

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

PREMISES:	TODD TAVERN HOTEL
LICENSEE:	M&J PASCOE AND DAUGHTERS Pty Ltd PEPITY Pty Ltd BONEHEAD Pty Ltd WRIGM Pty Ltd GRJP Pty Ltd STEWIE Pty Ltd
LICENCE NUMBER:	80102200
DUAL NOMINEES:	Leonie Joan Leech Mark George Pascoe
PROCEEDING:	Alleged Breach of Section 106B(1) of the <i>Liquor Act</i> – Minor on Licensed Premises
HEARD BEFORE:	Mr Philip Timney (Presiding Member) Ms Helen Kilgariff Mr Paul Fitzsimons
DATE OF HEARING:	9 June 2010
DATE OF DECISION:	2 July 2010
APPEARANCES:	Ms Caitlin McAlister, Counsel for the Director of Licensing Mr Lex Sylvester, Counsel for the Licensee

BACKGROUND

- 1) On 8 March 2010 the Director of Licensing lodged a complaint with the Licensing Commission alleging that the licensee of the Todd Tavern Hotel had committed a breach of Section 106B(1) of the Liquor Act ("the Act").
- 2) The complaint alleged that on 16 September 2009 at approximately 12.20 pm two Police officers were conducting an inspection of the Todd Tavern. During the course of that inspection one of the officers noticed a male person consuming a can of VB beer in the Riverside Bar of the licensed premises. The officer concerned had dealings with the male the previous evening and was aware that he was not eighteen years of age, his birth date being 18 January 1992.

THE HEARING

- 7) At the commencement of the hearing, Ms McAlister informed the Commission she was seeking an adjournment of the hearing for the purpose of arranging the attendance of a “key witness” to give evidence in support of the Director’s complaint. She advised that the witness would probably be available to give evidence on 17 June 2010 or at a later date. Ms McAlister also stated that she had, on instructions, agreed with Counsel for the Licensee on the evening before the hearing that the complaint would be withdrawn. However those instructions had subsequently been changed and she was now instructed to request the adjournment.
- 8) Mr Sylvester submitted that the request for an adjournment should be refused. He advised the Commission that both he and his client were ready for the hearing to proceed. Mr Sylvester noted that he had travelled from Darwin at his client’s expense and a delay in the conduct of the hearing would require him to again attend in Alice Springs at further cost to his client. Mr Sylvester also referred to the agreement reached the previous evening with Ms McAlister, that the complaint would be withdrawn, and submitted it was not appropriate for those instructions to be changed at the last minute and so shortly before the date set for the hearing.
- 9) Following a short adjournment the Commission determined that it would not grant the adjournment sought on behalf of the Director and advised the parties ex tempore of the decision. Following are the Commission’s reasons for the decision to refuse the application for an adjournment.

CONSIDERATION OF THE ISSUES

- 10) In considering the Director’s application for an adjournment the Commission noted the following key dates. The incident giving rise to the complaint occurred on 16 September 2009. Statutory Declarations were executed by the Police Officers concerned on 19 September 2009. The report to the Licensing Commission was prepared by the Deputy Director Licensing (South) on 8 March 2010 and forwarded to the Commission’s meeting on 16 March 2010. At that meeting the Commission determined to conduct a hearing in respect of the complaint. By letter dated 22 March 2010 the Commission advised the Licensee, through its legal representative Mr Tony Whitelum, that the hearing in respect of the complaint would be conducted on 9 June 2010.
- 11) The parties, including the complainant, had been aware of the date of the hearing some 2 ½ months prior. That is more than sufficient time for the preparation for the hearing of the complaint, including the identification of witnesses to be called to give evidence. In those circumstances the Commission is of the view that a request for an adjournment on the date a hearing is due to commence should not be granted except in extenuating or emergency circumstances.

- 12) The Commission was not directed to any particular circumstances or emergency that gave rise to the application for adjournment. From the little information available to the Commission it would appear that a witness whose evidence may have been critical to the Director's complaint was not previously summonsed to attend the hearing. The Commission was not presented with evidence from either Counsel to suggest that failure was a result of any action or change of position on the part of the Licensee.
- 13) Whilst cost is not necessary a determinative factor in considering whether or not to grant an adjournment, it is a matter that the Commission should take into account. This is more so in hearing of this type in that the Act makes no allowance for the Commission to make an order for costs so as to compensate the party who is prejudiced, in terms of costs thrown away, as a result of an adjournment.
- 14) The Commission agrees with Mr Sylvester's submission that his client, who was ready and willing to proceed on the date set for the hearing, should not be subjected to the additional costs that would be incurred should its counsel be required to attend Alice Springs again. The Commission also notes that costs must have been incurred in having Ms McAlister appear in Alice Springs. The Commission itself has incurred the travel costs of the Presiding Member and the Executive Officer attending the hearing.
- 15) For the reasons set out immediately above the Commission was not minded to grant the adjournment.
- 16) On resumption of the hearing the Presiding Member advised the parties of its decision to refuse to grant the adjournment following which Ms Caitlin formally withdrew the complaint.

DECISION

- 17) The Commission notes that the complaint detailed above against the Licensee of the Todd River Tavern was withdrawn on the date of the hearing. As a result the Commission makes no determination in respect of the alleged breach of the Act.

Philip Timney
PRESIDING MEMBER

2 July 2010