

# NORTHERN TERRITORY LICENSING COMMISSION

## REASONS FOR DECISION

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<b>PREMISES:</b>	<b>TIWI SUPERMARKET</b>
<b>LICENCE NUMBER:</b>	80903294
<b>COMPLAINANT:</b>	Director of Licensing
<b>HEARING:</b>	Complaints pursuant to Section 48 of the <i>Liquor Act</i> - Breach of Licence conditions contrary to Section 110 of the <i>Liquor Act</i> (Sale Outside Licensed Hours) and breach of Section 106C of the <i>Liquor Act</i> (Supply of Liquor to a Minor)
<b>HEARD BEFORE:</b>	Mr Richard O'Sullivan (Chairman) Mr Paul Costigan Ms Brenda Monaghan
<b>DATE OF HEARING:</b>	15 June 2007 and 11 July 2007
<b>APPEARANCES:</b>	Complainant – Mr Phil Timney Licensee – Mr Peter Elliott

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### Background

- 1) This complaint has been laid by the Director of Licensing against the Licensee of Tiwi Supermarket, Mrs Jannie Grau Mathers. The first complaint, that the Licensee on a number of occasions sold liquor outside licensed hours, was dismissed on the grounds that there was insufficient evidence for the Commission to be satisfied that there was a case to answer. The second complaint alleges that on the morning of Thursday 15 March 2007, an employee of the Licensee sold liquor to a minor named K. The complaint is denied.
- 2) A brief summation of the evidence put forward by the complainant is that on 15 March 2007, a group of 13 and 14 year old Year 9 students from a local High School skipped classes and pooled their money to buy alcohol from the Tiwi Supermarket. They arranged for student K to enter the store and obtain the liquor while the rest of the group hung around the side of the shop or closeby. K entered the shop on two (2) occasions to purchase liquor in the form of a six pack of Jim Beam and Cola and a six pack of UDL cans of raspberry and soda. On both occasions, a young blond woman served him.

- 3) K gave evidence at the hearing and was cross-examined. The complainant also relied on the following:
  - a) Statutory declarations made by four other students known as J, Ju, R and W;
  - b) Statutory declaration and oral evidence of the Student Liaison Officer (AIEW) at the relevant High School;
  - c) Statutory declaration and oral evidence of Inspectors Christine O'Brien and Doug Bell;
  - d) Statutory declaration and oral evidence of the Assistant Principal of the relevant High School;
  - e) Statutory declaration of the Principal of the relevant High School; and
  - f) Evidence of the till tapes showing alcohol purchases made on 15 March 2007.
- 4) In defence, Counsel for the Licensee, Mr Elliot relied upon documents in the Brief including the written evidence of Ms Rachael Hewitt denying the alleged sale to any minor including Student K and written submissions made by the Licensee. Ms Hewitt also gave oral evidence at the hearing.
- 5) The Commission has considered all of the evidence and submissions placed before it in this matter and makes the following findings:
  - a) The principal witness for the complainant was Student K, a young man of 14 who was 13 at the time of the alleged breach. K is very physically mature for his age being 6'6" in height and weighing 95kg. His voice has broken and he has an athletic frame. Mr Elliot made the strong submission that this young man easily looks 18 and that on this ground alone, the complaint of serving a minor should be dismissed. He emphasised that Supply of Liquor to a Minor under the *Liquor Act* is not a regulatory offence and that his client should not be held liable for a breach in circumstances where the minor looked like an adult. The Commission agrees that Student K is physically advanced for his age. Having had the benefit of seeing him in person however, we do not accept the submission that he clearly looks 18. We would have considered his age to be more in the realms of 16 or 17 such that he should have been refused service. At the outside, his appearance placed him in that category of "grey" where it becomes the responsibility of the Licensee to seek proof of age before allowing the person to purchase liquor.
  - b) Mr Elliott directed the Commission's attention to certain inconsistencies in the evidence-particularly the evidence given by Student K. The Commission notes minor inconsistencies but was generally impressed with the evidence of this young man at the hearing. His oral evidence accorded with his "confession" to school management on 15 March 2007 and with the statement/s made later to licensing inspectors. It was also remarkably consistent with the statements made by the other students who were with him on the morning in question. In short, we found Student K to be a truthful witness giving a clear and honest account and maintaining that account under cross examination. We do not

- accept Mr Elliott's submission that the story could easily have been concocted by the students. P and J were spoken to by school management soon after they returned to the School from their escapade and K was spoken to separately shortly after that. Those accounts plus the statutory declarations of other students taken later were consistent in their content on important issues including the fact that on two occasions K entered the Tiwi Supermarket and purchased two specific products. This particular piece of evidence is also corroborated by entries on the till tape at the relevant times.
- c) Mr Elliott expressed concern at the Commission's decision to close the hearing while Student K's evidence was taken but with Mr Elliott present to represent the interests of the Licensee. Such a ruling was not made lightly. It was the Commission not the complainant that asked whether Student K could be made available to give oral evidence. The Commission was made aware of the concerns held by the Director of Licensing, the High School management and K's parents about exposing the minor to such a process but it was also mindful of the need to ensure that the best evidence was before it when dealing with such a serious complaint. When Student K agreed to give evidence, steps were taken to ensure that his identity was protected throughout the process including when entering and leaving the Commission hearing room. A further direction was given prohibiting disclosure or publication of K's real name and contact details or that of any other minors mentioned in the evidence.
- d) After seeing Student K himself, Mr Elliott expressed concern at the Commission's refusal to allow Ms Hewitt- the person who allegedly served him- to see K. His concern was that his instructions from Ms Hewitt that she had not served a minor might change if she saw Student K and recognised him. The Commission after some consideration decided to maintain its position that Student K's evidence should be taken in the absence of everyone apart from his parents, the Commissioners and Mr Elliot. The Commission made it clear to Mr Elliot however, that so long as he did not name Student K, he was able to physically describe him to Ms Hewitt or to any witness. He could also obtain their responses to any oral evidence K gave. This ruling was made in the light of the Commission's view that this young man's physical appearance was consistent with him still being a minor of 16 or 17 years of age. At the outside, Student K falls within that category of "grey" where it becomes the responsibility of the Licensee to seek proof of age before liquor is supplied. The evidence before us supports a finding that no proof of age was sought.
- e) We are satisfied on the totality of the evidence that K was served liquor at Tiwi Supermarket on 15 March 2007. The oral and written evidence of K is sufficiently corroborated by the statements of other students and the till tapes for us to be satisfied of this fact. We are also satisfied on the totality of the evidence that Ms Hewitt was the person who served him. Despite her denial, she matches the physical description given, she admits to a habit of smoking outside the shop and she was "on duty" at the shop on the day in question.
- f) Mr Elliott submits that K's evidence is unreliable when he stated that Ms Hewitt saw his group of friends outside the shop. Ms Hewitt disputed it and Mr Elliott submits that if the youths were at the side of the shop or behind it, then she could not have seen them. We do not accept this submission. We note the

consistency of K's evidence from the outset on this issue ie that the young blond female shop assistant saw them when she was smoking out the front and later warned him about drinking near the shop. K's evidence at hearing was credible on this issue and is supported by the statement of student W (Brief Page11) and the comments K made to Ms Ah Sam when he was questioned by her. (Brief page 14). We accept K's evidence that he saw the person who served him (ie Ms Hewitt) on 2 occasions outside the shop and that he thought that on each occasion she had seen them. It also appears to us highly likely that she saw them and perhaps heard them also.

- g) We also accept K's evidence that Ms Hewitt warned him about the risks of the group drinking near the shop. He has consistently maintained the same recollection of events on each occasion that he was formally questioned i.e. by school management on 15 March (the day of the alleged breach), by Licensing Inspectors on 19 April (when his statement was taken) and at the hearing on 15 June. Whilst Ms Hewitt strongly denies serving any minor at any time, her initial written statement dated 20 April 2007 states that she didn't remember much about the day in question. In short, we found Ms Hewitt's recollection less convincing than that of Student K about the events that occurred at Tiwi Supermarket on 15 March.
- 6) In summary, the Commission finds on the balance of probabilities (and noting the Briginshaw Test) that Student K, a minor, was knowingly supplied liquor by Ms Hewitt at the Tiwi Supermarket on 15 March 2007 in breach of Section 106C of the *Liquor Act* and of the licence conditions. We await submissions on penalty.

Richard O'Sullivan  
CHAIRMAN

12 July 2007