

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

LICENSEE:	J & L Investments Pty Ltd
PREMISES:	Squires Tavern /The Time Nightclub
LICENCE NUMBER:	80300317
PROCEEDING:	Complaint Pursuant to Section 48(2) Breaches of: Section 106B – Allow Minor to Enter and Remain on 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) Mrs Jane Large
DATE OF HEARING:	26 May 2009
APPEARANCES:	Mr Ian Rowbottam for the Licensee Mr Ray Murphy and Ms Kathryn Gleeson for the Director of Licensing

BACKGROUND

- 1) The liquor licence for Squires Tavern contains a Section 106B condition prohibiting minors to enter or remain on premises at any time. The circumstances of this complaint are that in the early hours of the morning on Saturday 20 December 2008, a minor aged sixteen (16) years four (4) months named X and his cousin Y, aged eighteen (18) were allowed entry to Squires Tavern where the minor remained for some time and is seen on CCTV footage to play a gaming machine and drink alcohol purchased by Y. X gained entry by showing the Crowd Controller at the main entrance a driver’s licence identification of a person over the age of eighteen (18) years.
- 2) Around 1am on the morning in question, X was approached by on-duty Licensing Inspectors, one of whom recognised him as a person who was attempting to enter another licensed venue earlier that evening. When spoken to, X provided inspectors with a driver’s licence of another person. The licence showed a male with generally similar facial features to X but with longer hair. Although X denied that he had used identification to enter the premises, the camera surveillance shows this to be untrue and there is little or

no doubt that the driver's licence was the identification used. The Licensee admits the breach.

- 3) A second breach admitted to by the Licensee relates to the failure of the premises to maintain a record of each licensed Crowd Controller employed on premises as required by Special Condition 5 of the liquor licence. The Licensee admits this breach also.

HEARING

- 4) An agreed Precis of Facts was tabled at the Hearing largely confirming the complaint laid by the Director.
- 5) Mr Ray Murphy was originally appointed Counsel for the Director of Licensing and he has made submission on penalty. As Mr Murphy was unable to be present at the Hearing the Director was represented by Ms Katherine Gleeson.
- 6) At the hearing, various matters were put forward by both Ms Gleeson for the Director and Mr Rowbottam for the Licensee to assist the Commission when considering an appropriate penalty.
- 7) On behalf of the Director, the written submissions of Ray Murphy and the oral submissions of Ms Gleeson included the following points to be taken into account when considering penalty:
 - a) The very reason that the *Liquor Act* makes the Licensee responsible for the actions of their employees and contracted agents is to ensure that they exercise some control over the manner in which those persons conduct themselves whilst on duty.
 - b) The seriousness of the breach and the need to protect minors from entering and remaining at licensed premises-particularly in late night areas- and from consuming alcohol there.
 - c) The submission that that the minor bore little resemblance to the male depicted on the proffered driver's licence.
 - d) Regarding the second breach of failing to maintain a register, this should not be regarded as a technical breach but one of a serious nature which shows the attitude of the Nominee generally towards licence conditions.
 - e) The Licensee did not admit either breach until the hearing so any entitlement to mitigation of penalty for early admission is lost.
 - f) This is a second breach of Section 106B (minor on premises). The last time the Licensee received a one (1) day suspension for a minor on premises in 2005. This time, an appropriate suspension is six (6) days for this breach and one (1) day for failing to maintain the register (total of

seven days), three (3) of which should remain suspended for twelve (12) months and four (4) days should be served.

- 8) On behalf of the Licensee, Mr Rowbottam's written and oral submissions included the following points:
- a) Admissions of licence breaches were made on the first mention before the Commission. Whilst an adjournment was sought to clarify one issue, there was no full or contested hearing.
 - b) The inadvertence of the contracted Crowd Controller on the door in failing to properly check the identification provided by X lead to this breach. An inadvertence which the Licensee must now take responsibility for under the Act.
 - c) Both X and the male whose photo appears on the driver's licence ID used to gain entry were of Aboriginal extraction and despite age differences, had similar features.
 - d) X proffered an adult driver's licence to the security guard which was accepted. It was not a situation where X entered without any check taking place.
 - e) Licensees and Nominees are often at the mercy of the people they employ and on occasions, the Nominee herself spends the night on the door to ensure that the right thing is done.
 - f) Following the breach, the Licensee has ceased the contract they had for security services (with Monstar) and has now contracted with another security provider to ensure no further breaches of the licence in relation to admission of minors and other breaches preventable by Security.
 - g) When considering this current breach of allowing a minor to remain on premises, the Commission should take account of the circumstances of the first breach in 2005. That breach involved a former employee who used her position to bring a fifteen (15) year old onto the licensed premises with no checks whatsoever on her age. With this current breach, proof of age was requested but was foiled by an active attempt by two persons to circumvent the law.
 - h) This current breach is vastly different and substantially less serious than the circumstances outlined in the recent decisions of Ducks Nuts, Crossways and Discovery, all of which attracted periods of suspension. The Commission should consider the differences when deciding on appropriate penalty.
 - i) As regards the second admitted breach of failing to keep the required security record, the Nominee submits that the breach was caused by oversight or inadvertence on her part as she thought that the notes kept by security firms was sufficient to cover the requirements of the liquor

licence but now realises she was wrong.

MATTERS TAKEN INTO CONSIDERATION

- 9) When considering this matter, the Commission once again must emphasise the ever present need for Licensees and their staff to ensure that minors do not enter and remain on licensed premises. In order to protect minors, the Commission will continue to take a hard line against licensed premises who allow them to enter, drink and socialise.
- 10) It is a necessary reality that the Licensee and Nominee must bear the burden when their employees or agents fail in their duties but it is commendable that in this case, the Nominee has taken steps to improve security at the door by reviewing her security arrangements.
- 11) In the circumstances before us, we note that there was a general facial resemblance between the minor X and the male on the proffered driver's licence. The resemblance however was not sufficiently strong to persuade us that the Crowd Controller at the door was justified in allowing this sixteen (16) year old to enter. From the CCTV footage shown at the hearing, the young man was clearly someone whose identification should have been carefully checked to verify his age. Had the Crowd Controller asked a few more questions about his identity or required a second identification card (eg a debit card or other ID), then it is highly doubtful that X would have gained entry. It is also noted that the Licensing Inspectors who visited the premises on 20 December 2008 were suspicious enough of his age to question him, leading to his underage being revealed.
- 12) When considering penalty, the Commission takes note of the fact that this was a second breach for the Licensee involving a minor on premises. The first breach occurred in 2005. The Commission accepts that both breaches in their circumstances may not be as concerning as some which have come before it. The minors in each case at Squires Tavern were not seen purchasing alcohol from the bar although they were both supplied with alcohol from friends. Neither minor appeared to be intoxicated. The fact that they were there however is unacceptable.
- 13) The Commission must also take account of the young age of both the minors involved in these breaches. In the 2005 breach, the minor was only fifteen (15) and in this current breach, X was sixteen (16) years and four (4) months. To have minors of such young age on licensed premises, particularly late trading venues, is inexcusable.
- 14) In all penalty decisions relating to minors on licensed premises, the Commission will continue to reinforce a consistent message to all Licensees. It remains the Licensee's paramount responsibility to ensure that their staff carefully scrutinise and question all young people who may be under eighteen (18) and to only allow entry when they are satisfied that they are admitting an adult. Many apply a "yardstick" of questioning and seeking and verifying

identification from any client who appears under twenty-five (25) years, exhibiting a more prudent risk based approach than occurred in this instance. Slack or careless scrutiny which results in minors gaining unlawful entry into licensed premises will continue to result in serious penalties being imposed on the Licensee.

DECISION

- 15) For the breach of allowing a minor to enter and remain on premises, the Commission notes that this is a second breach and imposes a penalty of five (5) days suspension of the Squires Tavern area of the Squires Tavern / The Time Nightclub Liquor Licence. For the breach of failing to maintain a security register a penalty of one (1) day is imposed with the penalties to be served concurrently.
- 16) The Commission notes the measures taken by the Licensee in response to the breach and suspends two (2) of the five (5) days for a period of twelve months (12) as a "good behaviour bond". Should no further similar or more serious breach occur during that period then the suspended period will lapse after twelve (12) months. As regards the three (3) days of suspension to be served, those days shall be on a Saturday 20 June 2009, Sunday 21 June 2009 and Monday 22 June 2009.

Richard O'Sullivan
CHAIRMAN

8 June 2009