

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

PREMISES:	GAPVIEW RESORT HOTEL
LICENSEE:	CC1 Pty Ltd
LICENCE NUMBER:	80102399
NOMINEE:	Greg Boaz
PROCEEDING:	Complaint pursuant to s.48(2) of the <i>Liquor Act</i>
COMPLAINANT:	Snr. Sgt. Lance Godwin
HEARD BEFORE:	Mr John Withnall (Presiding) Ms Jill Huck Mr Alan Clough
DATE OF HEARING:	08 May 2003
DATE OF DECISION:	09 May 2003
APPEARANCES:	Mr Rob Burgoyne, for the Complainant Mr Murray Preston, for the Licensee

1. This has been a re-hearing of police complaints against the Gapview Resort Hotel originally made by Snr Sergeant Lance Godwin on 28 November 2002 in relation to two instances of what is colloquially known as "serving intox" that took place at the hotel bottleshop on the evening of 20 July 2002.
2. A re-hearing under s.51(3)(10A) of the *Liquor Act* is a hearing de novo, a fresh start from scratch. Mr Preston explained that such a process was not necessarily the licensee's choice but was the only way the licensee could put before the Commission material that with hindsight and legal advice should have been raised by or on behalf of the licensee on the occasion of the first hearing.

3. In this present hearing, the two breaches of s.102 of the *Liquor Act* were again admitted. An agreed set of basic facts was amplified by evidence from Sergeant Deutrom, and Mr Preston called several witnesses including the nominee Mr Greg Boaz to give evidence of a sea change in the quality of management and the whole drinking environment at the hotel that had taken place since the events complained of. Those breaches of the Act had occurred within less than a fortnight after Mr Boaz's company had taken over the hotel operation knowing it to be in a condition of general operational decay only to find the level of problems to be worse than anticipated.
4. Mr Boaz had next to no experience in the hospitality industry, and his more experienced partner in the business had already deserted it by 20 July. The staff that had been inherited had little training, no attendance ethic and no morale. An unexpected failure in the roster for the night of 20 July resulted in the nominee's son, Mr Matthew Boaz, being called upon to fill in at the bottleshop. He too was inexperienced in the trade, and this was his first night serving in the bottleshop, a situation he describes as pretty stressful. He was aware of his responsibility not to serve intoxicated persons, but has no memory of seeing Jacinta walk up to the counter or of speaking with her.
5. We are told, and in some detail, that since those early days the changes for the better have been "huge" (Mr Greg Boaz), a "dramatic turnaround" (Mr Alleman), "impressive" (Mr Elferink) and "unbelievable" (Mr Preston).
6. However, we agree with Mr Burgoyne that the evidence of improved operational environment is for the most part not relevant to the compliance issues we are considering. Compliance with the *Liquor Act* by licensees is for the most part regulatory; non-compliance attracts penalties. Mr Greg Boaz is a longtime resident of Alice Springs, undoubtedly well aware of Aboriginal liquor issues in the Territory, and particularly in Alice Springs. He bought the hotel at a time when the town was well into a trial of contentious liquor restrictions, and he must be assumed to have assessed the risks of any unpreparedness for what he was taking on. The hotel came with the appurtenant need for the necessary managerial skill and vigilance.
7. Although no blood-alcohol reading was in evidence in relation to the Aboriginal lady Jacinta, who was sold a cask of tawny port for \$19.95, she was described by Sgt Deutrom as "heavily intoxicated". Mr Preston declined to call for the audio tape of her interview with the police at the scene. The police evidence as to the visible indicators of the condition of the vehicle driver involved in the second incident at the bottle shop on the same night was supported by a blood alcohol reading of five times the legal limit prescribed by the *Traffic Act*, a reading that the Commission accepts is well beyond any evidentiary grey area in which his intoxication might be arguable.
8. Mr Preston submits in effect that the picture he has painted goes to the degree of culpability, and that the program of improvements in management systems obviates the need for any element of deterrence in the penalty. This may well be so, to some extent, in relation to what is called personal deterrence, but in the Commission's view there are in the context of the broader alcohol-related

- issues in Alice Springs at the present time obvious issues of whole-of-industry deterrence to be taken into account. The message must be sent.
9. That being so, the Commission as constituted for this present hearing is minded to impose a similar penalty to that faced by the licensee as the outcome of the first hearing, viz. suspension of bottleshop trading for four days. We appreciate that the penalty will be seen as a tough one, if recourse be had to previous Commission decisions in search of some sort of “tariff”, but it reflects the Commission’s assessment of the gravity of the matters complained of and our concerns and perceptions as to a need for general deterrence at this time.
 10. However, in our view there are several elements in mitigation of the whole four days suspension having to be actually served, most notably:
 - how far into the necessary learning curve Matthew Boaz seems to have progressed; the frankness of his evidence and present attitude to the job is to be commended; and
 - the concession by Mr Burgoyne that the complainant considers it a good idea that some part of the penalty be suspended to keep the licensee focussed on compliance issues and to help guard against future failure.
 11. Pursuant to s.66(1)(b) of the *Liquor Act* the Commission is satisfied that the licensee’s contraventions of s.102 of the Act are of sufficient gravity to justify the suspension of Licence No. 80102399 in its application to the bottleshop for four trading days, which is to say that all take-away trade from the bottleshop or from any part of the licensed premises will be prohibited during the course of such suspension.
 12. The licensee is notified that the first and second days’ suspension will take effect on 17 and 24 May respectively.
 13. The Commission will defer the third and fourth days’ suspension in the following manner. Notification of dates on which the third and fourth days’ suspension is to take effect will not be given unless and until any further complaint may be upheld in relation to take-away 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.
 14. What this means is that if no further complaints in relation to the take-away operation have been forwarded to the Commission by 08 May 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 08 May 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.

15. The licensee will need to carefully note for the future that s.102 of the *Liquor Act* imposes a positive obligation on a licensee to be satisfied that every person to whom liquor is sold or supplied is not intoxicated.
16. As the suspension of the liquor licence is a suspension of only part of the operation of the licence, the Commission accepts that the partial suspension does not activate s.48(b) of the *Gaming Machine Act* unless the liquor licence is suspended in relation to that part of the licensed premises in which the gaming machines are installed.

John Withnall
(Presiding Member)
Delivered 09 May 2003