

# NORTHERN TERRITORY LICENSING COMMISSION

## REASONS FOR DECISION

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**RESPONDENT:** **MR JOHN SMITH**  
Site 8 Temple Bar Carpark  
ALICE SPRINGS NT 0870

**PROCEEDINGS:** Application for a Dual Security / Crowd Controller Licence

**HEARD BEFORE:** Mr Richard O'Sullivan (Chairman)  
Ms Brenda Monaghan (Legal Member)  
Mr Wally Grimshaw

**DATE OF HEARING:** 6 May 2009

**APPEARANCES:** Mr John Smith  
Senior Inspector Wayne Sanderson for the  
Director of Licensing

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## BACKGROUND

- 1) Mr John Smith made application for a dual Crowd Controller / Security Officer on 8 January 2009. He had previously possessed a dual licence which expired on 6 November 2008. At the time the Commission considered Mr Smith's application for a licence on 6 April 2009, he had been issued a Show Cause Notice from the Director of Licensing relating to allegations of threatening remarks against Chubb employees, Mr Douglas Stray and Mr Brenton Polanski.
- 2) Mr Stray had sought and been granted through the Court of Summary Jurisdiction a Personal Violence Restraining Order against Smith on 13 October 2008. Additionally in a separate action the Domestic Violence Legal Service in Alice Springs had written to Mr Smith on 7 August 2008 on behalf of Ms Katherine McKinnon requesting that Mr Smith have no further contact with Ms McKinnon due to alleged harassment. This letter followed an earlier unsuccessful application for a Domestic Violence Order against Smith by Ms McKinnon in March 2008 which was dismissed.
- 3) The Show Cause Notice was issued by the Director of Licensing on 20 February 2009 referencing the above material and specifying alleged intimidation action towards McKinnon and Stray.

- 4) The current matter before the Commission is separate to that of the Show Cause Notice, action on which has been discontinued by the Director of Licensing. The material presented in, and relating to, the Show Cause Notice portrays Mr Smith in a poor light, however much of this material is relevant in the Commission's deliberations on whether to approve the grant of the dual licence applied for.
- 5) On 6 April 2009 the Commission, on the papers before it, considered Mr Smith's licence application but was unable to determine whether to grant or not grant a licence, until it had heard from Mr Smith and better able to assess his fitness to hold a licence.
- 6) Under Section 16(1) of the *Private Security Act* ("the Act") where the Commission is making inquiries about a person's appropriateness to hold a licence, it is required to notify the Commissioner of Police. NT Police, through Superintendent Sean Parnell, has made response on 1 May 2009 to the request for any comment on Mr Smith's suitability to hold a licence.

*"Further to my last email, the basis of our objection is this applicant has prior criminal history for unlawful entry, stealing and property damage, although that history is not recent. He has a significant record of traffic offences. Of more concern is the recent history of violence related incidents (2008) which had led to the issuing of a Domestic Violence Order (Exp 12 October 2009) and was the suspect in an assault matter in 2007 which was not proceeded with."*

- 7) The Commission makes no judgement on the suspicion of assault matter referred to above and gives no credit or weight to that comment.

## **INQUIRY**

- 8) The Commission convened an Inquiry on 6 May 2009 in Alice Springs. Senior Inspector Wayne Sanderson, on behalf of the Director of Licensing, outlined to the Commission a series of incidents and matters which are relevant to the Commission's consideration of whether Mr Smith is an appropriate person to hold a dual Crowd Controller / Security Licence.
- 9) He drew the Commission's attention to Section 15(4)(c) of the Act: A person is entitled to be granted a licence if:

*"15(4)(c) The Licensing Authority is satisfied that the person is an appropriate person to hold the licence".*

- 10) Under Section 15(6) of the Act:

*"15(6) 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.”

11) In assisting the Commission to make a decision relating to lack of integrity and use of harassing tactics, Senior Inspector Sanderson made reference to:

- The application for a Domestic Violence Order against Smith by Ms McKinnon, which was subsequently dismissed on 10 March 2008;
- Correspondence from the Domestic Violence Legal Service Alice Springs of 7 August 2008 alleging offensive, intimidating and provocative behaviour towards Ms McKinnon and requesting Smith to make no further contact with Ms McKinnon;
- A Statement made to Police by Mr Brenton Polanski in the form of a Statutory Declaration of 11 August 2008 alleging threatening and aggressive behaviour towards him by Mr Smith;
- A successful application by Mr Stray for a Personal Violence Restraining Order against Smith, granted by the Courts on 13 October 2008.

12) In defence Mr Smith advised the Commission that in November 2008 he applied for renewal of his licence but was advised by Licensing and Regulation staff that investigations were under way into his suitability to hold such licences. It therefore follows that Mr Smith let his reapplication lapse until on 8 January 2009 when he made application for a new licence, now the subject of this Inquiry by the Commission.

13) Mr Smith outlined his good work when employed by Peppered Black as a Patrol Officer (Security Officer) during the time in which Court proceedings were being convened relating to the abovementioned restraining applications.

14) He mentioned that he had held a licence for a number of years without challenge and was therefore considered fit and proper to hold the dual licences.

15) Commissioners queried Mr Smith in relation to a statement made in Court proceedings by Mr O'Brien of Chubb Security, his then employer. Mr O'Brien is quoted as saying:

*“He’s come to my office many times, upset and crying and saying he can’t take it anymore, he has had enough of security, he has been to see his Social Welfare worker or his psychiatrist and the psychiatrist has said, John get back on your tablets and you will be okay. John’s come back to me when he is back on his tablets again and I have said, ‘John Smith, if you’re back on your tablets then you can come back to work’ and he settles down again. ....’when you don’t take your tablets you get angry*

*with the world and you get really violent and you have spoken of this many times'."*

- 16) Mr Smith refuted having to see a Social Worker or a psychiatrist but did outline that he takes Nurofen tablets to help settle him down after working long and stressful hours.
- 17) In relation to the various allegations on behalf of McKinnon and by Strang and Polanski he stated that all of the actions and his anger were directed at defending his wife who was being subject to critical remarks and comments by those making statements against him.
- 18) He also mentioned that Ms McKinnon had "*a crush on me*" and that she was bipolar and this needed to be facted into any consideration of statements and applications made on her behalf.
- 19) Mr Smith in support of his application the Commission of the following factors in his life indicating his suitability to be granted the dual licence applied for.
  - While he had committed a number of offences in his earlier life, in more recent times he had upheld the law;
  - He had got married and shown responsibility;
  - He had a good record as a licence holder and had assisted in detecting theft and more recently his actions had led to the successful prosecution for car theft;
  - He had support from shop owners and made reference to Ms Kate Freestone, the Centre / Marketing Manager of the Alice Springs Shopping Centre;
  - He had never assaulted anyone and if he did he would expect to lose his licence.
- 20) Following conclusion of the Inquiry Commissioners then made contact with Superintendent Sean Parnell of NT Police who confirmed their objection to Mr Smith being granted a dual licence. Superintended Parnell did, however indicate that he had no issue with the grant of a Security Licence if the Commission was so inclined.
- 21) The Commission also contacted Ms Kate Freestone who made positive comments about Mr Smith's application to work and his diligence in ensuring safe and theft free shopping centre.

## MATTERS TAKEN INTO CONSIDERATION

22) Throughout hearing Mr Smith displayed an excited and often impatient manner of presentation. Observations of the Commission to Mr Smith's demeanour, coupled with memos provided in the Inquiry brief provided by Licensing Inspectors, led the Commission to a view that Mr Smith has a volatile personality with little respect for officialdom.

23) In a typed statement signed by Inspector Tony O'Donohoe dated 19 February 2009 where Mr Smith attended the Licensing and Regulation office, it is stated:

*"He was not interested in too much of what I had to say, he left the interview room saying, 'I don't want the fucking licence and I want my \$200 back', I followed Smith in an attempt to calm him down, with no effect."*

24) A further note from Inspector Susan Whyte dated 24 March 2009 states:

*"John then lost his temper and stormed out"*.

25) These statements reinforced the Commission's view as to the volatile temperament of Mr Smith who did admit to getting angry when frustrated. Further, he did not contest the above statements.

26) Taking all matters into account the Commission is of a view that Mr Smith's personality and propensity towards anger and "losing it" could pose a danger when undertaking crowd controlling duties.

27) Additionally, on the evidence provided relating to McKinnon, Stray and Polanski, Mr Smith has used harassing tactics further leading to his inappropriateness to hold a Crowd Controller licence as under Section 15(6)(a) of the Act, use of harassing tactics is a matter indicating that a person is not appropriate to hold a licence.

## REASONS FOR DECISION

28) The Licensing Commission has determined that Mr Smith is not an appropriate person to hold a Crowd Controller licence for the reasons stated above. In short, Mr Smith would have to demonstrate a significant change in attitude to be considered appropriate at any time in the future.

29) A further consideration for the Commission is whether Mr Smith should be granted a security officer licence. Under the *Private Security Act*, the difference between these licences is as follows:

## **5. Crowd controllers**

*In this Act, a crowd controller is a person who, in respect of licensed premises within the meaning of the Liquor Act, a place of entertainment, a place to which the public has access or a public or private event or function, as part of his or her duties, performs the function of –*

- (a) controlling or monitoring the behaviour of persons;*
- (b) screening persons seeking entry; or*
- (c) removing persons because of their behaviour, or any other prescribed function.*

## **6. Security officers**

*In this Act, a security officer is a person who, for reward, patrols or guards another person's property.*

30) In short, Security Officers are engaged to patrol or guard another person's property. Whilst that may occasionally involve contact with a member of the public (for example a person breaking into a warehouse), Security Officers would not normally be expected to engage in day to day monitoring of, or interaction with, members of the public.

31) Crowd Controllers monitor and deal with members of the public or persons who attend the premises in question. If the premises are a shopping centre, at times when the centre is open to the public, and the security provider is required to perform any one or more of the following functions:

- controlling or monitoring the behaviour of persons at the premises;
- screening persons seeking entry to the premises; or
- removing persons from the premises because of their behaviour,

that person is acting in the capacity of a Crowd Controller and must wear the prescribed identification. If he or she also checks external doors, deposits takings in the safe, looks after the keys and patrols the premises, then a dual licence would be required.

**DECISION**

- 32) The Commission does not approve the application for a Crowd Controller Licence.
- 33) The Commission has decided to grant to Mr Smith a further Security Officer licence for twelve (12) months. Should no issues arise regarding Mr Smith's appropriateness to hold a Security Officer licence during the twelve (12) months, then we assume a further licence may be granted for a longer period on the next occasion. If issues do arise, then it is expected that Licensing & Regulation will bring these issues to the Commission. During the next twelve (12) months, the Commission recommends that Mr Smith avail himself of anger management training to assist him in maintaining a professional and measured attitude in times of stress.

Richard O'Sullivan  
CHAIRMAN

15 May 2009