





1 MR. MARRIOTT: I appear as agent on behalf of Mr. Betsina. Mr.  
2 Betsina is not here today.

3 THE COURT: Thank you, Mr. Marriott.

4 The matter of The Queen v. Noel Betsina, my Infor-  
5 mation Number 518, re the failure to appear without  
6 lawful excuse, contrary to Section 133(4) of the  
7 Criminal Code. A transcript has been typed and filed  
8 of what was said in court on the 2nd day of April of  
9 this year, and the admitted facts contained in the  
10 transcript are sufficient for me to convict the accused  
11 if I do not accept Mr. Marriott's argument that the  
12 summons is deficient.

13 I think I should comment on the admitted facts. On  
14 page 3 of the transcript, Mr. Marriott states:

15 "We are further prepared to admit that the original  
16 of the summons is a true copy of the summons Mr.  
Betsina received, that is the ticket."

17 The ticket or the original copy of the summons is on  
18 file with the court and is, in fact, an Information. I  
19 took it upon myself to check the copy of the summons that  
20 was served on the accused in this case, and the front  
21 of it is the same as the original, but the back of it is  
22 quite different and rather than the Affidavit of Service  
23 and provisions for the disposition of the matter on the  
24 back, the accused's copy backing has on it instruc-  
25 tions to the accused as to how he should proceed, and  
26 I satisfied myself that nowhere on the back or the front  
27 of the accused's copy is the text of Sections 133(4) and



1 455.6 contained. I have looked at the warning, if I may  
2 refer to it so, that is contained in the usual form of  
3 summons where it starts off:

4 "You are warned that failure without lawful excuse  
5 to attend court in accordance with this summons",  
6 and then goes on to recite the text of Section 133(4)  
7 of the Code and Section 455.6 of the Code.

8 Also on file are the written arguments submitted  
9 by Mr. Marriott and Mr. Fournier, the solicitor for the  
10 Government of the Northwest Territories, and I am not  
11 going to review all the arguments or make any comments  
12 re ordinances overriding federal enactments, as it would be  
13 obiter, and, in any event, my decision is not binding  
14 on anyone. In short, I accept Mr. Marriott's argument  
15 that the Summary Offence Ticket Information is deficient  
16 as a summons for the purposes of a charge under Section  
17 133(4) in that it does not contain the text of Section  
18 133(4) and Section 455.6 of the Criminal Code. I also  
19 accept, what is really obiter but is very persuasive on  
20 me because of the judge involved, the comment of Superior  
21 Court Judge Hugessen in R. v. Pontbrian in (1978) 1 C.R.  
22 (3rd) 97, Quebec, which states at page 100:

23 "In my opinion, failure to comply with the re-  
24 quirement of s. 455.5(4) can have no effect other  
25 than to render impossible the bringing of a charge  
26 under s. 133(4)."

27 Accordingly, I cannot convict on the charge under  
Section 133(3) of the Code but I am satisfied that the  
Summary Offence Ticket Information re a charge under



1 Section 62 of the Liquor Ordinance is a good Information.  
2 It would seem to me a simple matter for the Territorial  
3 Government to print the text of Section 133(4) and  
4 Section 455.6 on the back of the copy that is served  
5 on the accused. I do not know how many million sets  
6 of these forms they have but, in any event, that would  
7 cure that deficiency.

8 Accordingly, I find Mr. Betsina not guilty on the  
9 charge under Section 133(4) of the Criminal Code.

10 On the other one, that is the charge under the  
11 Liquor Ordinance, I do not believe any plea has been  
12 entered; is that correct?

13 MR. MARRIOTT: My instructions from my client are to enter a  
14 plea of guilty.

15 THE COURT: Very well. Are both the Crown and the Defence  
16 satisfied that I can sentence on that matter now without  
17 Mr. Betsina being present?

18 MR. ZIGAYER: Yes, your honour.

19 MR. MARRIOTT: I am satisfied, your honour.

20 THE COURT: I guess I should hear some facts on it before I  
21 convict.

22 MR. ZIGAYER: Your honour, on the 4th day of July, 1980, the  
23 accused was located behind the Explorer Hotel with two  
24 other persons, one male and one female, and they were  
25 noted to be drinking. Seized were two part-full bottles  
26 of Labatt's beer, one empty Labatt's beer bottle, and  
27 nine full sealed bottles of Labatt's beer. Mr. Betsina



1 admitted ownership, and was, accordingly, issued a  
2 summons under Section 62 of the Liquor Ordinance. Payment  
3 of a fine of Twenty-five dollars was requested of the  
4 defendant in August, 1980, and not done.

5 THE COURT: Do you agree with those facts?

6 MR. MARRIOTT: The facts as alleged by my friend are admitted.

7 THE COURT: I do convict Mr. Betsina as charged. Although  
8 he is not here today, he has come to court several times  
9 on these matters, and when a person does not pay the  
10 voluntary amount I usually go higher, but I think in all  
11 the circumstances I am inclined to simply impose the  
12 regular voluntary amount of Twenty-five dollars. Would  
13 you have any objection, Mr. Zigayer?

14 MR. ZIGAYER: No, your honour.

15 THE COURT: Very well, I direct him to pay a fine of Twenty-  
16 five dollars, and in default four days' imprisonment.

17 You cannot advise him by mail, Mr. Marriott.

18 MR. MARRIOTT: Indeed, I cannot.

19 THE COURT: Is there a telex office in Detah?

20 MR. MARRIOTT: The information I have, although I have not been  
21 able to get in touch with Mr. Betsina the last couple of  
22 weeks, the information he gave me just prior to that  
23 time was that he would be involved in a commercial fish-  
24 ing operation for much of the summer.

25 THE COURT: I am not concerned about giving him time to find  
26 the money but getting in touch with him.

27 MR. MARRIOTT: Perhaps what I might suggest, I shall phone



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his office and see -

THE COURT: I will give him three months to pay, anyway,  
in view of the difficulty in communicating with him. I  
am going to file the written arguments as exhibits in the  
Section 133(4) case, together with the transcript which  
is already part of the record.

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Certified correct  
*G. Mitchell*  
(G. Mitchell - Court Reporter)