

IN THE TERRITORIAL COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER of an Application for the Termination of the Seizure and Return of a Motor Vehicle and its licence plates, seized from the Applicant on 19 July 2001 pursuant to the provisions of the Motor Vehicles Act, R.S.N.W.T. 1988, c. M-6, as amended;

BETWEEN:

DAVID BECKWITH

Applicant

- and -

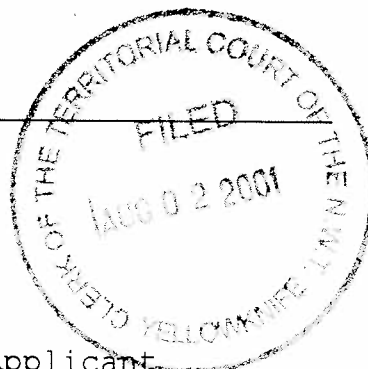
**THE ROYAL CANADIAN MOUNTED POLICE,
THE CITY OF YELLOWKNIFE and THE REGISTRAR OF
MOTOR VEHICLES OF THE GOVERNMENT OF THE
NORTHWEST TERRITORIES**

Respondents

Transcript of the Oral Reasons made on an Originating Notice of Motion heard before The Honourable Judge B.A. Bruser, in Yellowknife, in the Northwest Territories, on the 1st day of August, A.D. 2001.

APPEARANCES:

Mr. J. Brydon: Counsel for the Applicant
Ms. H. Potter: Counsel for the Respondent RCMP
Mr. M. Himmelman: Counsel for the Respondent City of Yellowknife



1 THE COURT: This is an originating notice. It
2 was filed in the Territorial Court on July 25th, 2001.
3 The return date was for yesterday. Yesterday was
4 docket day. We had a very busy day but the court was
5 able to accommodate the parties up until about five
6 o'clock, at which time the matter was adjourned until
7 this morning for continuation if time permitted, and
8 time does permit.

9 The applicant is David Beckwith, who operates a
10 security company in the City of Yellowknife, and three
11 respondents are named. They are: The Royal Canadian
12 Mounted Police, or RCMP from this point on; the City
13 of Yellowknife; and the Registrar of Motor Vehicles of
14 the Government of the Northwest Territories. The
15 Registrar of Motor Vehicles, while named as a
16 respondent, actually has no involvement because of the
17 factual context of the matter. The remarks I have to
18 make from this point on address the issues respecting
19 the other respondents.

20 Mr. Brydon is counsel for the applicant;
21 Ms. Potter for the RCMP; Mr. Himmelman for the City of
22 Yellowknife; and Mr. Toner appeared briefly yesterday
23 on behalf of the Registrar but determined that he had
24 no viable need to be here, with which the court
25 agreed.

26 There are two affidavits: one is the affidavit
27 in support of the originating notice, it is the

1 affidavit of David Beckwith; the other is the
2 affidavit of Terry Scott, a member of the RCMP.

3 The powers of the Territorial Court are
4 circumscribed by statute. This court is a court of
5 statutory creation. Its jurisdiction flows from
6 statute. The court has limited inherent jurisdiction
7 recognized by the Supreme Court of Canada and by
8 appeal courts, but the inherent jurisdiction that this
9 court possesses, such as maintaining control over its
10 process and other similar matters, are of no concern
11 in this proceeding. In the circumstances of this
12 proceeding, I must find my jurisdiction, my powers and
13 my duties from statute. I cannot capture these
14 necessities through pure logic, sympathy or common
15 sense.

16 The history of the matter is, in summary, as
17 follows, which I take from the affidavit material. I
18 begin with the affidavit of Terry Scott not because it
19 is more important, but because it is a simpler basis
20 upon which to begin to outline the history.

21 The RCMP have apparently, as has the City of
22 Yellowknife Bylaw Enforcement, explained to the
23 applicant on more than one occasion that in their view
24 it is a violation of section 132 of the *Motor Vehicles*
25 *Act* to have a flashing light bar mounted on the top of
26 his vehicle. In paragraph 4, it is said that the
27 issue was explained to Mr. Beckwith by the Acting

1 Director of the Motor Vehicles Division of the
2 Department of Transportation, Government of the
3 Northwest Territories. Exhibit A is a copy of the
4 letter written by the Acting Director to the
5 applicant.

6 Paragraph 5 sets out some involvement of the
7 Municipal Enforcement Division of the City of
8 Yellowknife. Exhibit B supports paragraph 5. On July
9 8th, an RCMP member stopped the vehicle in issue and
10 informed the applicant that the light bar had to be
11 removed from the top of the vehicle. Exhibit C is
12 material supporting that allegation. It seems that
13 Mr. Beckwith was warned by the officer that if he did
14 not remove the light bar within one week the vehicle
15 would be seized. He was also given a ticket in the
16 form of a SOTI.

17 On July 18th, the same vehicle was stopped by
18 Municipal Enforcement officers of the City. The light
19 bar had not been removed. They contacted the RCMP.
20 The RCMP attended, seized the vehicle, and removed it
21 via a private company, Age Automotive Limited.

22 Also on July 18th, it is said that Constable
23 Doucet told the applicant that the vehicle would be
24 released to him as soon as he made arrangements to
25 remove the offending light bar from the roof of the
26 vehicle. Exhibit D is a copy of the applicable
27 correspondence. The vehicle and its licence plate

1 remain with the RCMP. The licence plate has
2 apparently been removed from the vehicle.

3 The affidavit of David Beckwith establishes that
4 a significant part of the business that he controls
5 and operates, called Centurion Security Systems
6 Limited, is maintenance of the security of the clients
7 of Centurion. To that end, the applicant, through his
8 company, leased a Dodge Ram motor vehicle, which is
9 the vehicle in issue. The licence plate number is
10 85068 of the Northwest Territories.

11 The company needs to fulfill various duties in
12 order to function, and, in order to maintain the
13 safety of employees, Mr. Beckwith had a light bar
14 installed on top of the vehicle. The components of
15 the light bar include two spot lights, two alley
16 lights, and two flashing amber lights. It is the two
17 flashing amber lights that have attracted the
18 attention of the enforcement authorities, both City
19 and RCMP. According to Mr. Beckwith, the light bar is
20 necessary so that the employees can illuminate
21 locations when they go to investigate various matters.
22 Mr. Beckwith says that his company was informed that
23 the flashing amber lights violated section 132 of the
24 *Motor Vehicles Act*. He says in paragraph 5 that in
25 consideration of the matter and complaint, he had the
26 two flashing lights disconnected. This made the
27 flashing lights inoperable so that in his view they

1 were no longer flashing lights and therefore in his
2 view did not offend the applicable provisions of the
3 *Motor Vehicles Act*. He left the disconnected amber
4 lights on the light bar because to remove them would
5 damage the light bar because the lights are set up in
6 a series. Because they are set up in that way, the
7 alley lights and the spot lights could not properly
8 work if the amber lights were removed. What we are
9 left with, then, is that the amber flash assembly
10 remains on the light bar but is inoperable because of
11 the disconnection. The lights, because they are
12 disconnected, cannot, he says, shine, rotate, or
13 flash. If the light bar were removed as the RCMP have
14 asked Mr. Beckwith to do, the vehicle could not fully
15 operate as intended to fulfill Centurion's contractual
16 obligations.

17 On July 18th when stopped by the Municipal
18 Enforcement officer, Mr. Beckwith demonstrated that
19 the flashing lights did not operate. The vehicle
20 nevertheless was towed away after the RCMP attended.
21 It was before the vehicle was towed away that the
22 police removed the licence plates.

23 In paragraph 10, Mr. Beckwith says that he
24 believes the plates were returned to the Registrar,
25 but during argument it appeared that they are with the
26 RCMP. Counsel are not clear whether there is one
27 plate or more than one. Mr. Beckwith says there are

1 two. Elsewhere there's an indication of one. It
2 doesn't matter whether there is one or two.

3 At the time of the seizure, Mr. Beckwith was
4 given a letter marked as Exhibit A to his affidavit.
5 It is a letter from the RCMP dated the same date as
6 the seizure advising that he had been stopped and
7 ticketed pursuant to section 132(1) of the *Motor*
8 *Vehicles Act*. It refers to a warning that he had been
9 given to remove the light bar. In paragraph (2) the
10 officer writes that on July 18th the vehicle was
11 stopped and the plate (singular) was removed from it.
12 The RCMP offered in that letter (an offer that remains
13 outstanding) to release the vehicle to Mr. Beckwith
14 when the light bar is removed from it.

15 The applicant says that in his view he has not
16 violated any applicable section of the *Motor Vehicles*
17 *Act*, nor was the vehicle abandoned, nor is any public
18 interest engaged in the seizure and continued
19 detention of the vehicle or the plate. He says the
20 vehicle has at all material times been fully
21 registered and properly insured. There were no
22 parking violations and so forth.

23 In paragraph 18, he flushes out the public
24 interest issue by saying that the existence of the
25 light bar did not engage the public interest requiring
26 the vehicle to be seized. He says that none of the
27 officers involved in the matter of the seizure itself

1 have expressed to him any reasonable grounds or even
2 claimed that the seizure was required in the public
3 interest.

4 It is not up to Mr. Beckwith to determine what
5 the public interest is, nor is it up to him to
6 adjudicate upon whether there were or were not
7 reasonable grounds to seize the vehicle or to continue
8 to detain it. The vehicle was not detained for a
9 24-hour period referred to in one of the subsections
10 of section 300 of the *Motor Vehicles Act*, which I will
11 have more to say about shortly.

12 The applicant did know where the vehicle would be
13 stored. He says in paragraph 23 that he has "no idea"
14 if the police have complied with subsection 301(2).
15 He did not receive any notification, he says, pursuant
16 to subsection 301(3) of the Act.

17 At the end of the affidavit Mr. Beckwith states
18 that the seizure of the vehicle has interfered with
19 the lawful and appropriate business of Centurion and
20 that this has cost Centurion client goodwill and loss
21 of income.

22 The only authority which would give me
23 jurisdiction under the *Motor Vehicles Act* to order the
24 return of the vehicle is section 298. Subsection
25 298(1) reads:

26 The owner or any person having an interest in a
27 vehicle referred to in subsection 295(1) may apply
to a territorial judge for an order that

1 terminates the seizure and releases the vehicle to
2 the applicant.

3 Subsection (2):

4 A territorial judge shall order the termination of
5 a seizure and the return of the vehicle to an
6 applicant referred to in subsection (1) where

- 7 (a) the judge is satisfied that the applicant is
8 the owner or person who is lawfully entitled
9 to possession of the vehicle; and
10 (b) the prosecutor does not satisfy the judge that
11 the vehicle is required for the purposes of
12 any investigation or proceedings in relation
13 to an offence under this Act or the
14 regulations.

15 In order to understand section 298 better, it
16 follows that section 295 has to be understood.

17 Subsection 295 (1) reads:

18 Subject to sections 297 and 298, an officer who
19 seizes a vehicle under section 294 or under a
20 search warrant in respect of an offence under this
21 Act or the regulations may cause the vehicle to be
22 taken to and stored in a suitable place until the
23 final disposition of any proceedings in respect of
24 the offence involving the vehicle and may cause
25 tests and examinations to be made of the vehicle
26 that the officer considers proper.

27 Subsection (2) is inapplicable.

Because section 295 makes reference to a seizure
under section 294, it is necessary to look at section
294.

Section 294, being the first section under the
heading "Seizure", reads:

An officer who finds a person, on a highway,

1 of the vehicle to the applicant.

2 I return to section 300.

3 I have read subsection (3) which governs the
4 termination of a section 300 seizure. Unfortunately
5 for the applicant, a provision comparable to section
6 298 empowering the court to terminate a seizure
7 lasting longer than 24 hours does not exist. Because
8 I have no inherent power to order the vehicle to be
9 returned to the applicant and because no statutory
10 power is in the *Motor Vehicles Act* (pursuant to which
11 this proceeding has been instituted), I am without
12 jurisdiction to direct the RCMP to return the vehicle
13 to Mr. Beckwith, although I sympathize with his
14 plight. But although I sympathize with his plight, I
15 also sympathize with the position the RCMP finds
16 itself in. Mr. Beckwith may, and probably does, have
17 other lawful remedies open to him. The issue of
18 whether the light bar or any part of it is lawful or
19 unlawful is for the trial court hearing the summary
20 offence ticket information, which is currently before
21 the Justice of the Peace Court, as shown in Exhibit C
22 of the affidavit of Terry Scott. That issue is not to
23 be resolved in this particular proceeding.

24 The licence plate was removed, it would appear,
25 pursuant to section 287 of the *Motor Vehicles Act*. It
26 says that where an officer who has conducted an
27 inspection believes that the vehicle is in such

1 condition that its operation is likely to endanger the
2 safety of people, the officer may remove the licence
3 plate or plates. There are provisions governing the
4 detention of plates and what the officer removing
5 plates has to do.

6 In section 288, the officer who has removed
7 plates must return them to the person in whose name
8 the vehicle is registered or an agent where the
9 officer is satisfied within 30 days after removing the
10 plates that the requirements of the notice given in
11 287(3)(a) have been completed. Subsection (2)
12 provides that where an officer does not return the
13 plates within the 30-day period the officer must
14 deliver or mail the plates to the Registrar along with
15 a copy of the subsection 287(3) notice.

16 The vehicle and the plate were seized on July
17 18th. If the 30-day period is operative in these
18 circumstances, it would be too early to direct a
19 return of the plate. In any event, there is no
20 provision in the *Motor Vehicles Act* that I am aware of
21 which would give this court the power to direct the
22 officer who has detained the plate to return them at
23 any time, whether before or after the 30-day period.
24 Once again, the issue of jurisdiction becomes
25 significant. It may be that the *Motor Vehicles Act*
26 should be amended to give this court broader powers
27 than it has under the present scheme in order to

1 safeguard in better ways the rights of citizens. But
2 this issue is up to the branch of government that
3 makes legislation.

4 For the reasons given, the application for the
5 return of the vehicle and for the return of the
6 licence plate is dismissed. The *Motor Vehicles Act* is
7 clear about who pays for all reasonable removal,
8 storage and care charges. There is no need to further
9 comment upon that branch of the originating notice.

10 **(PROCEEDINGS CONTINUE REGARDING COSTS)**

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13 Certified pursuant to Practice
14 Direction #20 dated December 18,
15 1987.

16 *Annette Wright*
17 _____
18 Annette Wright, RPR, CSR(A)
19 Court Reporter
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