

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Jabiru Golf Club Inc Jabiru Drive Jabiru NT 0886
Licensee:	Jabiru Golf Club Inc
Licence Number:	81403051
Nominee:	Mr Robert Ian Hay Hendry
Proceeding:	Pursuant to Section 124AAAS of the <i>Liquor Act</i> Further Penalty Subsequent to Finding of Guilt
Heard Before:	Mr Philip Timney (Presiding Member) Mrs Jane Large Mr Walter Grimshaw
Date of Hearing:	3 November 2008
Date of Decision:	11 November 2008
Appearances:	Nil

Background

1. On 22 July 2008 the Licensee of the Jabiru Golf Club Inc (“the Licensee”) was convicted of a breach of Section 102 of the *Liquor Act* (“the Act”) for the sale of liquor to a person who was intoxicated at the time of the sale. The Court imposed a fine of \$500 plus \$40 victim’s levy.
2. The complaint was brought before the Court by Police following observation of the commission of the offence by Licensing Inspectors Peter Cookson and Alan Borg. On 22 May 2008 the Inspectors attended at the Jabiru Golf Club to conduct a covert inspection. During the course of the inspection the inspectors noticed a person, later identified as Mr Jason Martin King, who, according to statutory declaration prepared by the inspectors, was showing significant signs of intoxication. Those signs included walking and swaying in an unsteady manner, swearing in a loud audible voice, bloodshot eyes and slurred speech.
3. Subsequent to those observations, the Inspectors watched Mr King purchase a drink (double Bacardi Rum and coke) from a bar attendant, later identified as Ms Jodie Stafford. Inspector Borg then called Police to assist with obtaining Mr King’s details. Two (2) Police officers attended the premises and removed Mr King to the car park of the premises. Inspector Borg then spoke with Ms Stafford and advised that he had observed her serving alcohol to Mr King whilst he was intoxicated. Ms Stafford responded that she did not think Mr King was “that bad” and that he was always like that, even when he is at work.
4. Inspector Borg also spoke to Mr Hay-Hendry and informed him of his observations in respect of Mr King’s level of intoxication. Mr Hay-Hendry confirmed that Ms Stafford had been an employee of the Licensee for “quite a while”, that she had completed the Responsible Service of Alcohol course and that she “is normally on the ball with this sort of thing”.
5. Statutory Declarations were also prepared by Senior Constable Peter Gray and Constable Tania Smith, the officers who attended the Golf Club at Inspector Borg’s request. Both

officers observed in their statements that Mr King appeared to be intoxicated when they spoke to him. The officers further stated that Mr King refused to provide Police with a sample of his breath and also refused to provide his personal details when requested to do so. Inspector Cookson attests that Mr King continued to swear whilst speaking with the Police officers in the car park. Mr King was subsequently taken into custody. Shortly after leaving the Golf Club he provided the officers with his details and was driven home.

6. By letters dated 12 August 2008 the Director of Licensing advised the Licensee and Nominee that he was inclined to recommend that the Commission impose an additional penalty pursuant to Section 124AAA of the Act and provided the opportunity for the Licensee to respond.
7. In a letter of response dated 25 August 2008 the Nominee, Mr Hay-Hendry, advised that five (5) of the staff that were on duty on the night in question, including Ms Stafford, had obtained certification in the Responsible Service of Alcohol with the final staff member being enrolled to complete the course. He advised further that Mr King is a person who is particularly difficult to pick as intoxicated as he displays some of the signs of inebriation even when not drinking. Mr Hay-Hendry also advised that he had subsequently arranged staff meetings to elevate their awareness in assessing the sobriety of patrons.
8. Mr Hay-Hendry further advised that he has been a Licensee in the Northern Territory for five (5) years, and before that for twelve (12) years in Western Australia and that during that time he had not incurred a breach of the *Liquor Act* in either state. The Director of Licensing confirmed that neither the Licensee nor Nominee have been the subject of prior breaches or complaints. The Commission notes that the liquor license for the Jabiru Golf Club was first issued in 1990.
9. The Commission determined to conduct a hearing pursuant to Section 124AAA of the Act to decide whether an additional penalty should be applied to the Licensee.

Hearing

10. The Commission noted the fact that the Licensee being convicted of an offence pursuant to Section 102 of the Act was evidenced by the Certificate of Proceedings issued by the Clerk of Courts on 7 August 2008. The Commission also took into account the Statutory Declarations provided by the Licensing Inspectors and the Police officers and noted that the Licensee, through Mr Hay-Hendry, did not take issue with the matters raised in the statements. The Commission also considered the response from Mr Hay-Hendry and determined that it had sufficient information and evidence to consider the recommendation for additional penalty without the requirement for the attendance of the parties at the hearing.
11. The Commission convened for the purpose of the hearing on 3 November 2008.

Considerations of the Commission

12. In reaching its decision on the appropriate additional penalty in this instance the Commission took the following matters into account as militating towards a penalty at the lower end of the scale:
 - the unblemished record of the Licensee over a period of eighteen (18) years;
 - the unblemished record of the Nominee over a period of seventeen (17) years;
 - the steps taken by the Nominee prior to and since the breach in respect of the staff training to prevent the future sale of alcohol to intoxicated persons;
 - the Licensee's admission of the breach at the first opportunity, both before the Court and the Commission;

- the submission contained in the report from the Director, that the appropriate penalty would be a letter of reprimand.
13. In the circumstances of this offence, the Commission does not accept the submission of the Director that the appropriate penalty should be a formal letter of reprimand.
 14. The Commission notes with concern the apparent level of intoxication of Mr King at the time and the fact the Inspectors' observations indicated Mr King was very intoxicated and that numerous indicia of intoxication were apparent to them and should have been apparent to the bar staff.
 15. The Commission notes with concern the apparent belligerence of Mr King when confronted by the Police officers and his initial refusal to co-operate with Police or the Inspectors. Whilst Mr King was ultimately escorted from the premises and delivered to his residence without further incident his initial behaviour after being ejected from the Club indicates quite clearly how incidents involving intoxicated persons can readily escalate to a situation which endangers the safety of the Police, Licensing Inspectors and other members of the public on licensed premises.
 16. The Commission notes that serving alcohol to intoxicated persons is a serious offence under the Act and one that will not be tolerated, particularly in regional areas where significant efforts are being made to reduce the harm and anti-social behaviour associated with excessive consumption of alcohol. The Commission is concerned at the number of offences for serving intoxicated persons that have been referred for hearing, either before the Court or the Commission, in recent months. Licensees can expect harsh penalties, including suspension or cancellation of licence, in circumstances where the sale of alcohol to intoxicated persons is consistent with indifferent and irresponsible behaviour on the part of the Licensee or staff members.

Decision

17. The Commission directed a one (1) day suspension of the licence of the Jabiru Golf Club Inc to be imposed, that penalty to be imposed on a Thursday, being the day of the offence. Taking account of the co-operative and positive conduct of the Licensee and Nominee since the offence and their previously unblemished records over significant periods, the Commission further directed that the suspension be totally suspended for a period of twelve (12) months from the date of this decision. The Commission further directed that the Director retain a copy of this decision on the file of the Licensee for reference in the event of any future offence on the part of the Licensee.

Philip Timney
Presiding Member
(Legal Member)

November 2008