Jettner v Peach **29 August, 12 September 2003**
(BF) Martin CJ, Bailey & Riley JJ
[2003] NTCA 16

On 26 February 2002, the appellant was found guilty by the Darwin Court of Summary Jurisdiction of one count of stealing credit valued at $2,805.60 the property of the Darwin Toy Library (DTL) and sentenced to six months imprisonment to be suspended after the respondent had served two months.

The appellant was employed by the DTL as Director. Part of her duties included keeping the financial records of the organisation. During her time as Director the appellant had the use of a DTL credit card. Debits incurred on the credit card were billed to the DTL and not the appellant personally. She was never told expressly that the card could not be used for her private use. During the appellant's time as Director she used the credit card for her private use and incurred a debt of $2805.60. The appellant gave the President of the DTL a cheque to cover the debt incurred following a conversation between the President and the appellant wherein the former referred to the latter's *inappropriate* use of the credit card and *abuse of her position as Director*.

The appellant's defence was that she honestly and reasonably but mistakenly believed that she was authorised to use the credit card in the way that she did. The appellant neither gave nor called evidence about such a belief. In her record of interview with police the appellant withdrew an earlier assertion that she had consent to use the credit card for her personal use, a matter to which the learned magistrate in his reasons expressly adverted. No witness called said that personal use of the credit card by the appellant was authorised. The learned magistrate said that the appellant had failed to *identify any permission* or to *point to permission.*

The appellant appealed to the Supreme Court against both conviction and sentence on the grounds that:-

(1) the Magistrate erred in reversing the onus of proof in respect to whether the appellant held a mistaken belief as to authorisation,

(2) the finding of guilty was unsafe and unsatisfactory, and

(3) the sentence was manifestly excessive.

The Supreme Court dismissed the appeal against conviction holding that neither the issue of authorisation nor the related issue of honest and reasonable but mistaken belief that the conduct was authorised were properly raised during the hearing.

The appellant then appealed to the Court of Appeal contending that the Supreme Court erred in finding that neither authorisation, nor honest and reasonable but mistaken belief were properly raised at the hearing and further in failing to find that the Court of Summary Jurisdiction had reversed the onus of proof in respect of such authorisation or honest and reasonable but mistaken belief. The appellant also appealed against the order dismissing her appeal against severity of sentence.

The Court of Appeal unanimously dismissed the appeal against conviction holding that

- although the prosecution had to prove that the property was appropriated *unlawfully*, the prosecution was not obliged to bring evidence to meet every "defence" of authorisation provided for by s.26 of the ***Criminal Code***.

- an accused bears an evidentiary onus to point to or produce evidence from which it could be inferred that there is at least the possibility of any such defence. It is then upon the Crown to negative the possible defence beyond reasonable doubt.

- in this case the accused bore the evidentiary onus in respect of both authorisation and honest and reasonable mistaken belief in the existence of the state of things relied upon.

- in expressing himself as he did, the magistrate was not reversing the legal onus of proof, but rather was referring to the failure of the appellant to point to evidence which raised either issue. In any event there was no such evidence.

The Court of Appeal unanimously dismissed the appeal against sentence holding that the decision not to wholly suspend the sentence, that being the thrust of the appellant's submissions before the Court of Appeal, was not shown to be in error. The court observed that it would regard the sentence as having been manifestly inadequate had it been fully suspended.