

# NORTHERN TERRITORY LICENSING COMMISSION

## REASONS FOR DECISION

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<b>RESPONDENT:</b>	<b>Mr GENE HOCKING</b>
<b>LICENCE NUMBER:</b>	Private Security Licence Number 5176
<b>PROCEEDINGS:</b>	Complaint lodged under Part 53A of the <i>Private Security Act</i>
<b>HEARD BEFORE:</b>	Mr Richard O'Sullivan (Chairman) Mr Philip Timney (Legal Member) Ms Kerri Williams
<b>DATE OF HEARING:</b>	13 May 2010
<b>APPEARANCES:</b>	Mr Gene Hocking Mr Colin (Arnott) Belle, Complainant
<b>IN ATTENDANCE:</b>	Ms Pippa Pech – Licensing Inspector Mr Adrian Franklin – Employer of Gene Hocking Mr Michael Coleman, Director, Shenannigans Irish Pub

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### BACKGROUND

- 1) By letter dated 5 August 2010, Mr Arnott Belle lodged a complaint with the Director of Licensing against Mr Gene Hocking. Mr Hocking holds a dual Security and Crowd Controller licence issued pursuant to the *Private Security Act* (“the Act”).
- 2) Mr Belle’s complaint concerns an incident at Shenannigan’s Irish Pub early on the morning of 3 August 2010 during which he alleges he was pushed and grabbed in a choke hold and pushed to the ground by Mr Hocking after he was refused entry and was being escorted from the premises. Mr Belle claimed that he was “being unfairly victimised” by Mr Hocking in that Mr Hocking had cautioned him about his behaviour at the Victoria Hotel and subsequently refused him entry to the Hot Potato on another date.
- 3) On 13 August 2010, the Director of Licensing wrote to Mr Hocking inviting him to provide a response to the allegations made by Mr Belle. Mr Hocking provided his response in a letter dated 20 August 2010. He stated that Mr Belle “has a history of sexual misconduct against women in Darwin Bars” and acknowledged that he had refused Mr Belle entry to licensed premises where he was engaged as security on a number of occasions. In respect of

the 3 August 2010 incident at Shenannigans, Mr Hocking stated that he had refused Mr Belle entry to the premises and asked him to move away from the entrance. He stated that Mr Belle refused to do so and “began flailing his arms around menacingly” following which Mr Hocking “swept” Mr Belle from his feet and controlled his arms. He states that following a brief struggle Mr Belle was released on the footpath outside the entrance to the premises.

- 4) The alleged incident was investigated by Licensing Inspectors, including obtaining a copy of the CCTV footage from Shenannigans on the night in question. Following completion of the investigation the Director of Licensing declined to instruct Licensing Inspectors to lodge an application with the Licensing Authority for disciplinary action against Mr Hocking. As a result the matter proceeded as a complaint by Mr Belle, pursuant to Section 53A of the Act, alleging undue use of force by Mr Hocking in the conduct of his duties as a crowd controller.

## **THE LEGISLATION**

- 5) Section 19 of the Act deals with conditions associated with the issue of a security provider licence, including a Crowd Controller licence. Sub-section 19(2)(c)(2) provides:

*A licence is subject to:*

- (c) *where a code of practice has been approved under section 48 in relation to such a licence, the condition that the code shall be complied with and not contravened.*

- 6) A Code of Practice for Crowd Controllers has been approved pursuant to section 48 of the Act. Clause 3 of that Code prescribes Professional Standards and Conduct and sub-clause 3.13 provides that:

*A crowd controller shall not use undue force in the course of their duties.*

- 7) Having considered the complaint and the response from the security provider the Commission determined, pursuant to Section 53C(3)(b) of the Act, to conduct an inquiry into the complaint lodged by Mr Belle against Mr Hocking.

## **THE INQUIRY**

- 8) The Inquiry was convened at 9.30 am on 13 May 2010 in the Licensing Commission hearing room.
- 9) Mr Belle was unrepresented for the Inquiry. Mr Hocking was also unrepresented and appeared with his employer, Mr Adrian Franklin. Mr Michael Coleman, a Director, Shenannigans Irish Pub, was also in attendance in support of Mr Hocking.

- 10) Mr Belle elaborated on the matters set out in his letter of complaint and stated that he was being unfairly victimised by Mr Hocking when he tried to enter premises where Mr Hocking was on duty. He referred the Commission to an incident approximately four (4) months prior to the Shenannigans incident where Mr Hocking spoke to him about his contact with female patrons at the Victoria Hotel. Mr Belle reported that incident to the duty manager at the Victoria Hotel at the time. He also stated that, at a later date, he was refused entry to the Hot Potato on the basis that Mr Hocking had labelled him as a troublemaker. Mr Belle submitted that Mr Hocking refusing him entry was a result of the earlier incident at the Victoria Hotel and of Mr Belle complaining about Mr Hocking to the bar manager.
- 11) The Commission viewed CCTV footage of the incident complained of at Shenannigans on 3 August 2009. Both Mr Belle and Mr Hocking were invited to comment on the footage.
- 12) Mr Belle denied that he had done anything on the night to entitle Mr Hocking to physically assault or restrain him. He noted the CCTV footage showing him entering the premises and passing a security guard, who did not check his ID or otherwise query him.
- 13) Mr Belle stated that he objected to being told he could not enter the premises and had argued the point with Mr Hocking. He stated that he was then, without provocation, spun around, grabbed around the throat, thrown to the ground and then lifted off the ground by Mr Hocking and a second crowd controller (identified by Mr Hocking as Sam Izod). Whilst still being held around the neck by Mr Hocking, Mr Belle was then walked some five (5) to ten (10) metres along the footpath outside the licensed premises and then pushed to the ground. The CCTV footage confirmed that this sequence of events, as described by Mr Belle, did in fact occur.
- 14) Mr Belle directed the Commission to the CCTV footage that showed him speaking to Police prior to driving off in his own vehicle and submitted this was clear evidence that he was not intoxicated at the time he was refused entry to Shenannigans.
- 15) Mr Belle submitted that the force used by Mr Hocking to remove him from the premises was unnecessary and excessive in the circumstances. Mr Belle advised the Commission that he had never been treated in this way by security in the past and that Mr Hocking's action were unprovoked and an unnecessary use of force. He tabled a copy of a Police Certificate for Immigration Purposes showing his criminal history in the United Kingdom as evidence of his good character.
- 16) In response, Mr Hocking stated that he had held a Crowd Controller licence and had been engaged full time in the security industry for a period of approximately four (4) years during which time he had not been subject to any previous complaints. He recalled the incident at the Victoria Hotel and advised the Commission that on the night in question he had received complaints from a number of female patrons of being harassed by Mr Belle.

He spoke to Mr Belle regarding those complaints and allowed him to re-enter the premises. Mr Hocking conceded that he did not report the allegations of harassment against Mr Belle to Police nor did he recall noting the incident in the incident register.

- 17) Mr Hocking confirmed that he had formed the opinion that Mr Belle was a troublemaker in respect of harassing female patrons and that he had in fact denied him entry to the Hot Potato and Monsoons subsequent to the incident at the Victoria Hotel. On recognising Mr Belle at Shenannigans on 3 August 2010 he had immediately approached him and asked him to leave the premises.
- 18) Mr Hocking directed the Commission to the CCTV footage of him escorting Mr Belle from the licensed premises on to the Mitchell Street footpath without the use of any significant force. He stated that Mr Belle then re-entered the licensed premises and began to wave his arms around. Mr Hocking took this as threatening action and restrained Mr Belle in what he described as a "sweeping motion". Mr Hocking agreed that he had held Mr Belle around the neck as he removed him from the premises to a point some five (5) to ten (10) metres away on the footpath. He also acknowledged that he had taken Mr Belle to the ground however he denied that he pushed him to the ground but rather used a technique of sweeping Mr Belle's legs from underneath him.
- 19) Mr Hocking denied that he had used unnecessary force in removing Mr Belle and submitted that the CCTV footage after the altercation indicated that Mr Belle suffered no physical injuries. He informed the Commission that he had received training in restraint techniques and had used such a technique on Mr Belle with the intention of not causing him any physical harm but at the same time ensuring his own safety.
- 20) Mr Hocking tendered to the Commission references as to his good character provided by Mr Glen Parsons, General Manager of Monsoons Restaurant and Party Bar and Mr Michael Rochford General Manager/Nominee of Shenannigans Irish Pub.
- 21) Mr Coleman advised the Commission that he was made aware of complaints concerning Mr Belle harassing female patrons in his capacity as a director of Shenannigans Irish Pub. He stated that Mr Belle was known to the management staff at Shenannigans and whilst he was OK for the most part there had been some minor incidents which were of concern. Mr Coleman confirmed that in ejecting Mr Belle Mr Hocking would have been carrying out the instructions of Shenannigans' management to remove troublesome patrons.
- 22) Mr Franklin, on behalf of Mr Hocking, referred the Commission to the requirements of Section 121 of the *Liquor Act* and in particular the obligation on the part of Licensees to remove persons who interfere with the well being of other patrons of the licensed premises. He stated that in removing Mr Belle, who was thought to be a troublemaker, Mr Hocking was in fact carrying out the Licensee's obligations under the *Liquor Act*.

## **CONSIDERATION OF THE ISSUES**

- 23) The most compelling evidence presented to the Commission was the CCTV footage of the incident at Shenannigans on 3 August 2009. The footage was viewed several times in the course of the Inquiry, with both parties being afforded the opportunity to comment on the content.
- 24) The Commission, having formulated its own view of the CCTV evidence, is not satisfied that the degree of force used by Mr Hocking to restrain and remove Mr Belle was appropriate in the circumstances. On two (2) occasions Mr Belle was pushed to the ground. The Commission does not accept Mr Hocking's submission that Mr Belle's actions at the time constituted a threat to his safety or that physical force was necessary at all to remove Mr Belle from the premises.
- 25) The Commission does, however, concede that Mr Belle originally left the licensed premises without the application of force and then attempted to return to debate his eviction with Mr Hocking. The Commission acknowledges that Mr Belle was in an agitated state and was waving his arms around in close proximity to Mr Belle. Whilst unable to hear any audio from the CCTV footage, the Commission noted from his submissions and demeanour at the Inquiry that Mr Belle is capable of behaving in an argumentative and somewhat provocative manner. Without the opportunity to hear the conversation that transpired between Mr Belle and Mr Hocking the Commission is unable to conclude whether Mr Belle's language on the night was provocative and the cause of Mr Hocking's physical intervention to remove him. However, the Commission does not view Mr Belle's actions on the night in question, as seen on the CCTV footage, as particularly threatening behaviour or behaviour that required the physical restraint of Mr Belle by Mr Hocking.
- 26) On that basis the Commission determines that Mr Hocking has breached Sub-section 19(2)(c)(2) of the Act, with reference to Clause 3.13 of the Code of Practice for Crowd Controllers, in that he used undue force in the course of his duties as a Crowd Controller.

## **PENALTY**

- 27) In determining penalty the Commission takes into account the requirement for general and specific deterrence to be reflected in the penalties applied to security officers for the uses of unreasonable force in the conduct of their duties. The Commission readily acknowledges that the application of force by a Crowd Controller may be necessary in circumstances where a patron is likely to cause injury to other patrons, Crowd Controllers or the person themselves. However, where a Crowd Controller is compelled to use force for safety reasons the level of force must be commensurate with the degree of danger posed by the unruly or intoxicated patron.

28) In the normal situation the Commission may have been minded to impose a period of actual suspension of licence in circumstances where a Crowd Controller has crossed the threshold and applied force to a level that is more than necessary to control a particular situation. However, in this instance the Commission considers the following matters in mitigation should be taken into account:

- The fact that the force used by Mr Hocking against Mr Belle was at the low end of the scale so far as unreasonableness was concerned;
- That Mr Belle suffered no physical injuries as a result of his ejection from Shenannigans;
- Mr Hocking's record as a Crowd Controller, having no complaints recorded over a four (4) year period whilst operating in full time employment in CBD late trading venues Mitchell Street;
- The character references submitted by Mr Hocking attesting to professionalism, reliability and good judgement in the course of his duties as a crowd controller;
- The evidence of the Licensing Inspector concerned that Mr Hocking is known to Licensing Inspectors and has a good reputation as a polite and courteous operator;
- The fact that Mr Belle attempted to re-enter Shenannigans after being clearly advised he was refused entry;
- Mr Belle's argumentative and at times somewhat annoying nature as shown on the CCTV footage when he returned to the licensed premises to argue with Mr Hocking after being directed to leave and also as evidenced by the Commission in observing Mr Belle's conduct and demeanour during the Inquiry;
- The fact that Mr Belle inappropriately provided materials from the hearing brief to the media resulting in a front page story in the local newspaper on the day prior to the hearing.

29) Taking account of the mitigating matters set out immediately above the Commission is of the view that a suspension of licence is not appropriate in this case and that the appropriate penalty in the circumstances is a reprimand.

**DECISION**

- 30)The Commission finds that Mr Gene Hocking has breached Sub-section 19(2)(c) of the Act, with reference to Xlause 3.13 of the Code of Practice for Crowd Controllers, in that he used undue force in the course of his duties as a Crowd Controller in removing Mr Belle from Shenannigans Irish Pub on 3 August 2009.
- 31)The Commission determines, pursuant to Section 53D(1)(c) of the Act, to issue a formal caution to Mr Hocking. The Commission notes that this caution may be taken into account in the event Mr Hocking again finds himself before the Commission.

Richard O'Sullivan  
CHAIRMAN

26 May 2010