

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

PREMISES: TODD TAVERN

DATE OF DECISION: 27 October 2000

DATE OF HEARING: 26 October 2000

Complaint: Pursuant to Section 48 102

Complainant: Superintendent G Moseley NT Police

Licensee: Iliamede Pty Ltd

Nominee: Mrs Dianne Loechel

**Heard Before: Mr Peter Allen (Chairman)
Mr John Withnall (Member)
Mrs Shirley McKerrow (Member)**

**Appearances: Mr John Stirk for the NT Police
Mr Leigh Stewart for the Licensee**

At the outset of this hearing, Mr Stewart on behalf of the licensee indicated that the alleged breach of Section 102 of the Liquor Act was admitted. The essential agreed facts were that one Mica Hudson was acknowledged by the licensee to have been intoxicated when he had been sold a cask of moselle at the Todd Tavern bottleshop by an employee of the licensee, at a time when the nominee Mrs Dianne Loechel was on holidays and her daughter had been notified to the Commission as acting nominee.

It must be clearly stated that in the context of the broader alcohol-related issues in Alice Springs, the selling of a cask of wine to an intoxicated Aboriginal person is seen as an appalling act. In almost all circumstances it can expect to attract a significant penalty; there are obvious issues of liquor industry deterrence to be taken into account.

However, several matters were put to us by Mr Stewart in mitigation, most importantly that the licensee has no prior record of any breaches of the Act (ie. is a "first offender" before the Commission), and that the customer concerned in the transaction had not been staggering in his walk or unsteady on his feet and no indication of intoxication had been observable by the staff member involved.

In the latter context the fact remains that Mr Hudson attracted the attention of a nearby police patrol as he left the bottleshop area, and the police assessment of him as being intoxicated is now vindicated by the admission to that effect by the licensee in this proceeding. The vigilance of the police at the time is therefore to be commended.

In support of the submission that the customer had not presented as intoxicated, the Commission was given a viewing of the relevant surveillance video showing the transaction. It certainly did not demonstrate Mr Hudson to appear to be intoxicated, but the minimal frame speed of the video did not allow for any meaningful conclusion in that regard to be drawn from it. We were also told that the relevant staff member was an employee of long standing, that he was trained in responsible patron care, and that he had been aware of nearby mobile police patrols.

We note too that the Nominee is a member of the Drug and Alcohol Services Association in Alice ("DASA") and is the chairperson of the local Liquor Licensees Committee. Mr Ray Loechel is a member of the Alice Alcohol Representative Committee ("AARC"). Their commitment to good industry practice is unquestioned.

In all the circumstances the Commission accepts that the breach of Section 102(1) of the Act was inadvertent, and is to be seen as not being as culpable as it would have been if it had been deliberate or the result of managerial indifference.

The licensee is also to be given credit for the admission and in effect pleading guilty, to use Mr Stewart's term, and not putting the Commission (and the police) to a full contested hearing.

However, all the foregoing matters must be balanced against present-day community expectation in Alice Springs.

Licence No. 80102200 in its application to the bottleshop will be suspended for one trading day, which is to say that all take-away trade will be prohibited during the course of that day.

The suspension will itself be suspended for a period of twelve months from today, which is to say that the suspension will be given effect only if any further complaint relating to the operation and management of the Todd Tavern made against this licensee within the next twelve months under any relevant Act is upheld or found proven, whether by this Commission or by a Court of Summary Jurisdiction, as the case may be.

If at the end of the period of twelve months the licensee shall not have been found to be in breach of any Act or the terms of the liquor licence in relation to the operation of the licensed premises, and if no such complaint shall then be outstanding, then the suspension hereby imposed shall not thereafter be notified as having to be served.

If however such a complaint is made within twelve months and is upheld (whether within the period of twelve months or at any time thereafter) then in addition to whatever further penalty may be imposed in relation to such new matter the licensee may also be notified under section 66(1) of the Liquor Act of a specified Friday on which a day's suspension of the bottleshop is to be served as a result of this present proceeding.

The foregoing penalty can be seen to be analagous to a good behaviour bond. This should not be taken by the Alice Springs licensees, or indeed by the Alice Springs Community in general, to be an indication of the penalty that might normally be expected for serving an intoxicated person. All such complaints will be dealt with on a case by case basis, each according to its own facts and contexts. In determining an appropriate penalty in any case, the Commission will always pay particular attention to what it sees as the degree of culpability attaching to the particular breach.

PETER R ALLEN
(Chairman)
26 October 2000