

Defences and costs in local government parking prosecutions

By Nathan Sloan

On 25 March 2022, Mr Mongol was found guilty in the Fremantle Magistrates Court of the offence of parking a vehicle so that any portion of the vehicle was on or over a footpath, contrary to clause 3.10(e) of the *City of Melville Parking Local Law 2016* (**Local Law**). Mr Mongol subsequently appealed his conviction to the Supreme Court of Western Australia where, on 25 July 2022, Justice Strk refused his application for leave to appeal and dismissed the appeal. Despite the triviality of the facts of the case, the decision in *Mongol v Moulin* [2022] WASC 232 has significant and far-reaching implications for local governments in relation to the enforcement of parking infringements, which is an issue faced by effectively all metropolitan local government entities. The decision of Justice Strk addresses nearly all of the defences which are likely to arise in relation to parking matters, including the defences under sections 24 and 25 of the *Criminal Code 1913* (**Code**). The decision also addresses the ability of local governments to seek costs after successfully conducting a parking trial.

Background

On 9 December 2021, Mr Mongol was convicted of the offence after a trial in the Fremantle Magistrates Court. The Magistrate found all of the elements of the offence were proved beyond reasonable doubt, as it was clear Mr Mongol had parked his vehicle on a footpath along Fiona Wood Road in Murdoch on 5 August 2021. At trial, Mr Mongol conceded that he parked his vehicle on a footpath, but contended that he believed he could park there because there were no signs expressly prohibiting him from doing so and there were multiple other vehicles also parked on the footpath. Mr Mongol also contended that he had parked on the footpath because he was late for a job as a translator at the Emergency Department at Fiona Stanley Hospital. The Magistrate found that Mr Mongol had no defence to the charge.

Appeal

In summary, Mr Mongol appealed the decision of the Magistrate on the following grounds.

1. The incorrect clause of the Local Law was applied.
2. There was no sign which prohibited parking.
3. Circumstances of sudden or extraordinary emergency existed.
4. The fine and costs were excessive.

Mr Mongol's first ground of appeal was that the learned Magistrate erred by convicting him of an offence under clause 3.10(e) of the Local Law in circumstances where the infringement notice referred to clause 3.6(1). Justice Strk found that there was no merit in Mr Mongol's first ground of appeal. Her Honour found that reference to clause 3.6(1) (which dealt with

the offence of parking on a median strip) did not curtail the prosecution of Mr Mongol of a different offence under the Local Law. The decision confirms that it is open to local governments to commence a prosecution against an accused in respect of a different offence than that to which was initially referred in an infringement notice. In fact, the case confirms the principle that an infringement has no relevance at all once a prosecution is commenced.

Mr Mongol's second ground concerned the fact there were no signs which expressly prohibited the parking of vehicles on the footpath. Justice Strk found that Mr Mongol's mistaken belief that he could park where he did was brought about by his ignorance of the law. Accordingly, her Honour found that Mr Mongol's mistake was one of law, governed by section 22 of the *Criminal Code 1913 (Code)*, and that it did not ground a defence under section 24 of the Code. Section 24 of the Code provides for the defence of honest and reasonable mistake of fact. As Mr Mongol's error was not one relating to one of the factual elements of the offence, section 24 of the Code did not arise in the circumstances of the case.

Mr Mongol's third ground of appeal was to the effect that the learned Magistrate erred by not considering that Mr Mongol was acting in circumstances of sudden or extraordinary emergency. Justice Strk, again, found no merit in this ground. Her Honour found that the learned Magistrate did in fact consider the issue in his reasons and that he did not meet the evidentiary burden of establishing that the emergency defence was open to him in the circumstances (under section 25 of the Code). The evidence led did not suggest that Mr Mongol was urgently required to attend the emergency department at Fiona Stanley Hospital. As such, Mr Mongol did not believe he was acting in circumstances of emergency.

Mr Mongol's fourth and final core ground of appeal was that the fine and costs imposed was excessive. At trial, the Magistrate imposed a fine of \$200 for the offence and the City's costs in the amount of \$2,003. The Magistrate dismissed this ground of appeal, finding that the fine was not manifestly excessive and the costs awarded were reasonable. While her Honour accepted that the offending occupied a lower place on the scale of seriousness, her Honour held that the costs bore a reasonable relationship to the nature of the proceedings in light of the issues to be resolved, including matters involving evidence and statutory interpretation.

Justice Strk awarded the City's costs for the appeal in the amount of \$3,000 fixed costs.

Conclusion

In conclusion, the case is an important one for local governments. The case not only confirms the ability of local governments to prosecute an accused outside of the parameters of an infringement notice, but also clarifies the operation of potential defences under sections 24 and 25 of the Code. Most importantly, the case is authority for the proposition that the most relevant factor in a costs application (in respect of a parking matter) is whether the costs sought bear a reasonable relationship to the nature of the offending, rather than the question of whether the costs sought are proportional to the criminality of the offending. The decision thus has the potential to result in larger cost awards in relating to parking matters.

The information contained in this article should not be relied upon without obtaining further detailed legal advice in the circumstances of each case. For further information on matters discussed in this Update please contact Nathan Sloan by email to nsloan@mcleods.com.au.

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