

NORTHERN TERRITORY LICENSING COMMISSION

REASONS FOR DECISION

LICENSEE: Mataranka Investments Pty Ltd

PREMISES: Mataranka Hotel

LICENCE NUMBER: 80117506

PROCEEDING: Complaint Pursuant to Section 48(2) of the *Liquor Act*
Section 121(1) of the *Liquor Act* – Intoxicated Persons
on Premises

HEARD BEFORE: Mr Richard O’Sullivan (Chairman)
Mr Philip Timney
Ms Kerri Williams

DATE OF HEARING: 18 November 2008

APPEARANCES: Ms Pamela Deillon for the Licensee
Inspector Mark Wood for the Director of Licensing

BACKGROUND

- 1) On the evening of 26 June 2008 at approximately 7.30pm Inspectors Mark Wood and Marc MacKenzie undertook an inspection of the Mataranka Hotel (“the Hotel”). They observed a male known now as Mr Solomon Hodgson “*standing and moving erratically*”. At the time the Inspectors were advised by the Nominee, Ms Pamela Deillon that Mr Hodgson had been put “off tap” and that he had been informed he was allowed to remain on the premises to sing four (4) songs at the karaoke machine, which was in the process of being set up.
- 2) During this time it was also observed that a woman, now known as Mr Hodgson’s wife, was at the bar and had purchased two (2) cans of beer. She was then informed that she had to drink them both herself as a result of her husband being “off tap”.
- 3) Inspector Wood allowed Mr Hodgson to stay on the premises until he had completed his karaoke songs, effectively backing up the decision of Ms Deillon to allow him to stay on premises for a period of time. Inspectors watched Mr Hodgson sing two (2) of his songs and then departed. On returning some two (2) hours later they observed Mr Hodgson was still on the

premises, in breach of Section 121(1) of the *Liquor Act* (“the Act”), that is allowing an intoxicated person to remain on the premises.

- 4) On the night staff member and now Dual Nominee, Ms Alisha Wright, had ejected a number of intoxicated persons from the premises. Several of these patrons had later returned and were served alcohol by a staff member who was not involved with or informed of the early ejection of patrons by Ms Wright. However, this is not the subject of the complaint before the Commission.
- 5) The Licensing Commission at its meeting of 10 September 2008, on being presented with details of the complaint, determined to conduct a hearing into the alleged breach of Section 121 of the Act.

HEARING

- 6) Inspector Wood outlined that he and Inspector MacKenzie had visited the Hotel on 26 June 2008 and observed Mr Hodgson to be heavily intoxicated. When they returned to the premises some two (2) hours later, Mr Hodgson was still present, although he was not more intoxicated than earlier.
- 7) Inspector Wood acknowledged that on the initial visit Ms Deillon had informed him that Mr Hodgson was off tap but was allowed to remain on the premises for a period to sing four (4) songs with the karaoke machine. Mr Wood advised that he had agreed to this approach and the Commission notes in this regard that Section 121(1A)(b)(ii) of the Act allows for a person to remain on premises when intoxicated if the removal of that person was likely to “*disrupt the business of a Licensee or unreasonably interfere with the wellbeing of other persons lawfully on the premises*”.
- 8) Mr Wood also acknowledged that earlier in the evening when Mr Hodgson’s wife purchased two (2) cans of beer at the bar, she was told that she would have to drink both cans herself (as her husband had been put “off tap”). There was no evidence that Mr Hodgson had consumed any part of that or any other alcohol from the time of the Inspectors’ initial visit.
- 9) Ms Deillon, in evidence, stated that Mr Hodgson had arrived at the Hotel in an intoxicated state and that he had not been served alcohol at any time during the evening. His wife had purchased two (2) cans of beer and had slowly consumed them over a period of around two (2) hours by herself.
- 10) Ms Deillon stated that she did not contest the complaint but the circumstances were such that Mr Hodgson consumed no alcohol on the premises and had not caused a nuisance or disruption through remaining on the premises that evening.

SUBMISSIONS ON PENALTY

- 11) In submission on penalty Mr Wood advised the Commission that Mr Hodgson had not caused any problems while on the premises and he was confident that Mr Hodgson had not been served or consumed any alcohol from the time of their initial visit at around 7.30pm.
- 12) Mr Wood drew the Commission's attention to issues which arose on the evening of 26 June 2008 related to, but not part of, the complaint before the Commission; that being the ejection of several patrons due to intoxication who were able to sneak back onto the premises and be served more alcohol, albeit it by a staff member not involved with or aware of the earlier incidents.
- 13) He specifically drew the Commission's attention to a gate entrance at the rear of the premises which was not visible from any point by staff when serving behind the bar.
- 14) He submitted that the penalty imposed by the Commission should include better control of access to the licensed area through the locking of the rear gate with key access provided only to employees of the Hotel.
- 15) Mr Wood also tabled correspondence (Exhibit 1) which he stated was a letter of caution sent to the Licensee on 19 August 2008, concluding that in view of this caution and the agreed circumstances of the complaint the appropriate penalty would include the suspension of the licence for one (1) day but for that suspension to be deferred for a period of twelve (12) months.

CONSIDERATION OF THE ISSUES

- 16) The Commission is persuaded that Mr Hodgson was on the premises for a period of time during which he exhibited high levels of intoxication. The Commission is also persuaded that this level of intoxication was not attributable to any service of alcohol to Mr Hodgson by bar staff or other patrons of the Hotel.
- 17) In allowing Mr Hodgson to remain on the premises Inspectors Wood and MacKenzie had tacitly approved Mr Deillon's actions in not ejecting him while intoxicated. The allowance of Mr Hodgson to remain on the premises for a period of time is therefore not an issue before the Commission. The fact that he remained on the premises beyond the singing of four (4) karaoke songs becomes the turning point in considering this issue.
- 18) Ms Deillon, as Nominee, agreed and accepts that Mr Hodgson should have been removed earlier after allowing sufficient time for Mr Hodgson to have sung his songs at the karaoke machine. The frank evidence of the Nominee supported by the now Dual Nominee, Ms Wright and their admission that they had done the wrong thing is noted by the Commission.

- 19) Whilst allowing intoxicants to remain on premises is a serious offence, in this instance there appear to be no aggravating circumstances or consequences.
- 20) In submission on penalty "*paragraph 13*", Mr wood referenced the issue of access to the licensed area. It would be appropriate that the rear gate be locked or access otherwise restricted to ensure that patrons do not gain access without the knowledge of the attending bar staff.
- 21) In relation to the letter of caution tabled as Exhibit 1, the Commission notes there is no foundation for the use of this caution in determining penalty in this case on the basis of two (2) facts. Firstly the letter of caution is dated 19 August 2008, some several weeks after the incident the subject of this hearing. As such, the licensee had no prior notice of the caution. Secondly the letter purports to issue a caution as a result of a complaint received under section 48(2) of the Act. Section 48 provides the mechanism for the referral of a complaint to the Commission. Whilst the Commission has no doubt the Director may issue a caution to a licensee he cannot do so under the auspices of section 48, that is a power of the Commission that may only be exercised following the conduct of the hearing. For those reasons the Commission does not take the letter of 19 August 2008 into account in determining penalty.
- 22) During hearing the Commission was informed that the Nominee Ms Pamela Deillon would shortly be leaving Mataranka and no longer Nominee or Manager of the premises. She advised that she had not had any complaint or breach of the Act in her time at the Hotel nor had there been any breaches during the four (4) years ownership by the Licensee.

DECISION

- 23) The Commission has determined to issue a formal reprimand to the Licensee of the Hotel and that this reprimand is to be placed on file to be taken into account if any future breaches are determined.
- 24) The Commission also strongly recommends to the Hotel that all access points to the licensed area are manageable and visible from within the premises, to avoid intoxicants entering the premises without detection by hotel staff.

Richard O'Sullivan
CHAIRMAN

3 December 2008