

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

APPLICANT:	MR BENJAMIN RICHARDSON
LICENCE NUMBER:	Security Provider Number 7529
PROCEEDINGS:	Complaints pursuant to Section 53A <i>Private Security Act</i>
HEARD BEFORE:	Mr Philip Timney (Presiding Member) Mr John Brears Mrs Jane Large
DATE OF HEARING:	12 May 2011
APPEARANCES:	Licensing Inspector Mark Wood for the Director of Licensing No appearance on behalf of Mr Richardson

BACKGROUND

- 1) On 27 October 2010 complaints was lodged with the Director of Licensing by Inspector Jodi Kirstenfeldt alleging that Mr Benjamin Richardson had breached Section 19(2)(c) of the *Private Security Act* ("the Act"), with reference to NT Private Security Code of Conduct for Crowd Controllers, whilst carrying out his duties as a Crowd Controller at licensed premises known as Monsoons in two separate incidents that occurred on 21 November 2010.
- 2) By decision dated 25 February 2011, the Licensing Commission determined to conduct an investigation pursuant to Section 53C(3)(a) of the *Act* by way of a Hearing into the complaints. By letter dated 7 March 2011, The Chairman of the Licensing Commission notified Mr Ian Rowbottam (then counsel for Mr Richardson) of the Hearing date, being 12 May 2011, and the matters that would be considered by the Commission at the Hearing.

PRELIMINARY ISSUE

- 3) At the commencement of the Hearing, Mr Wood informed the Commission that Mr Richardson was not in attendance. The Commission requested that Mr Rowbottam be contacted to ascertain the reasons for Mr Richardson's failure to attend the Hearing. Mr Rowbottam informed the Commission that

he no longer acted for Mr Richardson and his attempts to contact him had been unsuccessful.

- 4) The Commission notes that by letter dated 29 October 2010 the Director wrote to Mr Richardson, at the address recorded on the Security Provider data base, informing him of the particulars of the complaints against him and inviting him to provide a response to the allegations by 26 November 2010. By email dated 26 November 2010, Mr Ian Rowbottam, who was then engaged as Mr Richardson's counsel, sought and obtained an extension of time until 1 December 2010 to provide a response to the letter from the Director. No response was forthcoming from either Mr Rowbottam or Mr Richardson.
- 5) On 7 March 2011 the Chairman of the Licensing Commission wrote to Mr Rowbottam advising him that the Commission had determined to conduct a Hearing on 12 May 2011 in respect of the complaints against Mr Richardson. As noted above, on 12 May 2011 Mr Rowbottam informed the Commission that he no longer acted for Mr Richardson and that his attempts to contact him had been unsuccessful.
- 6) The Commission determines that the Director had done all that he is required to do under the Act in forwarding the notice of the complaint to Mr Richardson's registered address. Mr Richardson subsequently engaged Mr Rowbottam, effectively confirming that he had received the correspondence from the Director and was aware of the allegations resulting in the lodgement of the complaints against him. The Commission is also satisfied that the Notice of Hearing was received by Mr Rowbottam in his capacity as counsel for Mr Richardson. On the basis of the information provided by Mr Rowbottam, the Commission is also satisfied that Mr Richardson has not kept him up to date as to his whereabouts or contact details.
- 7) The Commission cannot be completely satisfied that Mr Richardson was aware of the Hearing date. However, given that neither the Inspectors nor Mr Rowbottam have been able to contact him, the Commission is of the view that any lack of notice of the Hearing on the part of Mr Richardson is of his own doing and as a direct result of his failure to advise his counsel or the Director of his current contact details. As a result the Commission determined that the Hearing would proceed in the absence of Mr Richardson.

THE HEARING

- 8) Inspector Wood informed the Commission that the complaints against Mr Richardson arose as a result of Inspectors reviewing CCTV footage obtained from licensed premises known Monsoons on 21 November 2010 for the purposes of unrelated investigations. Mr Richardson was engaged as a Crowd Controller at Monsoons on that date.
- 9) Inspector Wood informed the Commission that the first complaint alleged that at approximately 1.16 am on 15 October 2010, Mr Richardson had a conversation with an unknown female who indicated a patron sitting in the al

fresco area of the premises. It is alleged that Mr Richardson approached the male from behind, picked him up in a headlock and forcibly removed him to the entrance to the premises with the assistance of another Crowd Controller. It is further alleged that the male was slammed into a boundary wall causing him to drop to his knees. Mr Richardson then re-entered the premises whilst the male was picked up by the other Crowd Controller and escorted towards Nuttall Place.

- 10) Inspector Wood advised, in respect of the second complaint, that the CCTV footage showed Mr Richardson and another Crowd Controller removing an unnamed male from the premises at approximately 1.17 am on 15 October 2010. The male had apparently been involved in an altercation with another patron shortly prior to his eviction. The patron was escorted from the premises via the side entrance, which exits on to Nuttall Place. It is alleged that whilst escorting the unknown male along Nuttall Place Mr Richardson attempted to kick him.
- 11) The Commission then viewed the CCTV footage of the two incidents.
- 12) In respect of the first complaint, the Commission noted that the CCTV footage supports the allegations that form the basis of the complaint. The Commission observed that Mr Richardson approached the unknown male from behind and immediately placed him in a headlock. The incident appears to have happened quickly and without Mr Richardson informing the unknown male that he was about to be evicted or speaking to him at all. The CCTV footage also shows the male being slammed forcefully into a balustrade wall by Mr Richardson together with another Crowd Controller following which the male fell to the ground.
- 13) Mr Richardson is then seen to run from the front entrance back inside the premises, presumably to deal with the situation that resulted in the lodgement of the second complaint. In respect of the second complaint, the Commission observed Mr Richardson walking along Nuttall Street with the unknown male held in a headlock. The male appeared to turn his body slightly whilst still within the headlock. At that point Mr Richardson released the headlock, pulled the male's shirt over his head and kned him to the face and then attempted to kick him in the groin area. The blow with the knee delivered to the male's head was of sufficient force to knock him backwards on to a parked car. The male was then observed to back away quickly from Mr Richardson, with his hands in the air, and leave the vicinity via Nuttall Street. The Commission observed no physical or threatening action on the part of the male that would have warranted the use of any force whatsoever by Mr Richardson.

CONSIDERATION OF THE ISSUES

- 14) The Commission found in accordance with Section 53C(1)(a), and noting the absence of Mr Richardson to give evidence as to his version of events, that the complaint was not of a frivolous, irrelevant or malicious nature and that the background to the complaint, as lodged with the Commission, sets out facts and circumstances that are sufficient grounds on which to base a

complaint. As a result, Mr Richardson has a case to answer and must appear before the Commission in response to the allegations levelled against him.

- 15) Section 19 of the Act provides that a Security Officer Licence is issued subject to the condition that, where a Code of Practice has been approved under Section 48 of the Act, the Code will be complied with by the licence holder. A Code of Practice was approved for Crowd Controllers. The following conditions of the Code of Practice are relevant in respect of these complaints:

Professional Standards and Conduct:

Crowd controllers shall:

3.13 Not use undue force in the course of their duties

3.14 Not participate or encourage others to participate in assault.

3.15 In the course of their duties take action to prevent violence occurring.

3.16 In the course of their duties use mediation, negotiation, communication and conciliation as the primary methods of dealing with clients.

- 16) Section 26 of the Act provides that a contravention of a condition of licence is a ground for the suspension or cancellation of a security provider's licence.
- 17) The Commission is significantly alarmed, having viewed the CCTV footage of the incidents, at the apparent gratuitous violence meted out by Mr Richardson to the two patrons he dealt with on the night in question. From viewing the CCTV footage of the incidents the Commission saw no evidence that any degree of force was necessary to control the situations which faced Mr Richardson. The male who was kned in Nuttall Place appeared to be leaving peacefully and the violent removal of the patron identified by the female took place without warning to the patron and, apparently, without any discussion between Mr Richardson and the patron.
- 18) The Commission views both these complaints as being of a serious nature given the degree of force used by Mr Richardson in what appeared to the Commission to be unprovoked attacks. Based on the CCTV footage, the Commission is of the view that the complaints are at the high end of the scale of seriousness so as to warrant the suspension of Mr Richardson's Security Provider licence.
- 19) The Commission is mindful however that it has not heard from Mr Richardson in response to the complaints. In this instance the Commission cannot be satisfied that Mr Richardson has personally received the letter of the Chairman notifying him of the Hearing date. That letter was forwarded to Mr Rowbottam who no longer acts for Mr Richardson and who advised the Commission that he had been unable to make contact with Mr Richardson.
- 20) The Commission is satisfied however that Mr Richardson did receive the earlier letter from the Director informing him of the complaints and inviting him to provide a response. He did not respond to that letter however he did engage Mr Rowbottam as his legal representative some time after receipt of the letter. In the Commission's view some onus must rest with Mr Richardson

to contact either his lawyer or the Director to ascertain for himself the status of the complaint. Clearly he has not done so.

- 21) Given the apparent seriousness of the allegations the subject of the complaint, as evidenced by the viewing of the CCTV footage, the Commission is not prepared to leave the matter in abeyance indefinitely.

DECISION

- 22) The Commission, having conducted an investigation into the complaints against Mr Richardson in his absence, has formed the view he has a serious case to answer in respect of the allegations made against him by Inspector Kirstenfeldt. The Commission determines, pursuant to Section 53D(1)(f) of the Act, to suspend Mr Richardson's dual Crowd Controller and Security Officer licence, number 7529, until such time as he appears before the Commission and the a final determination is made in respect of the complaints.
- 23) In the event Mr Richardson contacts the Director and indicates he wishes to be heard in respect of the complaints, the Commission directs that he be advised that the Commission will consider re-opening the Hearing if presented with request to that effect accompanied by a written response to the notification of complaint from the Director, as envisaged by Section 53B of the Act.
- 24) The Commission notes that Mr Richardson's licence expires on 24 September 2011. In the event that Mr Richardson lodges an application for the renewal of his licence prior to its expiry date, or at any time after its expiry, the Commission directs that he is to be advised that his licence will not be renewed until such time as he appears before the Commission and the complaints the subject of this decision are finally determined.
- 25) The Commission also directs that a copy of this decision be placed on Mr Richardson's private security file for future reference and also be forwarded to the address recorded on the Private security database as his registered address.

Philip Timney
PRESIDING MEMBER

1 July 2011