

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

PREMISES:	THE VICTORIA HOTEL Smith Street Mall Darwin NT 0800
LICENSEE:	REVICTION PTY LTD
LICENCE NUMBER:	80300989
NOMINEE:	Steven Taylor
PROCEEDINGS:	Hearing into a Complaint Pursuant to Section 48(2) of the <i>Liquor Act</i> – Breaches of Section 110 re Failure to Comply with Camera Surveillance Guidelines 2004
HEARD BEFORE:	Mr Richard O’Sullivan (Chairman) Ms Brenda Monaghan (Legal Member) Mrs Jane Large
DATE OF HEARING:	22 October 2009
APPEARANCES:	Mr Des Crowe for the Licensee Mr Allan Borg for the Director of Licensing

BACKGROUND

- 1) On 31 March 2009, the Commission commenced a hearing to consider a complaint brought by the Director of Licensing against the Victoria Hotel.
- 2) The complaint alleged that the Licensee had breached a condition of its liquor licence by failing to comply with the Camera Surveillance Guidelines 2004. The alleged circumstances of the breach were that the Licensee failed to provide CCTV footage to a Police Officer upon request following an incident on 13 September 2008 at the Hotel.
- 3) On 25 August 2009, the Licensing Commission handed down a preliminary decision with respect to this complaint and found that the oral request by Police for CCTV footage had been validly received by the Hotel and that the

failure to provide that footage was a breach that the Licensee was ultimately responsible for.

PENALTY HEARING

4) The hearing resumed on 22 October 2009 for submissions on penalty.

SUBMISSIONS OF THE DIRECTOR

5) Mr Borg for the Director submitted the following:

- a) Valid requests for CCTV were made and that the Licensee must take ultimate responsibility for the fact that Hotel management failed to comply with the request;
- b) The Hotel's failure to provide CCTV footage led to the Police being unable to fully investigate whether an offence had occurred at the Hotel on 13 September 2009 when a patron alleged that a Security Officer had used unnecessary force in evicting him.
- c) The Licensing Commission must take such breaches of the Camera Surveillance Guidelines very seriously. If they do not, then the likely penalty for failure to comply may often be less than the likely penalty for the offence or breach alleged to have occurred at the premises.
- d) The Licensee has appeared before the Commission before. In particular, it is the Director's view that the Licensee received a light penalty when it appeared on a serious breach in 2008 (which included service of intoxicated patron). A more serious penalty is required on this occasion and a suspension of liquor licence is recommended.

SUBMISSIONS OF THE LICENSEE

6) Mr Crowe for the Licensee submitted the following:

- a) One of the problems for the Hotel was that this request was a verbal one made by a Police Officer by telephone. Most Police attend at the premises, request the CCTV footage and wait until it is produced. The internal processes to ensure compliance with a phone request failed.
- b) This breach is considered very seriously by Hotel management and the attendance of Managing Director, Mr Gray at the hearing today is evidence of this fact.

- c) Mr Gray was totally unaware of the alleged licence breach until January 2009 when the complaint was received by him from the Director. In response, he took the following actions:
- i) The Duty Manager Mr Case and the Nominee Mr Wilkes were both dismissed;
 - ii) A new General Manager, Mr Bottonfsen was appointed to the group of licensed premises (which includes the Victoria Hotel) to oversee and improve management and to ensure compliance with the Act;
 - iii) New internal processes were put in place to ensure both Mr Bottonfsen and Mr Gray are advised of every request for CCTV footage;
 - iv) Since January 2009, all fifteen (15) requests by Police for CCTV footage have been complied with without incident;
 - v) The few prior breaches (bar one that the Commission is considering at the moment and is unrelated) refer back to a time when the Hotel was under the management of the previous Licensee. Any perceived indulgence on penalty for a prior breach should not be taken into account.
 - vi) A 'good behaviour bond' in the form of a suspended suspension is an appropriate penalty.

CONSIDERATION OF THE ISSUES

- 7) At the preliminary hearing, the Commission accepted the following evidence:
- a) In an attempt to properly investigate an allegation that a Security Officer at the Hotel had used unreasonable force when removing a patron, PC Andrew Hansen made several attempts to obtain the CCTV footage. He phoned the Hotel about four (4) or five (5) times over ten (10) or so days following the alleged incident on 13 September 2008.
 - b) On 24 September PC Hansen made further enquiries via telephone to the Hotel and was advised the footage was available for collection.
 - c) On 5 October PC Hansen attended at the Hotel to collect the footage but was advised that there had been a mix-up and the footage was no longer available.

- d) In an interview on 31 October 2008, Licensing Inspectors Paull and Cookson were advised by Andrew Case, Duty Manager, that he was responsible for checking the communications diary and admitted it was his negligence which resulted in the request for CCTV footage not being copied or supplied.
- 8) The impact of the failure to provide CCTV footage was that a Police complaint regarding an alleged assault by a Security Officer at the Hotel could not be fully investigated. Whilst the failure may well have been due to inadvertence, it is not acceptable.
- 9) In a published decision involving a breach of Camera Surveillance Guidelines in March 2007¹, the Licensing Commission made the following comment:
- The Commission has considered all of the evidence and submissions put forward by both parties. We fully accept that this was an inadvertent breach caused by a Nominee who was new to the Territory. We are aware however that over the past year or so, there have been at least four (4) other premises who have appeared before the Commission claiming that they too have inadvertently breached various aspects of the Camera Surveillance Guidelines.*
- Whilst we do not intend to make an example of the Licensee and Nominee in this case, we will not be so reticent in the future when the "period of grace" for the implementation of the new Guidelines has passed. We cannot however ignore the fact that a licensed premise (ie The Alice Springs Plaza Hotel) which attracts a young, diverse clientele has been unable to provide camera footage upon request.*
- 10) Two and a half years have passed since the Commission made the above comments and the 'period of grace' has long expired. Licensed premises are well aware of the importance of CCTV footage for Police investigations and complaints of licence breach. The fact that Police have sought CCTV footage from the Vic Hotel on 15 occasions in the past 6 months is evidence of its usefulness as an investigative tool.
- 11) If the Licensing Commission treats failures to provide CCTV footage lightly, then there will be no imperative for licensed premises to maintain good systems which ensure the production of high quality CCTV footage upon request to Police and licensing inspectors-either verbal or written.
- 12) For this reason, the Commission intends to impose a penalty of a one (1) day suspension of liquor licence at the Hotel.

¹ Alice Springs Plaza Hotel-Decision dated 5 March 2007

13)The offence occurred on a Saturday. Had no steps been taken by Senior Hotel management to improve its internal processes and supervision following the breach, then the penalty would have been imposed on a Saturday. The Commission accepts in mitigation the steps taken [see para 6c) above] and instead imposes the suspension of liquor licence on a Wednesday within the next month on a date to be advised.

Richard O'Sullivan
CHAIRMAN

29 October 2009