

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

HEARING:	Mr Ian Charles William Spooner
MATTER:	Complaint Pursuant to Section 53A of the <i>Private Security Act</i>
MEMBERS:	Mr Richard O'Sullivan (Chairman) Mr John Brears Mr Doug Phillips
DATE OF HEARING:	04 February 2008
APPEARANCES:	Mr John Lawrence for Complainant Mr Matthew Garraway for Complainant Mr Graham Tribe for Director of Licensing Mr Ian Charles William Spooner (at commencement of hearing)
DATE OF DECISION:	01 April 2008

BACKGROUND

- 1) The Hearing was conducted into a complaint laid pursuant to Section 53(A) of the *Private Security Act* ("the Act"), via correspondence dated the 25 July 2007 which was further expanded on in correspondence on 31 July and 2 August 2007. The complainant is Mr Reno Martin represented by Matthew Garraway of De Silva Hebron, Barristers and Solicitors, and the complaint is against Mr Ian Spooner. Both the complainant and the person subject of the complaint are licensed security officers.
- 2) It was apparent to the Licensing Commission ("the Commission") that a level of disputation between the parties formed the backdrop of a number of the incidents relayed in the hearing brief and commented upon by Counsel for Mr Martin, Mr John Lawrence. Mr Martin and Mr Spooner have a history of association which concluded in an acrimonious fall out between the parties. An outline of the history, as understood by the Commission, provides context for consideration of the complaint, including the response (albeit limited to written response) from Mr Spooner. The full Commission at its meeting of 12 September 2007 determined that the complaint was not of a "frivolous, irrelevant or malicious nature"). The formal minute is as follows:

Commission Decision 12 September 2007

Pursuant to Section 53C(3)(b) of the Private Security Act, the Commission determined to conduct a hearing into this matter.

- 3) In August 2005 Guardian Security Services (Australia) Pty Ltd was formed and commenced trading. Mr Spooner was Managing Director and a thirty percent shareholder; Mr Martin was a Director and thirty percent shareholder; Mr Sua Si Heng was another Director and thirty percent shareholder, with Mr Tony Fitzakerley being a further ten percent shareholder. The company's business was the provision of security and crowd controller services.
- 4) Due to poor trading conditions of the Company and possibly other circumstances, an acrimonious disagreement between Directors Spooner and Martin had eventuated in 2006. Each party took legal action and various proceedings against the other. These included:-
 - Legal proceedings instigated by Spooner and subsequently withdrawn or not proceeded with.
 - Unfair dismissal proceedings by Mr Martin who was dismissed by Mr Spooner as a company employee – proceedings which culminated Mr Martin being awarded the sum of \$10,000 plus other costs.
- 5) Eventually Mr Spooner was removed as a Company Director in April 2007 with the Company being placed under a form of wind up arrangement through the appointment of a liquidator. Following this both parties continued in the security/crowd controller industry operating for different businesses, often in competition for the same clients.
- 6) The complaint currently before the Commission laid by Mr Martin pursuant to Section 53(A) of the Act was initiated in response to a complaint laid by Mr Spooner against Mr Martin on 10 July 2007. The Commission determined at its meeting of 12 September 2007 that the Spooner complaint against Mr Martin was not to be pursued. The formal minute is as follows:

Commission Decision 12 September 2007

Pursuant to Section 53D of the Private Security Act, the Commission directed the Director to advise the person making the complaint that, in the Licensing Authority's opinion, the complaint is for a frivolous, irrelevant or malicious nature, or that the complaint does not set out facts and circumstances that are sufficient grounds on which to base a complaint, and the complaint has been dismissed.

- 7) Mr Martin's complaint was laid on the 25 July 2007, with further detail provided on the 31 July and 2 August 2007. The grounds for the complaint advised in correspondence of 31 July from De Silva Hebron are; "That Mr Spooner is not an appropriate person to hold either a security licence or crowd controller's licence pursuant to Section 15 of the Act. Specifically, that

Mr Spooner has shown dishonesty or lack of integrity, and/or used harassing tactics against Mr Martin”.

Section 15 (6) of the Private Security Act states:

In deciding whether a person is an appropriate person to hold a licence, the licensing authority may consider the following matters as indicating that the person may not be an appropriate person:

- (a) that in dealings in which the person has been involved, the person has-*
 - (i) shown dishonesty or lack of integrity; or*
 - (ii) used harassing tactics.*

- 8) Mr Spooner was given due advice and details of the complaint and he provided a written response to the complaint in a letter dated 18 August 2007.

HEARING

- 9) The matter was originally set for hearing on 13 November 2007. This Hearing was adjourned to allow Mr Spooner time to avail himself of legal services to assist his defence of the complaint. The Hearing was then reconvened on 23 November 2007 with Mr Ian Rowbottom of Withnalls Solicitors representing Mr Spooner. However Mr Rowbottom sought a further adjournment to allow more time to properly prepare the defence of his client. Counsel for the complainant at Hearing, Mr John Lawrence, objected to a further adjournment and with some protestation the Commission reluctantly granted a further adjournment, noting it was coming up to the Christmas period and it was unlikely that the matter would be heard before Christmas 2007.

- 10) The hearing subsequently reconvened on 4 February 2008. Mr Spooner, who appeared without legal representation, sought leave of the Commission to make a statement. He advised;

- *“I am not legally represented*
- *On previous legal advice you have no proper complaint and accordingly have no jurisdiction to hear this matter*
- *You have no jurisdiction to hear evidence of hearsay or to receive such evidence*
- *You have no legal right to allow Mr Martin to be represented for this inquiry and accordingly as you have no legal jurisdiction to hear this matter I have been instructed by Mr Rowbottom to withdraw”.*

Mr Spooner then withdrew from the room and took no further part in the Hearing.

- 11) The Commission has satisfied itself as to its powers under Section 53(C) of the Act, which states:

- (2) *The licensing authority must consider each complaint in a manner that is fair and expeditious and gives proper consideration to the issues.*
- (3) *For subsection (2), the licensing authority –*
- (a) *may conduct the investigations regarding the complaint he or she thinks appropriate; and*
- (b) *may require or, if requested to do so by the security provider, must permit the security provider to appear before it to make submissions or answer questions regarding the complaint.*

This Hearing forms the key or pivotal element of the Commission's investigation into this matter.

Further, under the *Northern Territory Licensing Commission Act*, Section 5(2): *"The Commission has the power to do all things that are necessary or convenient to be done for or incidental to the performance of its functions"*.

- 12) Mr Lawrence drew the Commissioners attention to the series of incidents outlined in the Hearing Brief which provided evidence to the effect that Mr Spooner was not "an appropriate person" to hold a licence due to his manifest lack of integrity and history of use of harassing tactics. Mr Lawrence maintained that this behaviour is evident throughout the material contained in the Hearing Brief and corroborated through witness statements.
- 13) Mr Lawrence also referred to Mr Spooner's lack of integrity as applying and being evidenced through his behaviour ("dummy spit") before the Commission. This is reference to Mr Spooner, having caused delays in proceedings through continued application for adjournment, only to follow with failure to make himself available at hearing and have his version of events tested before the Commission.

CONSIDERATION OF THE ISSUES

- 14) The formal complaint against Mr Spooner is based on a number of incidents where it is alleged that Mr Spooner engaged in a series of harassing and intimidating activities against Mr Martin and people under his supervision. These incidents are;
- 9 October 2006 alleged phone harassment
 - 13 October 2006 alleged phone harassment
 - 4 November 2006 journalist approached Martin, allegedly at instigation of Spooner
 - 4 March 2007 alleged harassment and intimidation at the Tap Bar
 - 27 March 2007 alleged harassment and intimidation at the Tap Bar
 - 18 June 2007 alleged intimidation by Spooner of Mr Martins staff, Mr Gene Minniecon and Mr Gunter Eisenman
 - 29 June 2007 alleged harassment by Spooner at the Transit Centre

- 15) On both the 9 and 13 October 2006 Mr Martin alleges he received harassing and threatening phone calls from Mr Spooner while working at the Palmerston Shopping Centre. To catalogue these calls, Mr Martin advised his wife to take a note of these matters at the time and recorded them in the Incident Book. Mr Spooner has provided a somewhat plausible response to this complaint in that an employee of his was engaged in covert loss prevention work at the Palmerston Shopping Centre and that Mr Martin had attempted to unlawfully trespass him from the premises, so as to prevent him undertaking his duties. The Commission finds the response by Mr Spooner is not without plausibility in the circumstance where there was an ongoing dispute between the parties. It does not therefore find these two complaints proven with any certainty and leaves an open ended finding.
- 16) In regard to the allegation of Mr Spooner improperly referring a journalist to interview Mr Martin concerning an unlawful dismissal action, again the Commission finds the response by Mr Spooner has some plausibility. A matter before the Industrial Relations Commission is usually the subject of a notice in the Northern Territory News which could have alerted the journalist and prompted him to seek an interview with Mr Martin. This complaint is therefore not proven to the satisfaction of the Commission which leaves an open ended finding into the matter.
- 17) In relation to the complaint into harassment at the Tap Bar on the 4 March and 27 March 2007, there is degree of inconsistency with the allegation and supporting statements. In support of the complaint, details of the Employees' Incident Register entered by Mr Martin have been provided. 4 March 2007 Mr Martin recorded, *"Ian Spooner come abuse me while I am working."* The Register entry for 27 March 2007 includes, *"Ian Spooner and Corey Holz attacked me while I working....."* and a reference to Police attending in response to a call from Mr Martin.
- 18) Mr Spooner's written response is that he has recall of only one incident outside the Tap Bar. He also refers to Mr Holz approaching Mr Martin during this incident.
- 19) Inspector Tribe has provided a note of a telephone conversation he had with the Duty Manager of the Tap Bar, Mr Jay Gwyn concerning the nights Mr Martin was allegedly harassed by Mr Spooner. Mr Tribe's note includes, *"I spoke to Mr Gwyn about the incidents and he was only able to recollect one of the incidents. He advised that Mr Spooner did not appear to be involved and that it was a younger person (perhaps Mr Corey Holz). Mr Gwyn advised that the incident only involved a verbal argument and did not involve violence or threats of violence as far as he could tell."*
- 20) Further inconsistency applies in relation to statement from Mr Adrian Franklin. In support of the complaint a copy of the letter from Mr Franklin dated the 24 July 2007 has been provided and states:

“On the 4 March and again on the 27 March, Reno (Mr Martin) was again accosted by Ian Spooner and some of his guards whilst he was working at the Tap on Mitchell.”

Inspector Tribe has provided a note of his telephone conversation with Mr Franklin of the 21 August 2007 which states:

“I rang Mr Franklin to determine if he had personally witnessed any acts of harassment, however he advised that he had not.”

- 21) The degree of contradiction between the version of events portrayed by Mr Martin, the response from Mr Spooner, comments of the Tap Duty Manager, Mr Gwyn and those provided by Mr Franklin, does not enable the Commission to form a clear view of the allegation. The complaint is therefore not proven.
- 22) In regard to Mr Martin's complaint over an incident occurring on the 18 June 2007 at the Mitchell Centre where Mr Spooner has allegedly threatened Mr Gene Minniecon and Mr Gunther Eisenmann, the alleged incident appears to have occurred on 30 June 2007, based on the recall of witnesses. A number of credible witnesses have corroborated that the incident occurred and that Mr Spooner threatened Mr Minniecon and Mr Eisenmann who was not present at the time. However papers included in the Hearing Commission Brief indicate that Mr Spooner has not been informed of or supplied details of this complaint. Natural justice would require Mr Spooner to be advised of this complaint and afforded an opportunity to respond. This appears not to have occurred and therefore the Commission will not further consider this specific complaint.
- 23) On the 29 June 2007 at the Transit Centre, it is alleged that Mr Spooner verbally abused Mr Martin and released Rottweiler dogs as a means of intimidating him. A number of supporting statements have been made to the effect that Mr Spooner pulled up at the Transit Centre to launch a verbal assault on Mr Martin and in the process released the Rottweiler dogs and made threats. Similar statements supporting the complaint have been made by Mr Zelindo Lay, Mr Gunther Eisenmann and Mr David Wennerbom, all employees or under the supervision of Mr Martin.
- 24) The statements are consistent in outlining:
- verbal abuse and harassment,
 - Mr Spooner opening the rear doors and the Rottweilers being released without leash; and
 - that Mr Spooner recalled the dogs to the car when he was aware that Mr Martin was about to or in the process of phoning police.

Inspector Tribe has made contact with the writers of these statements and these subsequent conversations verify the written statements. Other witnesses to the incident were also contacted by Inspector Tribe and their version is not dissimilar to that of the complainant.

- 25) Mr Spooner has provided his view of the events in his letter of 18 August 2007 and it is the Commission's judgement that his version of events does not accurately convey what occurred and the Commission accepts the complainant's version of events and the supporting evidence of a number of bystanders. It takes into account that a number of the statement providers are under the employ or supervision of Mr Martin, but other independent witnesses have also backed these statements, adding to their legitimacy. The complaint is therefore upheld.
- 26) The complainant has alleged that from 9 October 2006 to 29 June 2007 Mr Spooner has engaged in a campaign of harassment and intimidation. This statement, on material before the Commission, may well be true but the Commission must rely on substantial and reasonably conclusive evidence that harassment or dishonesty has been perpetrated. Other than the evidence produced for the incident of 29 June 2007, the veracity of material supporting the complaint has not been sufficient for the Commission to determine the complaint proven or upheld.
- 27) The Commission finds that Mr Spooner did engage in harassing tactics on the evening of 29 June 2007 at the Transit Centre. While it has not determined Mr Spooner engaged in dishonesty, lack of integrity or use of harassing tactics in each or any of the other specified incidents, taken collectively, the overwhelming evidence is that in all probability he engaged in improper dealing with Mr Martin and staff under his supervision.
- 28) At Hearing the Commissioner sought views on an appropriate penalty should the result of their investigations find the complaint proven to their satisfaction.
- 29) Inspector Graham Tribe, on behalf of the Director of Licensing, proffered that licence cancellation in this instance was not appropriate. He initially advised an appropriate penalty could be the immediate suspension of Mr Spooner's licence until he provides evidence to support or explain his actions before the Commission. Mr Tribe's ultimate submission on penalty was for a substantial fine to be imposed and a period of licence suspension (partly suspended) to be applied. Options outlined were for a substantial fine and a licence suspension of one (1) month, with one (1) week to be served. An alternative if no pecuniary penalty was to be applied, is for licence suspension of three months with one month served.
- 30) Mr Lawrence made submission that Mr Spooner was unequivocally an inappropriate person to hold a licence i.e. calling for licence cancellation. Mr Martin's complaint had been prompted by the initial complaint by Spooner on the 10 July 2007 and it was Mr Lawrence's submission that Mr Spooner's action since the Commission determined to hold a hearing, including his conduct and the delays in proceedings, were of "farical proportions" and lent support to his submission that Mr Spooner's licence should be cancelled.

31) In establishing an appropriate penalty the Commission has regard for the Licensee conduct record. On file is correspondence to Mr Spooner from the then Chairman of the Licensing Commission, Mr Peter Allen, of 13 October 2003, which inter alia states

“The Commission has carefully considered the complaint and your response and determined that you should be cautioned regarding your alleged actions and that no other or further action would be taken.”

Following queries with regard to the caution a further letter to Mr Spooner was sent on the 29 January 2004 by the Acting Chairperson, Ms Jill Huck, which stated:

“It should be understood that the caution is simply a warning, not a reprimand..... (The) complaint has not been the subject of a decision on the merits but has prompted the Commission on the documentation before it to raise fitness issues with you by way of the show cause notice. The formal decision on your response to the show cause notice was that no further action be taken by the Commission other than to issue the caution.

Such a caution may become relevant in the advent of an adverse outcome to any similar complaint in the future.”

32) Currently the Act provides a range of penalties, cascading in order of severity from:

- a) Reprimand;
- b) Fine;
- c) Imposition of Licence condition;
- d) Licence suspension;
- e) Cancellation of Licence.

The caution handed out by the previous Commission is not within the spectrum of penalties outlined above. Although noted, the Commission has determined that no undue regard can be taken of the caution which the former Acting Chairperson advised is simply a warning, not a reprimand.

DECISION

33) The Commission finds the complaint of harassment by Mr Spooner against Mr Martin on the 29 June 2007 is substantiated. Without reaching a decision on a number of the other specific incident, the Commission is inclined to the view that taken collectively or in general, they indicate that in all probability Mr Spooner was engaged in the unlawful behaviour of harassment, dishonesty or lack of integrity.

34) The lack of appearance and presentation of evidence by Mr Spooner did not assist his defence of, or response to, the complaint. He appeared to have a cavalier disregard over the serious nature of the complaint and the investigations, including hearing, of the Commission.

35) Taking all matters before it into consideration the Commission finds the complaint substantiated and imposes the following penalty:

- A fine of \$500 to be paid within twenty-eight (28) days and if not paid within that timeframe for an indefinite Licence suspension to apply until payment is made;
- A one (1) month Licence suspension with two (2) weeks to be served and if no further subsequently proven complaint is made within twelve (12) months of the date of this decision, the remaining suspension is to expire.

Richard O'Sullivan
CHAIRMAN

2 April 2008