

The Queen v Harley [2013] NTSC 11

PARTIES: THE QUEEN

v

HARLEY, Leah Jodie

TITLE OF COURT: SUPREME COURT OF THE NORTHERN TERRITORY

JURISDICTION: SUPREME COURT OF THE NORTHERN TERRITORY EXERCISING TERRITORY JURISDICTION

FILE NO: 21228842

DELIVERED: 8 March 2013

HEARING DATES: 8 March 2013

JUDGMENT OF: RILEY CJ

REPRESENTATION:

Counsel:

Plaintiff: R Noble
Defendant: R Goldflam

Solicitors:

Plaintiff: Office of the Director of Public Prosecutions
Defendant: Northern Territory Legal Aid Commission

Judgment category classification: B

Judgment ID Number: Ril1302

Number of pages: 6

IN THE SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT ALICE SPRINGS

The Queen v Harley [2013] NTSC 11
No 21228842

BETWEEN:

THE QUEEN
Plaintiff

AND:

LEAH JODIE HARLEY
Defendant

CORAM: RILEY CJ

Ex Tempore
REASONS FOR JUDGMENT

(Delivered 8 March 2013)

- [1] The defendant has been charged with having caused damage to a building by using fire contrary to the provisions of s 243 of the *Criminal Code Act 1983* (NT). A question of law has arisen for determination within the proceedings and I am asked to resolve whether the structure which is described as a gazebo is a "building" for the purposes of the section.
- [2] I have been provided with a set of agreed facts in which the structure is described as a wooden Balinese style gazebo which was located in the backyard of the complainant's home in suburban Alice Springs. The gazebo had a thatched roof and included the following:
- (a) a wooden deck approximately 2.4m x 2.4m in size, and 70cm above the ground, laid with floorboards;

- (b) four wooden posts about 2.4m in height at each corner of the structure, to which was bolted the deck, and which supported the roof; and
 - (c) a square pyramidal wooden-framed thatched roof topped by a Balinese-style crown shaped roof ornament.
- [3] Each of the four posts was secured by a bolt to a galvanised post-shoe in a sunken cement footing.
- [4] The agreed facts went on to advise that the gazebo was not furnished except for a futon mattress. The gazebo was used by the complainant and other members of the household for activities such as reading books, smoking cigarettes, yoga and meditation, drinking tea and social gatherings. The complainant had slept overnight in the gazebo on approximately 10 occasions and friends had slept there overnight on occasion.

The legislative provisions

- [5] There is a general definition of the word "building" in s 1 of the *Criminal Code Act* in the following terms:

building means any structure complete or otherwise, not being a flimsy or insubstantial structure by the standards of the community to which the owner or occupier of it belongs, that, except in the 3 cases hereinafter mentioned, is not readily moveable and that is used or intended for the occupation of man or his animals or the storage or shelter of his goods. It includes a caravan, ship and an erected tent used or intended for any such purpose.

- [6] Section 243(5) of the *Criminal Code Act* extends the definition of "building" by providing that, for the purposes of that section:

building includes:

- (a) a part of a building; and

(b) all or part of any other structure or thing (whether or not moveable) that is used, designed or adapted for residential purposes (for example, a caravan).

- [7] There is no dispute that the gazebo was a complete structure which was not flimsy or insubstantial by the standards of the community of Alice Springs. It was not readily movable.
- [8] It was the submission of the prosecution that the gazebo falls within the general definition referred to above in that it was a structure "used or intended for the occupation of man". If that not be accepted then it was further submitted that the gazebo falls within the extended definition of "used, designed or adapted for residential purposes".
- [9] Reference to the words of the section makes it plain that there is no requirement that the building be actually used for the occupation of man at the time of the offending. It is sufficient that it has been used or is intended for the occupation of man. The real issue in the present case is what is meant by the expression "occupation of man".
- [10] The defendant resorted to dictionary definitions and submitted that the expression must refer to the act of occupying the structure and that, in turn, must mean "to be resident or established in a place as its tenant". I do not accept that such a narrow interpretation is either required or consistent with the intention of the legislation. As Spigelman CJ observed in *R v Campbell*¹:

The contemporary approach to statutory interpretation is not as rigid as it once was. The courts no longer approach a statute with scissors in one hand and a dictionary in the other.

¹ (2008) 73 NSWLR 272 at 284.

[11] The defendant submitted that, in contrast to s 241 of the *Code*, s 243 created a more serious offence. It was submitted that this offence was directed to protection of human life and property within a structure. In my opinion, whilst it is correct the offence under s 243 is a more serious offence, this does not assist in the interpretation of the meaning of the word "building". Section 241 relates to damage to all property no matter how caused. Section 243 creates the specific offence of causing damage to a building or conveyance by using fire or explosives. It is apparent that the legislature regarded such offending as more serious. It does not follow that the purpose of the offence under s 243 is limited to the protection of human life and property within a structure.

[12] In my opinion the expression "occupation of man" refers to the use of the structure as a part of human life. It may be, but does not have to be, used for residential purposes as provided for in the extended definition in s 243(5) of the *Code*. If that was intended the words "used, designed or adapted for residential purposes" as used in the extended definition, or something similar, would be incorporated into the primary definition. Contrary to the submission of the defendant it is not necessary for the building to be a dwelling place or a dwelling-house. "Dwelling-house" has its own definition in the *Criminal Code* referring to a building of a particular kind². That expression has a narrower meaning than "building" for the purposes of the *Code*.

[13] In my opinion there is force in the submission made on behalf of the prosecution that the expression "occupation of man" includes the concept that the structure affords some facility for the use by humans in activities that have functionality

² Section 1

with how the user or intended user of that structure may go about his or her daily life. Whether the expression also has a wider meaning need not be resolved on this occasion.

[14] As the agreed facts acknowledge, the gazebo in this case was a focal point for occupants of the house and their visitors for use in a number of activities including activities carried out by individuals and also for social gatherings. It was available to be used for, and was used for, such activities as reading, exercising or simply relaxing. The structure was sturdy, permanent and included a roof for shelter and a floor to avoid contact with the ground. On occasions it had been used as a place for people to sleep overnight. It was designed and built to provide for a whole range of everyday activities and such activities could and did take place in the structure even if it was not itself a residence. It was a building for the occupation of man.

[15] In my opinion, the gazebo, the subject of the proceedings, was a building for the purposes of s 243 of the *Criminal Code*.
