

# **NORTHERN TERRITORY LICENSING COMMISSION**

## **REVIEW OF DECISION OF CHAIRPERSON**

**APPLICANT FOR REVIEW:** JACQUELINE ROSE DANIELS

**CHAIRPERSON'S PROCEEDING:** Administrative decision under s.101 of the *Liquor Act*

**THIS PROCEEDING:** Review pursuant to s.28 of the *Northern Territory Licensing Commission Act*

**CORAM:** Mr John Withnall (Chairperson)

**DATE OF REVIEW HEARING:** 15 November 2004

**DATE OF REVIEW DECISION:** 04 January 2005

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1. In this matter I sat in review of an earlier decision made by the previous Chairman declining to return a vehicle to previous owner Jacqueline Daniels under s.101 of the *Liquor Act*. Ms Daniels requested a review of that decision pursuant to the provisions of the *Northern Territory Licensing Act*, and the review (not being a hearing within the meaning of either Act) was delegated by the Licensing Commission to me as a single member sitting alone, albeit with the pre-ascertained consent of the applicant.
2. The review was conducted in Katherine on 15 November 2004. Ms Daniels was represented by counsel Ms Cassandra Tys, and the police by Const. Ian Young.
3. I heard evidence from Jacqueline Daniels, Ambros(e) Daniels, Andy Andrews, Danny Daniels, Daphne Daniels and (for the police) ACPO Graham Turner. In the result, I believe that the matter turns on the "technical" submission of Ms Tys as

to the vehicle not having actually been forfeited under s.96 of the *Liquor Act* (“the Act”), and therefore unable to be disposed of by the Chairman under s.101 of the Act.

4. The Chairperson can only dispose of the vehicle under s.101 on a foundation of forfeiture under s.96. For that forfeiture of the vehicle to have occurred, a person must be found guilty of an offence “in connection with which it was seized”. For it to have been seized, the police must have had reasonable grounds to believe that the vehicle “is evidence of or otherwise relates to any offence that has been or is being committed” against Part VIII of the Act.
5. Ms Tys does not challenge the seizure. The notice of delivery to the Chairman under s.97 narrates as the grounds for seizure that “drinkers traveled from Roper Bar to Yellow Waters with carton of VB in grey Magna 611909 Informed by offenders & driver Ambros Daniels”.
6. However, the subsequent charge against Ambros (Ambrose) Daniels of bringing liquor into the restricted area in the vehicle was withdrawn. The only convictions sustained were in relation to simple possession or control of liquor in the restricted area in evidentiary circumstances not involving the vehicle. The police did not apprehend the defendants in the vehicle. Indeed, the police did not sight the vehicle at any stage of the apprehensions. ACPO Turner later went around to Ms Daniels’ house and seized the vehicle after being told by one of the offenders that this was the vehicle in which had been brought into the restricted area the liquor which the offenders were caught drinking. An allegation of a corroborative admission by Ambros to ACPO Turner during the seizure process was denied before me by Ambros on the basis of the situation having become so heated that his allegedly critical remark was misunderstood in context.
7. The charges of possession and control of liquor arose out of the observations by the police at the time of apprehension. Such possession was not in the vehicle. The vehicle was not an evidentiary element in the charges of possession. The only connection of the possession of liquor to the vehicle, apart from the contested Ambros remark, was the statement of one of the intoxicated offenders, and his statement in that regard was not the basis of, nor needed to be (nor was) proved in order to succeed with, any of the prosecutions *other than the one which was withdrawn*.
8. Admittedly “otherwise relates to” is a broad basis for connection to an offence, but even so, the connection in the particular circumstances of this particular matter is in my view too tenuous to be sustained. Constable Young at very short personal notice valiantly and ably argued the police position, but was undermined by the withdrawal of the only charge that directly related to the use of the vehicle. The other charges succeeded without the allegation of use of the vehicle being, or needing to be, either alleged or tested. The success of the other charges was (in the particular circumstances) independent of the use of the vehicle.

9. There is no accusation, either by Ms Tys or as part of my decision, that the seizure was improper or unlawful. ACPO Turner had reasonable grounds *at that point*. My determination as to no forfeiture having subsequently occurred is based upon the convictions that followed the seizure having an insufficient evidentiary connection with the vehicle. Before me, Ambros denied making any meaningful admission in relation to the vehicle, and the statement of Fabian Rami remained untested hearsay that had played no part in his conviction in the Court of Summary Jurisdiction for simple possession of liquor in the bushland at the base of the water tower hill.
10. In the result I agree that the matter cannot be dealt with under s.101, as s.96 forfeiture cannot be seen to have occurred. However, the vehicle is in the Chairman's legal custody following the notice of delivery, and I therefore instruct the Ngukurr police to release the vehicle to Ms Daniels (or at her written direction). Because in my view the vehicle was lawfully seized, I make it a condition of the vehicle's release that Ms Daniels first executes a standard form of release and indemnity in relation to the seizure.
11. As the release of the vehicle is not a disposal under s.101, this decision is not subject to the approval of the Minister.
12. Ms Daniels should be aware that the vehicle may not be able to be driven away from the police station before re-registration or the issue of an alternative enabling permit. For their part, the police should not necessarily take this decision to be any particular precedent; I reiterate that it is dependent on its own particular evidentiary circumstances.



John Withnall  
CHAIRMAN  
04 January 2005