

NORTHERN TERRITORY LICENSING COMMISSION

PENALTY DECISION

LICENSEE: Gove Yacht Club Inc

PREMISES: Gove Yacht Club

LICENCE NUMBER: 81401564

PROCEEDING: Complaint Pursuant to Section 48(2) Breaches of:
Section 102 – Liquor not to be sold to an Intoxicated Person;
Section 121 – Failure to Remove or Exclude Intoxicated Person from the Licensed Premises;
Section 110 – Failure of Licensee to Comply with a Condition of Liquor Licence

HEARD BEFORE: Mr Richard O’Sullivan (Chairman)
Ms Brenda Monaghan (Legal Member)
Mr Walter Grimshaw

DATE OF HEARING: 19 March 2009

APPEARANCES: Mr Glynn Andrew Baynham, Nominee
Inspector Allan Borg for the Director of Licensing

BACKGROUND

- 1) The Commission, in a decision handed down on 9 April 2009 determined alleged breaches of the *Liquor Act* (“the Act”) proven in respect of events which took place at the Gove Yacht Club premises on 4 November 2008.
- 2) The Commission found the breaches proven in respect of:
 - Section 102 – Liquor not to be sold to an intoxicated person;
 - Section 121 – Failure to remove or exclude an intoxicated person from the licensed premises;
 - Section 110 – Failure of Licensee to comply with a condition of the liquor licence.
- 3) This latter breach relates to a patron on the premises who was not a member of the Gove Yacht Club and who was not duly signed in by a member.

- 4) In determining penalty the Commission has taken into account submissions received from both the Gove Yacht Club and Licensing Inspector Allan Borg.
- 5) The breaches are deemed serious and when considered in conjunction with recent history of the Gove Yacht Club, there is cause for considerable anxiety and concern over the conduct and management of the premises.
- 6) Particular aspects of the Club's recent history are worth examining more closely. The Licensee on 19 August 2006, was charged on complaint by Police for selling liquor to an intoxicated person contrary to Section 102 of the Act. In this instance the Licensee pleaded guilty.
- 7) Following this a Section 124AAA action was considered by the Commission (Section 124AAA of the Act provides for the Commission to consider additional penalty following a finding of guilt by the Court). On 3 January 2008, the Commission handed down a written decision imposing the maximum penalty of a twenty-four (24) hour licence suspension.
- 8) Subsequently, the Licensee was issued a letter of warning on 4 June 2008 by the Acting Director of Licensing. This warning followed allegations that intoxicated patrons were being served on the premises and were allowed to remain on the premises in an intoxicated state. This letter inter alia stated:

"You are hereby caution and warned that any further breach of this nature will result in a formal complaint and prosecution action being taken."

DECISION

- 9) The Commission views the events which took place on 4 November 2008 as most serious. Allowing a person to be served and remain on premises to the point where he virtually passes out in a garden bed when departing is an indictment on the Club and its failure in ensuring its liquor licence obligations are carried out. All Licensees are on notice to ensure careful monitoring of patron sobriety and behaviour. Failure to look out for signs of intoxication and failure to discharge a licensee's responsibilities when patrons are showing signs of intoxication will result in significant penalty where breaches are determined.
- 10) Taking into account the earlier proven breach of serving an intoxicated person and the issue of a letter of warning some five (5) months prior to the proven breaches in this instance, the penalty imposed is as follows:
 - (i) The most serious breach is that of serving an intoxicated person (Section 102) and for this breach the Commission imposes a penalty of three (3) days licence suspension.

- (ii) On the second count, that is the failure to remove or exclude an intoxicated person from the licensed premises (Section 121), the Commission determines a penalty of one (1) full day suspension.
- (iii) On the third count of the failure of a Licensee to comply with a condition of liquor licence (Section 110), that is allowing a non member who has not been signed in as a visitor to be on the premises, the Commission issues a reprimand.
- (iv) The one (1) day suspension for the proven breach of Section 121 is to be served concurrently with the three (3) day suspension issued under Section 102.
- (v) Additionally, the Commission imposes a requirement on the Gove Yacht Club to upgrade its CCTV coverage to that of the 2008 Camera Surveillance Requirements and that the equipment is to be installed and operational to the satisfaction of the Director of the Licensing by 1 August 2009.
- (vi) The three (3) day licence suspension penalty is to include a Tuesday, that being the day of the proven breaches and is to be served on Monday 11 May 2009, Tuesday 12 May 2009 and Wednesday 13 May 2009.

Richard O'Sullivan
CHAIRMAN

27 April 2009