

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

RESPONDENT:	MR JOHN RAMM
LICENCE NUMBER:	Security Officer / Crowd Controller Number 3839
PROCEEDINGS:	Complaint lodged under Part 6A of the <i>Private Security Act</i>
HEARD BEFORE:	Mr Richard O'Sullivan (Chairman) Ms Brenda Monaghan (Legal Member) Ms Helen Kilgariff
DATE OF HEARING:	30 April 2009
APPEARANCES:	Mr John Ramm Mr Tony O'Brien for the Licensee Senior Inspector Wayne Sanderson for the Director of Licensing Mr Paul Lelliott, Witness Ms Levina Letchford, Witness Ms Hannah DaCosta, Witness

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1. In March 2009, a complaint was lodged against Mr John Ramm by the Director of Licensing alleging that on 29 November 2008, Mr Ramm contravened the professional standards of conduct agreed to by those holding a Security Officer / Crowd Controller licence. The circumstances of the alleged breach related to the manner in which Mr Ramm restrained a member of the public during the course of his duties as a Security Officer / Crowd Controller at Yeperenye Shopping Centre. The matter proceeded to hearing on 30 April in Alice Springs and Mr Ramm attended together with his employer Mr O'Brien to defend the complaint.
 2. Before considering the evidence, it is necessary to look at the rules that govern the manner in which Private Security providers conduct themselves while on duty. The Code of Practice (the Code) which governs licensed Crowd Controllers and Security Officers is written in clear words and its terms are agreed to by all licence holders. It includes the following rules that security providers must follow:
 - 2.1. *Not to use undue force in the course of their duties.*
 - 2.2. *In the course of their duties, to take action to prevent violence occurring.*

- 2.3. *In the course of their duties, to use mediation, negotiation, communication and conciliation as the primary methods of dealing with clients and not to resort to physical contact where such can be avoided.*
3. If a security provider considers that a person has committed an offence, then he has the power to arrest that person under Section 441 of the Criminal Code which states:
- (1) *A person shall not be arrested without warrant except in accordance with this Code or an Act expressly giving power to arrest without warrant.*
 - (2) *A person, not being a member of the Police Force, may without warrant arrest a person (**the offender**) where the person:*
 - (a) *finds the offender committing an offence or doing an act or behaving or conducting himself, or in such circumstances, that the person believes on reasonable grounds that the offender has committed an offence and that the arrest of the offender is necessary:*
 - (i) *To ensure the appearance of the offender before a court of competent jurisdiction;*
 - (ii) *To preserve public order;*
 - (iii) *To prevent the continuation or repetition of the offence or the commission of a further offence; or*
 - (iv) *For the safety or welfare of members of the public or of the offender;*
 - (b) *Is instructed to do so by a member of the Police Force having power under an Act to apprehend the offender; or*
 - (c) *Believes on reasonable grounds that the offender is escaping from legal custody or aiding or abetting another person to escape from legal custody or avoiding apprehension by some person having authority to apprehend the offender in the circumstances of the case.*
 - (3) *A person who is arrested under subsection (2) and in custody shall not be questioned in relation to an offence other than by a member of the Police Force in accordance with the Police Administration Act.*
 - (4) *As soon as practicable after a person is arrested under subsection (2), the person shall be delivered to a member of the Police Force, and the Police Administration Act shall apply to and in relation to the person and the member as if the arrest had been made under that Act.*
 - (5) *A person who is arrested under subsection (2) (a) shall be held in custody only while the reason for the person's arrest, as referred to in that paragraph, continues.*

- (6) *A person who is arrested under subsection (2) (a) shall be released immediately from custody where it becomes apparent that the person did not commit the offence for which the person was arrested.*

27 Circumstances in which force not being such force as is likely to cause death or serious harm is justified

In the circumstances following, the application of force is justified provided it is not unnecessary force and it is not intended and is not such as is likely to cause death or serious harm:

- (a) *To lawfully execute any sentence, process or warrant or make any arrest;*
 - (b) *To prevent a person who is being or who has been lawfully arrested from escaping or from being rescued;*
 - (c) *To prevent the continuance of a breach of the peace or a renewal of it and to detain any person who is committing or about to join in or to renew the breach of the peace for such time as may be reasonably necessary in order to give him into the custody of a police officer;*
 - (d) *To suppress a riot;*
 - (e) *To prevent the commission of an offence;*
 - (k) *In the case of a person who is entitled by law to the possession of moveable property, or a person acting by his authority, and who attempts to take possession of it from a person who neither claims right to it nor acts by the authority of a person who claims right to it and the person in possession resists him, to obtain possession of the property, provided he does not intentionally do him harm;*
 - (p) *In the case of a parent or guardian of a child, or a person in the place of such parent or guardian, to discipline, manage or control such child;*
 - (Pa) *To prevent a person reasonably believed to be attempting to, or about to, kill himself, from killing himself;*
 - (q) *In the case of the person in command of a ship on a voyage or an aircraft on a flight, or a person acting by his authority, to maintain good order and discipline on board the ship or aircraft;*
 - (r) *To assist a person to do any of the things aforesaid.*
4. The Director submits that on 29 November 2008, Mr Ramm breached his duties under the Code when arresting without warrant and restraining a man who had stolen a bottle of alcohol from Mac's Liquor. The evidence put forward by the Director included that of three (3) eye-witnesses who were

present at Yeperenye Shopping Centre on the afternoon of 29 November.

5. The first witness, Mr Lelliott is the proprietor of the camera shop located opposite the entrance to Woolworths and Mac's Liquor. He was in his store at the relevant time but became aware of an incident happening outside in the foyer near Mac's Liquor. He saw a Security Officer, identified as Mr Ramm, sitting on top of an Indigenous male with his feet towards Mr Lelliott and his head towards Mac's Liquor. He gave evidence that the restrained male appeared to be trying to get up and was putting up "a fair bit of resistance". He noted that another guard was present but that he did not assist at all and that he appeared not to want to get involved and departed the area soon after the fracas began. Mr Lelliott's evidence was that people came from everywhere and many were quite distressed and were screaming comments such as "you're strangling him", "he can't breathe" and "let him up". He also saw the Security Guard punch the restrained, struggling man with about five (5) short jabs to the head. When asked about his impression of the manner in which Mr Ramm dealt with the restrained man, he said that his methods were "overly aggressive" and that he has seen other security guards quelling people in other ways.
6. The second two (2) witnesses were young women, Ms DaCosta aged seventeen (17) and Ms Letchford aged eighteen (18) at the time of the incident. They were together at the shopping centre on the afternoon of 29 November 2008 and were located just outside the camera shop. They were both so upset by what they saw that they attended at the police station later that afternoon and made formal statements.
7. Ms DaCosta's oral evidence was that she was standing near the entrance to the camera shop when she became aware of something happening near Mac's Liquor. She saw a slender Aboriginal man aged about forty (40) handing over something to a Security guard. Despite her having the impression that that the man was not resisting, the Security guard, identified as John Ramm, kicked him in the back of the legs and pushed him down on his stomach in the corner near the bottle shop. The restrained man was trying to get up but was unable to because Ramm was sitting on his chest. Her evidence was that at one stage, Mr Ramm's glasses were knocked off by the restrained man and broke. Mr Ramm "just sort of cracked it" and began swearing at the restrained man, punching him in the back of the head several times with a clenched fist. Ms DaCosta's evidence was that she thought the restrained man could not breathe and that the guard was obviously hurting him. She could see that his head was bleeding. Many people in the gathering crowd were screaming for the guard to get off the man.
8. Ms Letchford's oral evidence was generally consistent with that of her friend as regards Mr Ramm's actions towards the restrained man. She was clear that the man didn't attack Mr Ramm but that he might have been intending to walk away. He was forced to the ground and restrained by the weight of Mr Ramm's body on his chest where he was squirming around. Her evidence was that at one stage the security guard knocked his own glasses off and he blamed the restrained man and was visibly upset and abusive towards him.

Throughout the incident, the witness stated that Ramm was verbally and physically aggressive with the restrained man including punching him five (5) or six (6) times in the head, slamming his head into the corner and elbowing him in the back of the neck. He also took a swipe at a vocal female spectator and abused her when the incident was finally over.

9. Mr Ramm also gave oral evidence of what occurred on the afternoon in question. In short, his evidence was that the man had stolen and hidden a bottle of alcohol in his trouser leg and had been caught. After the bottle was recovered by another Security Officer at Mac's Liquor, Ramm used normal restraining tactics to get the man onto his stomach on the ground. He kept his body weight on the man's torso and another guard was restraining the man's legs. He suddenly realised that the other guard had gone leaving him to restrain the man alone. The man was able to twist himself onto his back freeing up his hands to attack Mr Ramm by attempting to grab his throat, pulling his beard and deliberately crushing his glasses. The only way Ramm could force him to let go of his beard was by punching him on the jaw twice with his closed fist with short jabs. Mr Ramm was very upset by this stage and, although he has poor vision without his glasses, he was aware of the crowd around him yelling. When other security arrived, he finally released the man over to them and moved away. On leaving, he admits that he swung in the direction of a female spectator who criticised him and he swore at her in frustration. Mr Ramm's evidence was that the restrained man's actions in attempting to attack his neck, grabbing his beard and crushing his glasses were deliberate and that the man was quietly threatening him. He says that the witnesses were behind him and that they did not have a clear view of what was happening to him and that it was very intimidating for him to feel that the crowd around him was angry with him.
10. Whilst there are some differences in the evidence given by the three (3) witnesses for the Director, all formed a strong view that the actions of the guard towards the restrained man from the outset were unacceptably aggressive. All were concerned that the man could not breathe and their concerns were obviously shared by other members of the public. All recalled Mr Ramm delivering a number of blows to the head of the man and not just two (2) to his jaw. None mentioned seeing the restrained man doing anything aggressive other than "flailing around" trying to get up from the ground. They did not see the man holding onto Mr Ramm's beard but their vision may well have been partially blocked by Mr Ramm's body. All three (3) witnesses appeared to give truthful accounts of what they recalled. Both Ms Letchford and Ms DaCosta did not remember all of the detail that they included in their statement to Police on the day of the incident but they recalled enough for the Commission to conclude that the actions of Mr Ramm were unacceptably aggressive from the outset.
11. It is the Commission's view on the preferred evidence before it that Mr Ramm made little or no attempt to deal with the situation by means other than physical restraint and that his physical contact with the restrained man was from the beginning overly aggressive. The Commission does not accept that the restrained man posed a threat to Mr Ramm or to the public but instead, it

seems that Mr Ramm posed a threat to him by pinning him to the floor with his body which left spectators fearing that the man could suffocate. Finally, lashing out at and abusing a member of the public is unacceptable in any circumstances. The complaint is upheld.

PENALTY

12. When considering penalty, Commission takes into account the following matters:

- a) This is the first breach by Mr Ramm who has held a dual licence for seven (7) years;
- b) Mr Ramm was placed in a difficult situation on his own with a distressed crowd around him. It was difficult for him to extricate himself from the situation when it got out of hand. Once help arrived, Mr Ramm left the area; and
- c) Mr Ramm has the full support of his employer Mr O'Brien.

DECISION

13. In these circumstances, the Commission imposes a penalty as follows:

- a) A suspension of Mr Ramm's dual licence for three (3) days within the next month on dates as directed by the Director; and
- b) A requirement that Mr Ramm undertake a training course that focuses on appropriate restraint procedures in a Crowd Controller environment as directed by the Director.

NOTE

14. In a Coronial Report in 2000, the Coroner expressed concerns about the adequacy of the training undertaken by security providers particularly when dealing with Indigenous persons. The need for a review remains and the Commission recommends that the Northern Territory Government take steps to ensure that the training currently undertaken by Security Officers and Crowd Controllers is sufficient and that it includes training in alternative dispute resolution, effective communication (particularly when dealing with Aboriginal persons) and safe restraint techniques.

Richard O'Sullivan
CHAIRMAN

26 May 2009