

NORTHERN TERRITORY LICENSING COMMISSION

Reasons for Decision

Liquor Act 1978 – Section 101. Disposal of forfeited things - Vehicle
Application by Registered Owner - Ms Angela Ninnal

Representation

Sergeant Don Garner

Northern Territory Police

Ms Melanie Little

Instructed by Ms Camilla Hughes, Top End
Women's Legal Service for Ms Angela
Ninnal

1. Police at Port Keats seized the vehicle in question on Tuesday 13 July 1999. The vehicle was seized pursuant to s95 (1)(e) of the Liquor Act. A number of persons were charged with offences pursuant to s75 of that Act. On 23 August 1999, Don Pultchen pleaded guilty in the Darwin Court of Summary Jurisdiction to bringing liquor into, and consuming liquor within a restricted area. In accordance with the provisions of s96, the vehicle was forfeited to the Territory. Angela Ninnal, a resident of Port Keats, is the registered owner of the vehicle.
2. On 22 September 1999, acting on behalf of Ms Ninnal, the Top End Women's Legal Service made application, pursuant to s101 of the Act, for the disposal of the vehicle in her favour. The application was refused.
3. The Top End Women's Legal Service sought judicial review. The application, *Ninnal v Minister for Racing, Gaming & Licensing & Anor* (2001) NTSC 68, was heard by His Honour, Chief Justice Martin on 12 June 2001. His Honour's Reasons for Judgement were delivered on 10 August 2001.
4. Concurrent with the application for judicial review it was agreed between the parties to that review, that the Chairman would conduct a hearing in Port Keats to determine disposal of the vehicle. The hearing, the subject of this decision, was conducted in Port Keats on 29 October 2001.
5. At the commencement of proceedings, the parties were advised of my intention to utilise s101 of the Act when considering my decision as to the disposal of the vehicle. In particular, my intention as foreshadowed was to rely on that part of the section which conditions the Minister's approval to return the vehicle; the section and the Act being of no assistance as to the factors the Chairperson must or might consider.

6. The section is as follows:

101. Disposal of forfeited things

All things forfeited under this Part may be destroyed or otherwise disposed of in such a 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.

7. The parties concurred with my stated intention to be guided, when formulating my decision, by those factors in the section that must be considered by Minister. Ms Little for Ms Ninnal submitted that, in addition to the section, I should consider other material that would arise from evidence to be put before me during the Hearing; a submission I accepted.
8. Clearly, this decision has great significance to Ms Ninnal, the registered owner of the vehicle, a vehicle with an estimated value of \$28,000. The decision may also be of significance to future considerations involving the disposal of seized vehicles. Historically, such matters have been dealt with by way of written submission with no formal reasons provided to the parties. Vehicles seized are generally of minimal value, often no more than a few hundred dollars. Many, once forfeited, sit unclaimed.
9. This matter was vigorously and capably contested by counsel for the applicant and opposed with equal vigour by the Police. It is important then, that in addition to a clear statement as to my reasoning in this matter as it affects Ms Ninnal, future applicants and their opponents are provided with a decision to which they can refer when structuring their submissions.
10. I am satisfied on the evidence that Ms Ninnal is a valued and leading member of the Port Keats community and that she has worked very hard over an extended period to improve the quality of life of members of that community, particularly through her work for Alcoholics Anonymous (AA).
11. In considering the requirements of s101, I am thoroughly well satisfied that Ms Ninnal was not knowingly involved in the act constituting the offence for which her vehicle was forfeited. In my opinion, to be knowingly involved would have required Ms Ninnal's active and supportive participation in the chain of events that led to the offence. No evidence to this effect was adduced.
12. The section also requires an assessment of whether Ms Ninnal "had no reason to suspect" that the vehicle "might" be used in connection with an

offence. (Emphasis added.) In my opinion, a decision as to whether Ms Ninnal “had no reason to suspect” requires an objective assessment; an assessment of inferences able to be reasonably drawn from the circumstances in this matter. The word “might” suggests to me that Ms Ninnal is required to demonstrate “no reason to suspect” that there was any reasonable chance of her vehicle being used to transport liquor into a restricted area.

13. For the purposes of further explanation the word “might” as used in the section can be compared to the word “would”. In my opinion the word “might” goes to chance, a reasonable chance that the vehicle might be used, whereas “would” goes to reasonable probability; a lesser degree of difficulty for Ms Ninnal if linked with “no reason to suspect”, but one not afforded to her by s101.
14. It is apparent from the evidence that Ms Ninnal has been cautious when loaning her vehicle to others for purposes apart from AA, the “CAPS” program and her Church and that on occasions when permitting its use, she has warned against the transport of liquor. On the occasion of its seizure she had loaned the vehicle for the purpose of an important family visit to another community and was without the vehicle for several weeks. There is evidence that the vehicle returned to the community and was sighted at Mr Pultchen’s house before departing again prior to its seizure.
15. It is apparent from the Police evidence that liquor is brought by vehicle into Port Keats on a very regular basis during the dry season and that this is well known to members of the Port Keats community. Police conduct roadblocks and vehicle searches and the seizure of vehicles, both private and official, is a regular occurrence. A fact, also likely to be well known to the community. Those persons who bring liquor into the restricted area are residents of Port Keats. Many are regular offenders and are known to be regular offenders by members of the community. Some are relatives of the applicant, these and other persons identified in the community as drinkers have been known to use her vehicle. During 1999, relatives used Ms Ninnal’s vehicle to obtain liquor at locations outside of the restricted area. Ms Ninnal is unlicensed and does not drive her vehicle.
16. In 1999, thirty vehicles (30) were seized by Police and one hundred and thirty (130) persons were prosecuted for bringing liquor into the Ports Keats restricted area. However this evidence must be tempered with the understanding that these are whole of dry season figures and that the vehicle was seized on 13 July; less than half way through the dry season. Nevertheless it is likely the fact that vehicles were being seized and persons were being prosecuted, prior to when Ms Ninnal loaned her vehicle, was known to many members of the community.
17. The evidence of Ms Ninnal’s good character and valued community service is persuasive and would have me dispose of the vehicle in her favour were there no other factors to be considered. However the substance of the Police evidence is compelling to the degree that I am not

able to draw sufficient inference from the detail and circumstances of the application, to find on the balance of probabilities that the applicant had no reason to suspect there was any real possibility that the vehicle might be used in the manner it was. Indeed it is difficult, on the evidence; to avoid any conclusion other than that Ms Ninnal had reason to suspect her vehicle might be so used.

18. The application to dispose of the vehicle by returning it to Ms Ninnal is refused.
19. The vehicle will be disposed of by way of public tender and such tender is to be advertised by the Director of Licensing, in the Katherine Times, the Northern Territory News and by way of notices prominently displayed around the Port Keats community. All notices are to clearly state that tenders shall only be lodged with the Director of Licensing, Northern Territory Treasury, GPO Box 1154, Darwin, 0801.
20. Such advertisement is to be stayed for a period of thirty days from the date of this decision in order that Ms Ninnal can consider what further action on her part, may be appropriate.

Peter R. Allen
CHAIRMAN

29 January 2002