the timing of notices, vis a vis prosecutions and progress to convictions (or rather, “findings of guilt” as is now required). The Commission’s view is that whether the notices are sent or not, that is irrelevant to the question of forfeiture because upon conviction (or rather, “findings of guilt”), forfeiture is clear.

15. Counsel for Ms Roberts points out that prior to the amendments to the *Liquor Act* in 1982, (when the Court possessed the discretion on whether to order forfeiture after conviction), if the item was not forfeited, ss 98-100 *Liquor Act* operated to allow the Court to consider return of the property under s 130B of the *Justices Act*. It was argued that this was what was meant by His Honour when he noted “Section 100 provided the mechanisms

for the disposal of claims”. On behalf of Ms Roberts it was argued that items seized in the circumstances of this case are forfeited to the Northern Territory upon a finding of guilt only when the prosecution is commenced within 30 days. It is noted that at the point of forfeiture the Chairperson has a broad discretion on whether or not to return the vehicle pursuant to s 101 *Liquor Act*. On behalf of Ms Roberts it is also pointed out that Justice Nader noted at p 185 in relation to the repeal of s 96(3):

“Where the seized vehicle was not forfeited under s 96, ss 98, 99 and 100 applied as if no prosecution had been instituted within the period referred to in s 98”.

16. It was pointed out by counsel for Ms Roberts that despite the removal of the discretion of the Court to order forfeiture in the 1982 amendments, the legislature declined to amend ss 98-100 in the *Liquor Act*. It was submitted that although the discretion of the court was removed in s 96 *Liquor Act*, a referral process still remained in place in the event that a prosecution was not commenced within 30 days.
17. *Wulain Association Incorporated v Minister for Racing and Gaming* (1991) 78 NTR 1 concerned the operation and interaction of s 96 *Liquor Act* and s 100A (the provision granting the discretion to the Minister to return the item). His Honour Asche CJ held that s 100A of the *Liquor Act* does not give the right to release of the property but a right to apply for release and that the forfeiture upon conviction provisions of s 96 of the *Liquor Act* were not affected by unsuccessful applications under s 100A *Liquor Act* even if that was as a result of an erroneous decision by a Minister.
18. Although there are indications in *Djana* and *Wulain* on the interpretation and history of some of the relevant sections of the *Liquor Act*, neither authority specifically deals with the problem facing this Court on this occasion. Given developments in the jurisprudence relating to forfeiture as exhibited in the authorities noted in paragraph 12 above, the trend in interpreting statutes relating to forfeiture is towards a stricter interpretation



against forfeiture, especially in the face of a competing interpretation that is reasonable.

19. As mentioned at the outset, both parties raised reasonable and competing arguments on the construction of this part of the *Liquor Act*. As I mentioned to counsel at various stages of the argument during this matter, I would have preferred to have referred the matter to the Supreme Court on a question of law, however as the matter is not dealt with on complaint or information, nor is it within jurisdiction of the Local Court, there does not seem to be a provision permitting me to refer the question. As mentioned also, regrettably *Djana* and *Wulaign* do not precisely deal with the problem of interaction between s 96(1) on the one hand and ss 98-100 on the other as they currently stand. In my view, having regard to procedures as significant and fundamental as forfeiture of valuable property without compensation, where the statute is ambiguous, the Court must construe against forfeiture. I have been particularly cognizant of the argument s 96 is clear on its terms and is not dependent on other sections for its interpretation, particularly because of its reference to s 100A. It is particularly problematic when dealing with a person's rights not to read the relevant Act as a whole. Reading the Act as a whole is particularly significant and I refer to the principles cited by Gifford, "Statutory Interpretation", The Law Book Company, 61-62 (footnotes omitted):

"No part of an Act "can be considered in isolation from its context – the whole must be considered". "In the complex task of wrestling and true construction of an Act it cannot be compartmentalised and scrutinised molecularly." An Act is not to be read "as though each word and phrase was in a watertight compartment, and in such a way as to defeat the manifest purpose of the Act". The various provisions "must be harmonised" and it may be necessary for this purpose to read down general words – but if so "they should not be read down any further than is absolutely necessary to achieve that harmony". The words used must be constructed having regard to the quality of the Act revealed by a consideration of all its provisions" and "the meaning of the provision is to be gathered from the statute as a whole". The rule allows the court to avoid absurdity and anomaly as

well as repugnancy and inconsistency. “It is not necessary for one section to refer specifically to another section before the first section can be constructed as being subject to or overriding or in some other way qualifying the other section””.

20. There is clearly a relationship of sorts between a person being “found guilty of an offence” and the institution, (or even lack of institution) of a prosecution. The reference to s 100A in s 96 exempts certain administrative decisions from the consequences of the finding of guilt. Section 98 *Liquor Act* does not exempt a category of decisions but rather requires particular action to be taken if no prosecution is instituted within 30 days of seizure. In my view it would be an error to effectively treat ss 98 and 99 *Liquor Act* as though they had *no work to do* in a vast array of circumstances. The interpretation advanced by the claimant more effectively harmonizes the provisions of the *Liquor Act*.
21. Effectively, the submission on behalf of the Licensing Commission would urge the Court to disregard those sections in these circumstances. There is no statutory warrant to disregard the sections. Although on behalf of the Commission it was argued that ss 98-100 effectively became redundant in relation to forfeiture decisions after the Court’s discretion was removed on or about 1982, that is not at all clear on a fair reading of the statute. If that were the case it should be clear. It appears there is some acknowledgment of the alleged ambiguity by the Commission itself given the approach noted in paragraph 8 above. In other words the approach by The Commission is illustrative of the existence of an ambiguity. I have come to the conclusion that it is a reasonable interpretation of the legislative scheme to the effect that if a prosecution is not commenced within 30 days, Notice and referral to the Court is to occur. Even though the earlier amendments removed the Court’s discretion upon conviction, it does not follow from that that there will be no process regulating the giving of Notice, and other consequential aspects of the process that might be envisaged. I disagree with arguments made on behalf of the Commission that the ambiguity alleged on behalf of

Ms Roberts merely arises as a result of circumstances concerning the facts of the case rather than on the face of the statute itself. This part of the *Liquor Act* invites ambiguity, in particular the relationship between s 96 and ss 98-100. After some consideration of the matter, I believe I would be quite wrong to allow an interpretation of the *Liquor Act* that permitted notice to be given to an owner well after the finding of guilt and well after a purported forfeiture, especially when the fairer interpretation is legitimately open. Clearly the legislation seeks to enforce forfeitures in certain circumstances but also seeks to prevent an unjust result. It would appear to be a reasonable legislative approach to provide a scheme that ensures that a person who has had their vehicle seized may have recourse to the Court if there is no prosecution instituted within 30 days. Otherwise, a person's vehicle remains seized for as long as a prosecution takes, unless the Minister exercises his or her discretion pursuant to s 100A.

22. It would also be a very odd legislative scheme for the Court to be empowered to make orders under s 130 *Justices Act* when the only order that lawfully could be made is an order that the vehicle remain with the Territory because forfeiture has already taken place.
23. Although the Commission argues forfeiture has already taken place, the secondary submission is that pursuant to s 130B *Justice Act* this Court can and should take into account similar considerations that would be taken into account by the Minister after considering recommendations of the Chairperson under s 100A of the *Liquor Act*. Quite fairly, the Commission has also put forward a series of cases indicating that similar statutory provisions in other jurisdictions indicate that Courts should not make any order under such provisions except in straight forward and simple cases. I am referred to *Deborah Petrice Otto* (1996) 90A CRIM R 492, Pinkus JA at p 505:

“The Magistrate has a discretion as to whether to make any order at all and there is authority for the view that no order of the kind in

issue should be made except in “straight forward simple cases”: Uxbridge Justices (above at 839). This was hardly such a case. It seems possible that the Magistrate was influenced in taking the course he did by the thought that otherwise the question of right to property would be left undecided, that the property would be left ownerless”.

24. I was referred to *R v Uxbridge Justice; EP Commissioner of Police* [1981] 1 QB 829, Denning MR at 839:

“The procedure of the Act should be confined to straight forward simple cases where there is no difficulty of law or fact: and where there is no need for much in the way of legal costs. If the case is in any way complicated in law or in fact the applicant should take civil proceedings in the High Court or County Court”.

25. It was submitted that I should decline to make an order because it involved a complex matter where it may be more appropriate to allow the process under s 101 *Liquor Act* to continue. I cannot agree with this argument. It is the Commission who have referred the matter, it is the operation of the statute that requires the Court to consider the matter. The Commission has invoked the procedures as it must. I of course accept it must comply with the process set out under procedures of the *Liquor Act*.
26. Unless the statute referring the matter to the Court to deal with under s 130B *Justices Act* adds further factors that must be considered there is no authorisation for the Court to determine further criteria. The considerations that may be relevant to administrative decisions in s 100A cannot simply be imported into proceedings conducted by this Court pursuant to s 130B *Justices Act*. I note by comparison that when the Local Court is dealing with innocent parties in relation to *Criminal Property Forfeiture Act* (NT) applications, s 66 of that Act sets out the criteria to establish in what circumstances property may be returned. Neither the *Liquor Act* nor the *Justices Act* establishes any such criteria.
27. I do not consider that forfeiture has been effected and I will order the seized motor vehicle be returned to the claimant as she appears to be the owner.

28. I will forward these reasons to the parties today and list the matter for final orders on 4 August 2006 at 10:00 am. I request the parties confer as to practical arrangements that can be made in relation to the vehicle's return. If that date is not convenient, the parties may approach the Listing Registrar.

Dated this 31st day of July 2006.

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**Jenny Blokland**  
CHIEF MAGISTRATE