

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Todd Tavern
Licensee:	Iliadmede Pty Ltd
Licence Number:	80102200
Nominee:	Diane Margaret June Loechel
Proceeding:	Complaint pursuant to s48(2) of the <i>Liquor Act</i> , alleging breach of s 102
Complainant:	Superintendent T H Bell Northern Territory Police
Heard Before:	Mr Peter Allen Mr John Withnall Mr Paul Costigan
Date of Hearing:	12 February 2003
Date of Decision:	13 February 2003
Appearances:	Mr Murray Preston Mr Rob Burgoyne for the Complainant

1. The circumstances of this matter are very similar to a previous complaint against the Todd Tavern which was dealt with by the Commission on 26 October 2000.
2. As was the case in the previous matter, a passing police patrol has noticed an intoxicated-looking aboriginal person leaving the takeaway service area of the premises with a liquor purchase. As before, apprehension of the purchaser confirmed to the police that the purchaser was intoxicated.
3. The intoxication of the purchaser and the substance of the complaint has been admitted by the licensee, the bottleshop attendant concerned in the transaction having been convicted in the Alice Springs Court of Summary Jurisdiction of the relevant offence under s.102 of the Liquor Act.
4. Mr Preston for the licensee made submissions as to the ease with which the mistake could have been made in the case of this particular purchaser, who was said to be well known as exhibiting certain physical indicators of intoxication even when not intoxicated. Mr Burgoyne for the police conceded that the person has a distinctive gait.
5. However, both police officers knew the person well, and both said they were immediately able to detect that he was intoxicated. The subsequent breath analysis readout not being formally before us, we are left with the descriptions of the two police officers as to the state of insobriety of the purchaser, specifically "very intoxicated" and "highly intoxicated" respectively. Also, at the time of the police apprehension the bottleshop attendant admitted that he could see then that the man was intoxicated, and this was within only a few minutes of having affected the sale.
6. In our decision on the previous matter, we commented as follows:

It must be clearly stated that in the context of the broader alcohol-related issues in Alice Springs, the selling of a cask of wine to an intoxicated Aboriginal person is seen as an

appalling act. In almost all circumstances it can expect to attract a significant penalty; there are obvious issues of liquor industry deterrence to be taken into account.

In all the circumstances the Commission accepts that the breach of Section 102(1) of the Act was inadvertent, and is to be seen as not being as culpable as it would have been if it had been deliberate or the result of managerial indifference.

The licensee is also to be given credit for the admission and in effect pleading guilty, to use (Counsel's) term, and not putting the Commission (and the police) to a fully contested hearing.

However, all the foregoing matters must be balanced against present-day community expectation in Alice Springs.

7. With only the substitution of a 750 ml. bottle of port for the previous wine cask, those comments hold true for this second incident, with the disadvantage for the licensee of being unable this time around to present as a "first offender".
8. On the first complaint the bottleshop was suspended for a day, but with the suspension deferred for twelve months by way of the Commission's equivalent of a suspended sentence or good behaviour bond. The deferral period expired without the day's suspension being activated.
9. The Commission readily accepts that the Loechels manage the Tavern in a generally responsible manner, but on this second complaint, so similar to the first, the licensee must surely accept that some duration of actual suspension of licence is unavoidable.
10. Licence No. 80102200 in its application to the bottleshop will be suspended for two trading days, which is to say that all take-away trade from the licensed premises will be prohibited during the course of those days.
11. The second day's suspension will be deferred for a period of twelve months from today, and will be given effect only if any further complaint relating to the operation and management of the Todd Tavern made against this licensee within the next twelve months under any relevant Act is upheld or found proven, whether by this Commission or by a Court of Summary Jurisdiction, as the case may be.
12. If at the end of the period of twelve months the licensee shall not have been found to be in breach of the *Liquor Act* or the terms of the liquor licence in relation to the operation of the licensed premises, and if no such complaint shall then be outstanding, then the second day's suspension hereby imposed shall not thereafter be notified as having to be served.
13. If however such a complaint is made within twelve months and is subsequently upheld (whether within the period of twelve months or at any time thereafter) then in addition to whatever further penalty may be imposed in relation to such new matter the licensee may also be notified under section 66(1) of the *Liquor Act* of a specified Friday on which another day's suspension of the bottleshop is to be served as a result of this present proceeding.

Peter R Allen
Chairman