

Northern Territory Licensing Commission

Reasons for Decision

Respondent:	Mr Andrew George Staib
Licence Number:	Security Officer Number 7128
Proceedings:	Complaints Pursuant to Section 53A <i>Private Security Act</i>
Heard Before:	Mr Philip Timney (Presiding member) Mr Wally Grimshaw Mr John Brears
Date of Hearing:	17 May 2011
Appearances:	Licensing Inspector Mark Wood for the Director of Licensing Mr Andrew Staib (in person)

Background

- 1) On 4 January 2010 a complaint was lodged with the Director of Licensing pursuant to Section 53A(1) of the *Private Security Act* ("the Act") in relation to Crowd Controller Mr Andrew Staib. The complaint alleged that Mr Staib had breached Section 19(2)(c) of 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 on 20 December 2010 (Complaint 1).
- 2) On 6 January 2010 a further complaint was lodged with the Director in relation to Mr Staib alleging that he had breached Section 19(2)(c) of the Act, with reference to NT Private Security Code of Conduct for Crowd Controllers, whilst carrying out his duties as a Crowd Controller at Monsoons on 21 November 2010 (Complaint 2).
- 3) By decision dated 25 February 2011, the Licensing Commission determined to conduct an investigation pursuant to Section 53C(3)(a) by way of a Hearing into the complaints. The Commission directed, pursuant to Section 53C(3)(b) of the Act, that Mr Staib was to appear at the Hearing.

Hearing

- 4) At the commencement of the Hearing, Mr Wood provided the Commission with a précis of the factual allegations leading to the laying of the complaints.
- 5) In respect of Complaint 1, Inspector Wood informed the Commission that on 20 December 2010 Mr Staib was on duty as a Crowd Controller at Monsoons. A review of the CCTV footage for that day revealed that at approximately 7.30 pm Mr Staib had a conversation in the bar area of the premises with a patron identified as Mr John Walker. Shortly afterwards Mr Staib took hold of Mr Walker's left arm but was brushed away by Mr Staib. Inspector Wood advised it was then alleged that Mr Staib grabbed Mr Walker near the throat and punched him to the head on several occasions. Mr Staib and Mr Walker then wrestled with each other during which Mr Staib is alleged to have head-butted Mr Walker.
- 6) It was alleged that Mr Staib then moved Mr Walker into the main toilet entry when another patron attempted to intervene in the scuffle. Another Crowd Controller, who was engaged at the Wisdom premises on the night, was called to assist Mr Staib following which Mr Walker was forcibly removed from the premises in a headlock applied by Mr Staib. It is alleged that

Mr Staib then threw Mr Walker on his back onto Mitchell Street and into the path of on-coming vehicles.

- 7) In respect of Complaint 2, Inspector Wood informed that Commission that Mr Staib was engaged as a Crowd Controller at Monsoons on 21 November 2010 and, at approximately 2.09 am, was working in conjunction with fellow Crowd Controller Mr Patrick Georgeson at the entrance to the premises screening patrons. Around that time a number of males appeared to be engaged in a verbal dispute with Mr Georgeson. It is alleged that Mr Georgeson struck one of the males to the side of the face causing him to retaliate, following which Mr Georgeson and Mr Staib engaged in "a melee" with the males. At one stage Mr Georgeson appeared to try and pull out of the melee whilst Mr Staib continued to try and strike a number of the males. It is alleged that a blow delivered by Mr Staib connected with the face of one of the males knocking him to the ground. Shortly afterwards the Police arrived and dispersed the group of males.
- 8) In respect of Complaint 1 Mr Staib informed the Commission that he was the only Crowd Controller on duty at the time he was involved in the altercation with Mr Walker. He stated that he had asked Mr Walker to leave the premises as he considered he was intoxicated. Mr Staib denied that he had grabbed Mr Walker by the throat or punched him. He stated that Mr Walker had refused to leave and he took him by the arm to escort him from the premises when the scuffle broke out. He stated that he did not force Mr Walker into the toilets but rather they fell in there during the altercation. Mr Staib added that he was concerned for his own safety at the time as it appeared some other patrons were friends of Mr Walker and looked as if they may try and assist him.
- 9) Mr Staib advised the Commission that he was unable to remove Mr Walker from the premises alone and required the assistance of the Crowd Controller who attended from Wisdom. He noted that the altercation with Mr Walker lasted some minutes and that when he finally got Mr Walker to the front of the premises he was near exhaustion. He acknowledged that he threw Mr Walker on to the road and said he did this as a result of his exhaustion and as a means of finally ending the matter. He conceded there was potential danger in throwing Mr Walker on to the road and realised now that he should not have done so. He stated that, if the same circumstances arose again, he would act differently.
- 10) In respect of Complaint 2, Mr Staib stated that he recalled the incident. He knew of the group of males who were engaged in the verbal dispute with Mr Georgeson as he had encountered them previously whilst on duty. He noted that they had been denied entry to Monsoons on two occasions on the basis of their level of intoxication. Mr Staib noted, whilst viewing the CCTV footage, that he had his back to Mr Georgeson and the males and was tying up a shoe lace when Mr Georgeson struck one of the males and he did not see that occur. When he turned around again he saw one of the males attempting to strike Mr Georgeson and that is when he joined the melee.
- 11) Mr Staib conceded that he had overreacted and "gone over the top" once the altercation with the males commenced. He thought he was intervening to protect Mr Georgeson but said that this did not condone his reaction as the aggressor on the night and he would do things differently if a similar situation arose in the future. Mr Staib asked that the Commission take into account the fact that one of the males involved in the altercation had later apologised for his behaviour and admitted he was in the wrong for starting the argument when they were refused entry to Monsoons.

Submissions on Penalty

- 12) Inspector Wood noted that Mr Staib had effectively entered a plea to both complaints, save that he denied any wrong doing in his dealings with Mr Walker prior to throwing him on to the street. Inspector Wood noted that there was no complaint in respect of Mr Staib asking Mr Walker to leave the premises or in removing him once he refused. He conceded also that the CCTV footage did not show Mr Staib dragging Mr Walker into the male toilets but rather indicated that they fell in there during the struggle.

- 13) Inspector Wood noted that Mr Staib was the only Crowd Controller on duty when he was required to deal with Mr Walker and that fact created a potentially dangerous situation. He noted however there were other options than a direct confrontation with Mr Walker, including calling for back up security or calling the Police. Inspector Wood agreed that the situation could have gotten further out of hand if Mr Walker's friends had physically intervened and that in taking the action he did Mr Staib had placed himself and other patrons of the premises at risk. He added that Mr Staib's action in throwing Mr Walker on to the road was indefensible and had exposed him to risk of serious injury from passing traffic.
- 14) In respect of the incident on 21 November 2010, Inspector Wood agreed that the CCTV footage showed that Mr Staib did not see Mr Georgeson strike one of the males and the first time he observed the altercation was when one of the males retaliated against Mr Georgeson. Inspector Wood submitted that Mr Staib's reaction in throwing punches was not appropriate and further inflamed an already volatile situation. He added that Mr Staib's reaction was completely over the top and out of control, particularly as he needed to be restrained by other staff of the premises even when the situation had calmed down to a degree.
- 15) Inspector Wood noted that Mr Staib had no known criminal history and this was the first time he had faced a complaint regarding his role as a Crowd Controller. He submitted however that, given the seriousness of the complaints against Mr Staib, a period of actual suspension of licence was warranted. Inspector Wood submitted that the appropriate penalty in the circumstances was a suspension of licence for a period of six months.
- 16) Mr Staib informed the Commission that he is twenty-one years of age, employed by Adrian Franklin of Proactive Security and has been licensed as a Crowd Controller since early 2009. This is his only form of employment and he currently works between 40 to 50 hours per week.
- 17) Mr Staib conceded that he had acted inappropriately in respect of Complaint 2 and in his dealings with the males who were arguing with Crowd Controller Georgeson. He also admitted that he was wrong to have thrown Mr Walker onto Mitchell Street but otherwise defended his actions in removing him from the premises. He asked that the Commission note the difficult role carried out by Crowd Controllers and the fact they are regularly required to deal with intoxicated and aggressive patrons.
- 18) In respect of the appropriate penalty, Mr Staib submitted that a period of suspension may be useful to him to allow time to consider whether he wants to stay in the security industry and submitted that the often stressful job may have resulted in him over reacting in the incidents that were before the Commission. He added however that a suspension of his licence for a period of six months would have a significant impact on his current employment prospects and suggested that a penalty of one month's suspension of licence would be more appropriate and allow him time to consider his ongoing engagement in the security industry without shutting out his only current employment option.

Consideration of the Issues

- 19) 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 this complaint:

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.*

- 20) 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. Mr Staib has admitted breaches of the Code of Practice in engaging in a fight with a group of males in the incident that occurred on 21 November 2010 and in throwing Mr Walker on to the road following his eviction from Monsoons on 20 December 2010.
- 21) Mr Staib denied any wrongdoing on his part in removing Mr Walker from Monsoons on the basis he was intoxicated and submitted that the force used was appropriate in circumstances where Mr Walker was physically resisting his removal. The Commission, having viewed the CCTV footage of the incident accepts that submission and intends to take no further action in respect of the altercation between Mr Staib and Mr Walker prior to him being removed from the premises. In reaching that conclusion, The Commission notes that the CCTV footage does not show Mr Staib grabbing Mr Walker by the throat and punching him at the start of the altercation, as was alleged in the complaint. The Commission notes Mr Staib's admission that throwing Mr Walker on to the road was inappropriate, even taking account of the mitigating circumstances raised by Mr Staib in his evidence.
- 22) The Code of Conduct for Crowd Controllers recognises that the use of force by Crowd Controllers is sometimes necessary to prevent injury to other patrons, the Crowd Controllers or the person themselves. However the degree of force that may be used lawfully is limited to that which is necessary in the particular circumstances and must be commensurate with the degree of danger posed by an unruly or intoxicated patron.
- 23) In the case of Mr Walker, the Commission is of the view that his refusal to leave the premises when requested to do so by Mr Staib left little option other than for a forceful eviction. The Commission regards Mr Staib's actions in removing Mr Walker to have been appropriate and within the bounds of necessary force given Mr Walker's aggressive response and the fact other patrons gave the impression they may join the dispute and assist him.
- 24) However, throwing Mr Walker on to the road was neither appropriate nor warranted. By that stage Mr Staib had back up and the situation was effectively under control. The Commission accepts that Mr Staib was most likely exhausted after the altercation and fed up with Mr Walker's reaction. That, however, cannot condone him placing Mr Walker into a dangerous situation where he may have been struck by a vehicle and suffered significant injuries.
- 25) The Commission also expresses its concern in respect of Mr Staib's actions in intervening in the melee that occurred on 21 November 2010. The Commission notes that Mr Staib was unaware of the incident that instigated the physical aspect of the altercation and that his actions had the effect of significantly inflaming an already volatile situation. The fact that Mr Staib had to be physically restrained from further engagement in the melee provides clear evidence to the Commission that he had lost control and was not acting in a professional manner.
- 26) In determining the appropriate penalty the Commission takes account of a number of mitigating factors. Namely, Mr Staib has no criminal history or record of offending as a Crowd Controller, he admitted the breaches at the first opportunity at the hearing and expressed remorse at his actions and an acknowledgement that he had "gone over the top" in the melee with the group of males. In addition, security work is currently Mr Staib's only means of income and a lengthy suspension is likely to have a significant impact on his current earning capacity.

- 27) The Commission notes the seriousness of this type of offending and the specific risk to which Mr Walker was exposed when he was thrown on to the road. The situation involving the group of males at the entrance to Monsoons on 21 November 2010 could readily have escalated into a dangerous brawl involving a significant number of people. Mr Staib's actions in leaping into the fight and punching people was not only inappropriate but had the real potential to escalate an already inflamed situation. The Commission finds that Mr Staib breached Clause 3.13 of the Code by using excessive force in the course of his duties.
- 28) Whilst the other Crowd Controller was engaged in a verbal discussion with several of the males prior to the fight erupting, Mr Staib did not appear to speak to anyone prior to throwing punches. The Commission considers that to be completely inappropriate behaviour and contrary to the requirement under the Code of Practice for Crowd Controllers to at least attempt to engage in mediation and non-violent resolutions, as required by Clauses 3.15 and 3.16.
- 29) The Commission has routinely stated that it will impose periods of actual suspension of licence where a Crowd Controller uses force that is more than what is required to control a particular situation. In this instance the Commission is satisfied that the force used by Mr Staib in throwing Mr Walker on to the road and in punching the males involved in the argument with Mr Georgeson is at the higher end of the scale so far as unreasonable use of force was concerned. In those circumstances the Commission is of the view that a period of actual suspension of licence is the appropriate penalty.

Decision

- 30) For the reasons set out above, the Commission finds that Mr Staib in his capacity as a licensed Crowd Controller used excessive force in his dealings with patrons of Monsoons on 21 November and 20 December 2010. Consequently the Commission finds that Mr Staib has breached sub-Section 19(2)(c) 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 on those dates.
- 31) The Commission determines, pursuant to Section 53D(1)(f) of the Act, to suspend Mr Staib's dual Security Officer and Crowd Controller licence for a period of one month. The suspension is to be served from 15 July to 14 August 2011.

Philip Timney
Presiding Member

1 July 2011