

## REASONS FOR DECISION

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<b>PREMISES:</b>	<b>GAPVIEW RESORT HOTEL</b>
<b>LICENSEE:</b>	CC1 Pty Ltd
<b>LICENCE NUMBER:</b>	80102399
<b>NOMINEES:</b>	Gregory John Boaz Hau Wah Boaz
<b>PROCEEDING:</b>	Complaint pursuant to s.48(2) of the <i>Liquor Act</i>
<b>COMPLAINANTS:</b>	Sgt. Craig V. Ryan Terrence James Newcombe
<b>HEARD BEFORE:</b>	Mr John Withnall (Presiding) Ms Jill Huck Mr Alan Clough
<b>DATE OF HEARING:</b>	30 July 2003
<b>DATE OF DECISION:</b>	31 July 2003
<b>APPEARANCES:</b>	Mr Rob Perry, for the Complainants Mr Murray Preston, for the Licensee

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1. The Commission dealt with this matter on the basis of an agreed statement of the facts of the complaint, which actually comprised two identical complaints lodged by the police and by licensing inspectors whom the police had called out to the venue. The agreed statement of facts is as follows:

*This proceeding is a complaint under section 48 of the Liquor Act (the Act) alleging that the licensee of the Gapview Resort Hotel, CC1 Pty Ltd, through its nominated manager and/or its employees, breached section 121 of the Act, in that on 28 February 2003, the licensee permitted patrons to enter or remain on the licensed premises whilst in an intoxicated state.*

*The facts of the alleged breaches are stated as follows:*

*At a time prior to 1.15pm on 28 February 2003 a large number of patrons, estimated to have been between 300 and 400 persons had congregated at the Gapview Resort Hotel. Two events had taken place earlier in the day – a funeral and a cricket match. Some of the patrons had been at one or the other of these events and may already have consumed alcohol before entering the venue. Three crowd controllers were on duty at the time.*

*About 1.15pm Officers Tottle and Westphal of the NT Police attended the venue and observed a number of people who appeared to have been intoxicated milling about outside the venue. Upon entering the venue, the officers saw a number of obviously intoxicated persons in the venue. It appeared to police that only when security staff noticed the police presence was any action taken to remove the intoxicated patrons.*

*About 1.45pm Licensing Inspectors Newcombe and O'Donohoe arrived at the premises and observed 5 or 6 obviously intoxicated patrons being removed from the venue by security officers. Upon entering the venue, the Inspectors observed a number of other patrons who were obviously intoxicated and who should not have been allowed to remain on the licensed premises.*

*Within the next 30 minutes or so – and by no later than 2.30pm, no less than 12 police officers had converged on the premises and were engaged in removing obviously intoxicated patrons from the venue. At least 6 patrons were taken to the sobering up shelter. Three patrons were taken to the police station and given breath analysis tests within 30 minutes of having been at the venue. The results of those tests were .196%, .256% and .274% respectively.*

*At all times relevant to the complaint the venue was open for and engaged in the trade of liquor as allowed for in the trading hours condition of the venue's liquor licence.*

2. The cricket match referred to above was said to be the Imparja Cup, an event of some significance to the Aboriginal community in Alice Springs. It is common ground that the Gapview's clientele is predominantly Aboriginal, at ease with the licensee's maintenance of what Mr Baden Williams described as a welcoming and friendly environment for Aboriginal people. Mr Williams leads the band that was playing at the venue on the day the subject of the complaint.
3. Mr Preston explained that on that day too many patrons had got away to a flying start with their liquor intake, elsewhere than at the Gapview.
4. Nominee Mr Greg Boaz testified that on that day he was faced with the biggest crowd he had ever had, and too many people becoming intoxicated unexpectedly quickly. He could not exclude them all fast enough. He explained the need for the eviction process to be essentially on a one by one basis so as to minimise the risk of any group agitation.

5. Mr Boaz told the Commission that the first eviction that day had been as early as 10.30 a.m. (when only light beer was being served), and that evictions were in train at the time the police arrived. He accepts, however, that at that point “there were people on the premises who should have been removed”. A large number of police officers were then engaged in effecting such removals. The licensee concedes that the police took at least six such persons to the sobering up shelter.
6. It is to be noted that police first attended the premises on routine patrol, and not in response to any call out. The intoxicated persons observed at that stage “milling about outside the venue” may well have been persons already excluded from the concert. Mr Boaz explained that persons removed from the premises are not excluded beyond the boundary of the licensed area but allowed to wait in a departure area for a mini-bus, the preferred method of transportation.
7. The Commission readily accepts that the removal from licensed premises of persons not actually causing any trouble by their intoxication is best effected with a minimum loss of face for the patron concerned and a minimum of aggravation. However, s.121 necessitates the employment and deployment of staff in such numbers and rosters as to ensure that intoxication on the part of any patron will be detected and acted on effectively. Mr Boaz admits that despite his efforts there were in fact intoxicated persons present upon the arrival of the police whose removal should have been in train. Such an admission is thus an admission of being short-staffed in the circumstances, confirmed by the subsequent doubling of the numbers of security personnel.
8. Mr Perry argues that inability to cope on the day is unacceptable as a plea in mitigation, that the licensee’s statutory obligations require the maintenance of proper management systems pro-actively rather than re-actively. He speculates as to whether the security staffing would have been increased had the licensee not been “caught out”, in his words.
9. Mr Perry’s submission echoes what the Commission said to Mr Boaz in its previous decision on 09 May 2003: the requirements of the *Liquor Act* are for the most part strictly regulatory, and Mr Boaz’s choice of business enterprise came with appurtenant obligations in terms of management skills and statutory vigilance.
10. Without anything further, given the number of intoxicated persons grounding the complaint, the Commission would be minded to impose a four day suspension of the on-premises component of the liquor licence.
11. However, we take Mr Preston’s point that this was the first occasion of any complaint against the licensee in relation to on-licence trading, and we accept Mr Preston’s assurances that there is nothing further of this nature currently outstanding or in the pipeline.

12. We have noted Mr Preston's submissions as to the licensee's commitment to "doing something for Aboriginal people that is worthy of support". We were impressed with the evidence of Mr Baden Williams as to the Gapview being in effect a much needed comfort zone for Aboriginal people and their appreciation of the way in which they are treated as "equals" there.
13. While we perceive that Mr Boaz's initiative in this regard is not driven entirely by altruism, the servicing of a specific niche market being a matter of business choice, we do not disagree with Mr Preston that the licensee should not suffer a penalty of discouraging harshness at this comparatively early stage of Mr Boaz's efforts to "get it right".
14. However, we are also of the view that *some* period of licence suspension must mark the breach of s.121 in this instance. Suspension is seen as the only possible outcome of being discovered with so many intoxicated patrons on the premises.
15. There will therefore be a day's actual suspension to be served. The formal decision follows.
16. Pursuant to s.66(1)(b) of the *Liquor Act* the Commission is satisfied that the licensee's contravention of s.121 of the Act is of sufficient gravity to justify the suspension of Licence No. 80102399 in its application to on-premises trading for three trading days, which is to say that all liquor trade other than from the bottleshop will be prohibited during the course of such suspension.
17. The licensee is notified that the first day's suspension will take effect on 8th August 2003.
18. The Commission will defer the second and third days' suspension in the following manner.. Notification of dates on which the second and third day's suspension is to take effect will not be given unless and until any further complaint may be upheld in relation to on-premises trade at the licensed premises which involves a contravention of a licence condition or provision of the *Liquor Act*, and which first comes before the Commission pursuant to s.48(6)(c) of the Act within a period of twelve months from today.
19. What this means is that if no further complaints in relation to on-premises trading have been forwarded to the Commission by 31 July 2004 then this matter will be at an end. If however any complaint against the licensee or nominee in relation to the take-away aspect of operation of the licensed premises comes before the Commission before 31 July 2004 and is subsequently upheld against the licensee or nominee as constituting a breach of the *Liquor Act* or of any licence condition, then in addition to whatever penalty may be imposed in relation to the further complaint, the Commission may also notify dates for the deferred part of the suspension hereby imposed to be served in relation to this present matter.

20. As the suspension of the liquor licence affects that part of the licensed premises in which the gaming machines are installed, it activates s.48(b) of the Gaming Machine Act, such that the gaming machines may not be operated during the suspension.
21. We agree with Mr Preston that the upholding of the present complaint cannot activate the deferred suspension from the previous proceedings on 09 May 2003.

John Withnall  
(Presiding Member)  
Delivered 31 July 2003