

CITATION: *Northern Territory Licensing Commission v Gumbuli* [2006] NTMC 066

PARTIES: NORTHERN TERRITORY LICENSING
COMMISSION

v

DIANE GUMBULI

TITLE OF COURT: Court of Summary Jurisdiction

JURISDICTION: Justices Act

FILE NO(s): 20528099

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:

Liquor Act (NT), ss 95 – 101
Justices Act (NT), ss 130B, 49, 50, 52
Police Administration Act (NT)
Director of Public Prosecutions Act (NT), s 13

Northern Territory Licensing Commission v Roberts [2006] NTMC 065

REPRESENTATION:

Counsel:

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

Solicitors:

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

Judgment category classification: B
Judgment ID number: [2006] NTMC 066
Number of paragraphs: 11

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

No. 20528099

BETWEEN:

**NORTHERN TERRITORY LICENSING
COMMISSION**
Referring Party

AND:

DIANE GUMBULI
Defendant

REASONS FOR DECISION

(Delivered 31 July 2006)

Ms BLOKLAND CM:

1. This matter raises the same fundamental point as *NT Territory Licensing Commission v Marion Roberts* [2006] NTMC 065 and an additional matter to be discussed further. The point dealt with in *NT Territory Licensing Commission v Marion Roberts* that also arises here is whether a finding of guilt against a person (not the owner of the vehicle) for a relevant offence against the *Liquor Act* leads to automatic forfeiture of the seized vehicle in terms of s 96 *Liquor Act* or, if a prosecution has not been instituted within 30 days of seizure, whether the Notice must be issued and the claim be referred to the Court in accordance with ss 98-100 *Liquor Act*.
2. The facts that do not appear to be in dispute are that Ms Gumbuli, (“the claimant”) is the owner of a vehicle, Toyota Troop Carrier “UNIQUE” seized by police on 6 December 2003 for an alleged breach of the restricted area provisions of the *Liquor Act*. Winston Forster was arrested and charged with a number of offences including breaches of the Restricted Area

provisions of the *Liquor Act (NT)*. He was bailed to appear on 2 February 2004. The formal complaint was laid on 2 February 2004: (Submissions on behalf of the Chairperson, NT Licensing Commission, para 2). The issue that arises beyond the matters discussed in *Northern Territory Licensing Commission v Marion Roberts* is whether the prosecution can be said to be “instituted within 30 days” for the purpose of s 98 *Liquor Act*. Mr Foster was found guilty of the offence of bringing and possessing liquor in a restricted on 1 June 2004.

3. The Northern Territory Licensing Commission issued a Notice pursuant to s 98 *Liquor Act*. According to the submissions made on behalf of the claimant, the Claimant wrote to the Licensing Commission requesting the return of her vehicle because it was used without her consent: (Claimant’s Submissions, para 3). The Court was advised that the matter was to go to hearing before the Chairperson of the Licensing Commission on 18 August 2005. Further, the Claimant’s Submission advises, “Shortly prior to that time, it was noted by KRALAS that prosecution had not been commenced within 30 days. The hearing was vacated, a notice was issued pursuant to s 98 of the *Liquor Act* and the Claimant made a claim for delivery within 30 days.” (Claimant’s Submissions, para 5).
4. Apparently following the same procedure, the Licensing Commission has referred the matter to this Court pursuant to ss 98-100 *Liquor Act (NT)* and s 130B *Justices Act*. The letter of referral (27 September 2005) reads (in part), as follows:

“I hereby refer a claim for delivery made by Ms Gumbuli for the return of her Toyota Troop Carrier NT registration UNIQUE (the vehicle) which was seized by Police at Ngukurr in connection with alleged offences against the restricted area provisions of the Act. The vehicle is in the possession of the Ngukurr Police who are aware of the current proceeding of my referral of this matter to the Court.

The claim for delivery was made following the issue of a notice pursuant to section 98 of the Act, as no prosecution was instituted

within 30 days of the seizure of the relevant property.” [Reference is made to certain enclosures] and:

“On the basis of the attached documentation it is submitted that there is no doubt that the Ms Gumbuli is the owner of the vehicle, and that it would be appropriate for the Court pursuant to Section 130B of the Justices Act, to make and order under section 100 of the Liquor Act for delivery of the vehicle to Ms Gumbuli. I therefore ask that you make such order.”

Legislation

5. The relevant legislation is as follows:

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.

The Section 98 Notice

6. As noted, the Chair of the Northern Territory Licensing Commission served a Section 98 Notice. That Notice reads (in part):

“I.....advise that no prosecution has commenced within thirty (30) days of the 6 December 2003 when the Toyota Landcruiser, NT registration UNIQUE, was seized under the 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 Section 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 Section 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 Acting Chairman will refer the claim to a Court of Summary Jurisdiction to be dealt with pursuant to Section 100 of the *Liquor Act*.”

7. Obviously at some stage prior to the hearing before me, the Licensing Commission or their representatives changed their view of the operation of the legislation. As indicated in *Northern Territory Licensing Commission v Marion Roberts*, the Commission is not bound by apparent previous views on the interpretation of the *Liquor Act*, however, in my view it is illustrative of the reasons for my conclusions in Northern Territory Licensing commission, namely there is a fundamental ambiguity in the statutory framework concerning forfeiture pursuant to the *Liquor Act*. Before me, the Licensing Commission raised similar arguments as those raised in the proceedings concerning Marion Roberts, namely, that s 96 *Liquor Act* is clear on its face and forfeiture of the claimant’s vehicle was effected by virtue of the finding of guilt against Mr Forster, despite the fact that a prosecution had (arguably, at least), not been instituted within 30 days of the seizure of the motor vehicle.

Adoption of Reasoning in *Northern Territory Licensing Commission v Marion Roberts*

8. As this matter has been argued at the same time as the matter concerning *Marion Roberts*, I indicate that I have revisited the reasoning in that matter and repeat and adopt the same reasoning here, in particular I find for the same reasons that there exists an ambiguity in the forfeiture procedures of the *Liquor Act*, or at least a reasonable interpretation favouring the procedure apparently adopted initially by the Licensing Commission here, namely, that where property has been seized pursuant s 95 *Liquor Act* and no prosecution has been instituted within 30 days, the Chairperson must issue a notice to the owner (s98) who in turn must comply with s 99 or else the thing seized is forfeited. When the claimant has complied with s 99 *Liquor Act*, the Chairperson must refer the matter to a Court of Summary Jurisdiction (s 100 *Liquor Act*; s 130B *Justices Act*). If the prosecution had commenced within 30 days of seizure; and there is a finding of guilt the property is forfeited unless the administrative procedures under s 100A *Liquor Act* are invoked. For comprehension of these reasons I respectfully direct the parties to my reasons in *Marion Roberts*. I repeat that I do not think a thirty day limit before Notice must be given is particularly onerous in the circumstances contemplated by the *Liquor Act*. Similarly, I repeat and incorporate my reasons from *Marion Roberts*' matter in relation to the powers of the Court and the question of relevant considerations when dealing with the claim pursuant to s 130B *Justices Act*.

Was the Prosecution “*Instituted Within 30 Days*”

9. As indicated, the Licensing Commission now takes the view that the prosecution was indeed instituted within 30 days of the seizure of the vehicle and hence the argument of the claimant, it is said, is irrelevant. The Licensing Commission argues that on 6 December 2003 (the date of the seizure), Mr Forster was arrested and “formally charged” and bailed to appear on 2 February 2004. On 2 February 2004 “the formal complaint was

laid”. In my view, prosecutions are commenced on the date of the complaint being made to the Justice pursuant to the Justices Act (NT) ss 49 and 50. The fact that a person is “charged” does not mean a prosecution is instituted. The word “charge” is used in a number of different contexts in the criminal justice system but is not of itself constitutive of any legal process. So far as I can see the *Police Administration Act* (NT) still does not use the term “charge”, although granted, in common usage many of the processes adopted under the *Police Administrative Act* might be thought of as “charging”. I agree police enliven all the processes to ensure or person’s attendance before the Court (for example under the *Bail Act* and through notices pursuant to Division 4A *Police Administration Act*), however, that does not mean a prosecution has been instituted. As is well known, complaints must be laid within six months of the commission of the offence: (Justices Act (NT) s 52). The six month time period always runs from the date of the complaint, not the “charge” by police. As is well known, the complaint or information that is eventually laid may well differ from the early view taken by investigators. This must also be seen the context of the current legal framework where the ultimate responsibility for summary prosecutions rests with the Director of Public Prosecutions: (Director of Public Prosecutions Act s 13). In my view the original view taken by the Commission was correct.

Orders

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

Dated this 31st day of July 2006.

Jenny Blokland
CHIEF MAGISTRATE