

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Melanka Lodge
Licensee:	Pinecot Pty Ltd
Licence Number:	80203189
Nominee:	Mr Jason Zammit to 25 April 2002 Mr Darren Lynch from 26 April 2002
Proceeding:	Complaint pursuant to s48(2) of the <i>Liquor Act</i> , alleging breach of s 105
Complainant:	Superintendent T H Bell
Heard Before:	Mr Peter Allen Mr John Withnall Mr Paul Costigan
Date of Hearing:	11 February 2003
Date of Decision:	12 February 2003
Appearances:	Mr John Stirk for the Licensee Mr Rob Burgoyne for the Complainant

1. By letter dated 19 March 2002 Superintendent T.H. Bell of the NT Police in Alice Springs formally complained to the Licensing Commission of an event at the licensed premises in the early hours of 29 January 2002, when four off-duty security staff at the premises were alleged to have committed a serious assault while intoxicated. As well as alleging several breaches of the Private Security Act the complainant alleged a breach of sec.105 of the Liquor Act by the holder of the liquor licence for the premises, in permitting riotous behaviour.
2. When the complaint first came on for hearing before the Commission the matter was adjourned at the request of the licensee until completion of prosecution action against the individuals alleged to have taken part in the assault.
3. Now that all relevant prosecutions have been finalised and the matter re-started before the Commission, the licensee concedes the version of events accepted by magistrate M. Ward SM as set out in his reasons for decision at Exhibit 6 in the present proceedings. The matter remains contested on an interpretational issue.
4. Mr Stirk on behalf of the licensee submits that while it is conceded that the conduct complained of, by its nature, comes within Section 105 of the *Liquor Act*, nevertheless the licensee should not be seen to have *permitted* that conduct. The offending security personnel were off duty at the time, and thus not acting in the course of their duty with the licensee. Mr Stirk submits that there has to be a degree of condoning of the conduct on the part of the licensee to support a finding of having permitted that conduct.
5. It is perhaps trite law that something can be permitted or allowed by way of inaction, by a failure to intervene where intervention would be a reasonable expectation if the situation is to be perceived as one of non-permission.
6. However, we do take Mr Stirk's point insofar as it is referable to the initial assault by Keynes. The licensee can hardly be said to have permitted or allowed Mr Peers to have

been “king hit”, a term with an inbuilt connotation of sudden and unexpected violence. It is common ground that Mr Peers had made no move to attack Mr Keynes, Mr Camelin or anybody at all.

7. The attack on Mr Peers by Keynes was the point, however, at which the licensee could reasonably have been expected to intervene by way of its on duty personnel. There is no evidence before us of any attempt at intervention having occurred.
8. No attempts were made to impose the licensee’s authority as several off-duty and intoxicated security personnel banded together and engaged in a further sequence of sustained violence upon the hapless Mr Peers. To use the descriptions of Mr Ward SM in Exhibit 6, after being king-hit by Keynes, Mr Peers was “set upon by a mob”, which included several “grossly intoxicated” off-duty bouncers acting in concert.
9. It is this course of conduct, certainly very violent if not strictly riotous, that we find was permitted by the licensee by way of the licensee’s failure to intervene in any way, whatever the effectiveness of any such intervention may have been.
10. It is a factor in this finding that Mr Ward SM found the wrongdoers to have become grossly intoxicated while drinking at the licensed premises. We agree with Mr Stirk that at this stage of these proceedings we should not formally find the Licensee to have been in breach of Section 102, but we agree with Mr Burgoyne for the complainant that we are able to take those circumstances into account in determining whether the licensee can be found to have permitted the conduct that eventuated.
11. The licensee permitted the level of intoxication of its off-duty security personnel from which the concerted violence erupted. Once it had erupted, the licensee’s inaction permitted it to go on. *To the same extent that the off-duty staff were drawn to the initial incident, so too should have been the on-duty staff.*
12. The combination of the environment of off-duty intoxication and on-duty inaction amounts in our view to a breach of Section 105.
13. Following our foregoing finding, Mr Stirk called nominee Mr Darren Lynch to give evidence on the issue of penalty.
14. Mr Lynch is the majority shareholder and Managing Director of the licensee company, who at the end of April 2002 installed himself as very much a hands-on nominee essentially in damage control as a series of formal complaints under sec.48 of the Liquor Act came to a head. A summary of those complaints against the licensed premises and their respective outcomes provides a necessary background to Mr Lynch’s evidence and to the penalty we have determined:
 - By decision dated 4 April 02 the Commission upheld a Liquor Inspector’s complaint as to a breach on 27 January 02 of the licence condition prohibiting the sale of takeaway liquor. The Commission suspended the licence for two days, with the second day’s suspension conditionally deferred for twelve months. (The licence condition was also varied by way of clarification of the prohibition on removal of liquor from the premises).
 - By decision dated 9 May 02 the Commission upheld a complaint by the NT Fire and Rescue Service that on 5 December 01 the licensee was in breach of a licence condition requiring compliance with NTFRS requirements within a certain time. The Commission’s decision directed the licensee to cease staging entertainment that constituted a Class 9 use of the premises according to the Building Code of Australia.
 - By decision dated 22 May 02 the Commission upheld a Police complaint as to a female minor having entered and remained upon the licensed premises undetected on 18 January 02. The Commission imposed a new licence condition mandating dedicated individual security for all unlocked access doors after 9 p.m.

- By decision dated 24 May 02 the Commission upheld a Police complaint of failure to remove intoxicated persons on 17 February 02. The Commission imposed two days suspension of licence. No part of that suspension was deferred.
15. It will be seen that the incidents giving rise to the above complaints all occurred within a period of a few months during the watch of the previous nominee, as did the event giving rise to the complaint now being determined.
 16. Mr Lynch testified as to the change in management culture that he has initiated, with a whole new team taking a clear operational direction to a successful turnaround in Police and liquor licensing issues. For various reasons, almost all of the staff who were there as at January last year have been removed. There is a new and experienced manager, and after some frustrations, a new and seemingly reliable security contractor. Mr Lynch believed the Police to currently have no issues specifically with Melanka.
 17. Mr Lynch values the Melanka liquor licence as the most important of the company's spread of operational assets.
 18. Mr Stirk emphasises that the current complaint arose out of the old management, and that at this remove in time the Commission can look at the way in which old management issues have since been addressed.
 19. Mr Burgoyne emphasises the extreme violence of the event which is the subject of the complaint, and the level of gross intoxication which the perpetrators were permitted to achieve. On the other hand, he concedes, the same staff is now not there, the problems at the time have largely been dealt with, and the need for a "crushing" penalty may be seen to have dissipated somewhat with the passing of time.
 20. We agree with Mr Stirk that the penalty should relate not so much to the actual level of violence of the event but to the level of referable culpability in the conduct of the business at the time. This in itself does not necessarily lead our thinking to any significant reduction of a stiff penalty, because the licensee's record in relation to upheld complaints suggests a poor standard of management at the time in terms of liquor licensing issues. The degree of culpability in allowing *anybody* to drink on the premises to a state of such gross intoxication is high, especially so in the case of intoxication of persons who are themselves part of the system of appropriate management and enforcement of liquor licensing controls.
 21. However, we do take heart from Mr Lynch's testimony, and it is appropriate that some credit be given for the improvement he has achieved in the company's corporate governance in relation to liquor licensing issues, albeit belatedly. While we make the finding that the breach was of sufficient gravity to still justify the suspension of the licence, what would almost certainly have been a suspension of licence of at least a week if this matter had proceeded in sequence last year will at this point be reduced to a suspension of four days, but with two of those days to be deferred. This penalty is to include and roll-up the twelve month deferral of a day's suspension imposed on 4 April 2002.
 22. Pursuant to section 66(1)(b) of the *Liquor Act 1978* licence No.80303189 will be suspended for a period of four days. The licensee is cautioned that the suspension is of the licence in its entirety and thus includes the mini-bars in the accommodation units.
 23. The licensee will be notified in writing of the dates of the first two days suspension. The Commission will hear the licensee as to dates.
 24. The Commission will defer the third and fourth days' suspension in the following manner.
 25. Notification of dates on which the third and fourth day's suspension is to take effect will not be given unless and until any further complaint may be upheld in relation to the licensed premises which involves a contravention of a licence condition or provision of the Act, and which is lodged with the Director of Licensing prior to 31 December 2003.

26. What this means is that if no further complaints are lodged against the licensed premises by 31 December 2003 then this matter will be at an end. If however any complaints against the licensee or nominee in relation to any aspect of operation of the licensed premises are lodged prior to 31 December 2003, either with the Commission or with a Court of Summary Jurisdiction, and are subsequently upheld against the licensee or nominee as constituting a breach of the Liquor Act or of any licence condition, then in addition to whatever penalty may be imposed in relation to the further complaint, the Commission may also notify dates for the deferred part of the suspension hereby imposed to be served in relation to this matter.
27. As indicated above, notification of the day's suspension which was imposed and deferred on 4 April 2002 will not now take place in any event. That is, this decision is to be a clean slate in terms of deferred suspensions, and at this point the licensee is to be subject to a deferred suspension of two days in total, until the end of the current calendar year.

Peter R Allen
Chairman

12 February 2003