

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Melanka Lodge
Licensee:	Pinecot Pty Ltd
Licence Number:	80303189
Nominee:	Leslie Lynch
Proceeding:	Complaints pursuant to s48(2) of the <i>Liquor Act</i>
Complainants:	NT Police, Licensing Inspector Orr
Heard Before:	Mr Peter Allen (Chairman) Mr John Withnall Mrs Barbara Vos
Date of Hearing:	26, 27 June 2003
Date of Decision:	10 July 2003
Appearances:	Mr Robert Perry, for Complainants Mr John Stirk, for Licensee

1. By way of background to the present complaints it is convenient to refer back to a prior decision of the Commission on 22 May 2002, which dealt with a complaint as to an under-age girl being discovered within the Melanka licensed premises at night.

2. On that occasion the Commission found that

she gained access through one of the then fire exit doors with the assistance of some person or persons on the inside. Mr Rodrigues testified that he had advised the Melanka management that these doors were an operational headache. Because of the NT Fire and Rescue Services requirement that such doors always be able to be opened from the inside, he was aware that anybody on the inside could let anybody in and bypass being vetted by the front entrance security.

3. We went on to say that

the problem which precipitated the breach of the Act is better addressed at this time not by the imposition of any penalty per se but by remediation. Our preferred resolution of this matter at this stage is to insert a new condition into the licence mandating an effective alert system whenever any of the one-way exit doors is utilised during licensed hours.

4. A condition was therefore inserted into the licence in the following terms:

At any time after 2100 hours on any day that the premises are open for the sale of liquor, any door allowing egress from the licensed premises which is neither locked nor manned by at least one member of the licensee's security personnel dedicated to the surveillance of that door at that time shall be fitted with an electronic alarm system which upon opening of that door will sound an audible alert in such a manner as to be easily discernible by at least one member of the staff designated by the licensee to listen for and act upon any and all such alarms at that time.

5. The current complaints allege non-compliance with this condition of the licence on three separate observations (two by police, one by licensing inspectors) during the period from

2200 hours to 2340 hours on the evening of Thursday 16 January 2003. Mr Perry appeared for both the police and the Director of Licensing, and agreed at the outset that the complaints relating to the unalarmed and unguarded fire door should be bundled and regarded as the one complaint.

6. Mr Perry submitted a precis of facts that was largely but not entirely agreed by the licensee. In view of the Commission's findings on the contested element, we are able at this stage to reproduce that precis in its entirety as a summary of the facts as accepted by the Commission:
 - (1) About 2200 hours, Thursday 16 January 2003, Constables Curriez, Clarke and Nickson of the Alice Springs Police conducted a walk-through of the licensed premises known as the Club Bar, Restaurant, Courtyard and Games Room of the Melanka Lodge (hereinafter referred to as the venue), during which they noticed the fire exit door located at the rear of the premises and to the side of the toilets which accesses the backpacker lodgings was open and being kept open by heavy objects utilised as door stops. No security personnel were observed to have been in control of that entry point and no alarm was audibly activated to alert staff as to the unlocked and open door. Constable Curriez spoke to a person who identified himself as the bar manager and informed that person of the breach of licence condition and ordered that the door be locked and guarded by a security officer forthwith. The bar manager undertook to fix the problem "straight away". Police then left the premises.
 - (2) About 2215 hours that night Licensing Inspectors Orr and Newcombe, operating independently of Police, conducted an inspection of the venue. On entering the Courtyard, they observed 8 or 10 persons standing in that area consuming alcohol. Although the area was fairly well patronised there was ample seating for all patrons to take advantage of. Inspector Orr advised the venue's security, who were in attendance, that permitting patrons to stand in the Courtyard of the venue is a breach of licence condition and they were to order all patrons to sit or quit that part of the venue. The duty manager, Mr James Cook, then attended and, after a brief conversation with the Inspectors, ordered the security to enforce the seating condition of the premises. Orr and Newcombe then conducted an inspection of the venue and discovered the fire exit door located at the rear of the premises and to the side of the toilets which accesses the backpacker lodgings was open patrons were entering and exiting the venue from that point. No security personnel were observed to have been in control of that entry point and no alarm was audibly activated to alert staff as to the unlocked and open door. Orr and Newcombe, in company with Cook, then conducted tests of the door's alarm system and it was agreed the system was not working and in need of repair. Cook was then instructed to ensure the door was secured and security provided to ensure the door was not used as an entry/exit point for the remainder of the night. Orr and Newcombe then left the venue.
 - (3) About 2300 hours that night Constables Brand and Duetrom of the Alice Springs Police attended the venue in plain clothes and conducted an inspection of the premises. Whilst there, they walked to the rear fire door adjacent to the toilets that gives access to the backpacker lodgings to test access to the venue via that point. They walked through the door and into the yard area beyond and the door closed behind them. After a short time they then tried the door from the courtyard and gained access back into the venue. They then observed the door for a period of time and witnessed eight patrons enter the venue through that access point between 2330 and 2340 hours. At no time during this period did they observe security staff guarding access to that entry point.
7. Mr Stirk on behalf of the licensee admitted the foregoing paragraphs (1) and (2) but not paragraph (3), in relation to which the parties called evidence.
8. Mr Perry called Constable Christopher Brand and Licensing Inspector James Orr.

9. Constable Brand gave clear and concise evidence, readily conceding a lack of memory in relation to just a few details, but impressively clear-spoken and unshakeable on those aspects on which he was challenged.
10. Constable Brand, operating in plain clothes, did not see any security guard when he approached the main fire door at 2300 hours. He and Constable Duetrom effected an exit from the licensed premises by going out through the door, and it closed behind them. After a few minutes they re-entered the premises through the same door, their entry unimpeded by locking mechanism, alarm activation or security personnel. No security were to be seen as they re-entered. Constable Duetrom went in to the bar area while Constable Brand opened and closed the door some five times or so, but no alarm was heard by either officer.
11. After walking around the premises for a time, they stationed themselves to watch the door. From 2331 hours to 2340 hours, eight persons entered the premises through the door, all unchallenged, there being no security personnel to be sighted in the area. Constable Brand agreed that he could not actually see the door itself from his station, but could see the doors of the toilet just inside the fire door, and could say that none of the eight persons who appeared from that direction came out of the toilet. The Commission's view of the premises confirmed that the fire door was the only other point of entry into Constable Brand's line of vision from that direction.
12. When the officers returned later at 0045 hours, there was a young security guard watching that particular door.
13. Licensing Inspector James Orr gave evidence in confirmation of paragraph (2) of the precis of facts. He identified a Mr Dave Mogg as the security officer who had been obviously unaware of the licence condition that drinkers in the courtyard had to be seated.
14. Mr Stirk called Mr Mogg to give evidence, and Mr Mogg confirmed that had indeed laughed at Mr Orr's information that courtyard patrons had to be seated, that he had never been told about it and did not believe it. He did recall being told by Mr Orr (this would have been at about 2220 hours) that the back fire door alarm was not working, and consequently stationed himself in the servery where he had a good view of the door. At 2300 hours he stationed one Adam Peers at the door, right outside the toilet door, asserting that Mr Peers did not leave his station until relieved.
15. Nominee Mr Darren Lynch explained in evidence that it was discovered that on the night the alarm system's power cord had been unplugged, the disconnection not being apparent because hidden behind the till in the bar. The alarm system has now been directly wired in. Mr Lynch was nevertheless at a loss to explain how the police officers had been able to get back into the premises through the fire door. A view of the door and its workings by the Commission certainly indicated that it was now working as it should have on the night, preventing entry from the outside.
16. While Constable Brand had agreed that he would not have been able to re-enter through the door configured as it now was, he was adamant that on the night the door had definitely closed behind him and Constable Duetrom, and that several minutes later they were able to simply push it open from the outside and re-enter the premises.
17. The Commission had no hesitation in accepting the evidence of Constable Brand. After stationing Mr Peers in the area of the toilet door and fire door, Mr Mogg had gone about other aspects of his duties and can only really testify that Mr Peers was in place when Mr Mogg returned to relieve him at a time subsequent to the police observations of the entry of the eight people. The evidence of Mr Mogg and that of Constable Brand are not necessarily in conflict.
18. At the conclusion of the factual evidence the Commission delivered an ex tempore finding in the following terms:

The Commission accepts the evidence of Constable Brand. We find that he was able to walk out through the door required by licence conditions to be alarmed or otherwise secured, and we find he was able to re-enter the premises through the same door without hindrance either by alarm or by security.

Further, we find that between 11.31pm and 11.40pm Constable Brand observed eight (8) people in such a manner as to persuade us on a strong balance of probability that they must have entered the licensed premises by the said door, and that again no security intervened or was seen to be in this area.

19. We then heard submissions, and the matter now stands for decision on penalty.
20. We agree with Mr Perry that the licensee needed to be meticulously vigilant in relation to the “alarm condition”, as it was itself a remedial measure consequent upon a previous breach. It had been an alternative outcome to suspension of the licence at that previous time.
21. It was anything but vigilant for nobody to notice that the tell-tale lights of the alarm system panel above the bar were unlit. That in itself was not necessarily a breach of the relevant licence condition, which mandates that after 2100 hours the door was to be *either* alarmed or manned. However, it was neither of those when the police visited at 2200 hours and the licensing inspectors arrived shortly after at 2215 hours, because the need for manning had simply not been noticed, and one can only wonder for how long the inactivity of the alarm system had not been noticed and for how long that situation may have prevailed had the inspections not taken place when they did.
22. It is possible that the bar manager really did believe, as he told the police, that the door did not have to be armed until 2300 hours.
23. In the Commission’s view the situation was indicative of a culpable degree of unconcern with the new condition and its importance in the nightly operation of the premises, aimed as it is at the surreptitious entry of minors and other persons whose entry may otherwise be unacceptable. The licensee is fortunate that Mr Stirk is able to say that as it turned out there were no adverse consequences.
24. Mr Perry may have been somewhat generous in bundling the events of the night as a single complaint. The inadequacy of the licensee’s response even after the alerts from both police and licensing inspectors certainly compounds the culpability. It was over an hour after Mr Orr’s visit that Constable Brand watched eight people enter unobstructed and unchallenged through the still unguarded fire door.
25. However, there are matters in mitigation of the stiff penalty that would otherwise seem to be inevitable given the venue’s complaint history.
26. We do not agree with Mr Perry’s submission that the upholding of this complaint must diminish or erode our hopes for the improved corporate governance outlined by Mr Lynch on 11 February 2003 on the last occasion he appeared before the Commission, on complaint in relation to another matter (vide the Commission’s Reasons for Decision dated 12 February 2003). The events of 16 January 2003 had already occurred at the time of that decision, and therefore cannot belie Mr Lynch’s commitment to the improvements in systemisation and corporate culture on which he had already embarked by February.
27. Most significantly, he had changed his contracted security firm by then, with the result that Superintendent Bell was able to give evidence in the present matter that all members of the Alice Springs police whom he had queried on the matter reported that security at Melanka Lodge was working a lot better than it had been last year, at which time they had viewed the situation at Melanka as extremely serious. Supt. Bell testified that there now “seems to have been a marked improvement”.
28. Constable Brand too said that he was impressed with the management and security at Melanka at the present time.

29. Such compliments must weigh heavily in the licensee's favour, although not quite as far as Mr Stirk advocates in suggesting that an admonition is all that is now necessary. We acknowledge the apparent effectiveness of Mr Lynch's commitment to compliance issues, and we agree with Mr Stirk that the need for personal deterrence at this point must be seen to be minimal. We agree with Mr Stirk that Mr Lynch's efforts that have produced the present climate of police approval should not be discouraged.
30. However, we are also of the view that *some* period of licence suspension must mark the breach. Suspension is seen as the only possible outcome for the unacceptable level of unconcern and/or inefficiency on the night, remembering that the condition being breached was itself an outcome of a previous breach situation.
31. In all the circumstances, we have determined to impose the minimum suspension of one day, rolling up all the events of the night of 16 January 2003 including the breach of the seating requirement in the courtyard. Liquor licence No. 80303189 will therefore be suspended for the trading period of Thursday 17 July 2003. On this occasion the suspension will not include the mini-bars.
32. We agree with Mr Stirk that the existing "hanging" suspension should not be activated in the circumstances. The net result is one days suspension to be served.
33. We would like to think that Mr Lynch will see such a minimal penalty in the face of the complaint history of the licensee as an expression of the Commission's confidence in his continuing management. Without that confidence, the present outcome could have been expected to have been quite dire. We share Mr Lynch's obviously fervent hope that he will not be appearing before the Commission again in a complaint situation.

Peter R Allen
Chairman

10 July 2003