

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Tops Springs Hotel
Licensee:	Jones Cattle (NT) Pty Ltd
Licence Number:	81203330
Proceeding:	Decision on Penalty re Breach of Section 121 <i>Liquor Act</i> – Failure to Remove or Exclude Intoxicated Person from the Licensed Premises
Heard Before:	Mr Richard O’Sullivan (Chairman) Ms Brenda Monaghan (Legal Member) Mrs Jane Large
Date of Decision:	20 April 2009
Appearances:	Mr Alan Woodcock for the Licensee Mr Ray Murphy for the Director of Licensing

Background

- 1) On 25 February 2009, the Licensing Commission conducted a hearing relating to two (2) complaints brought by Licensing Inspector Wood against the Licensee and Nominee of Top Springs Hotel. The complaint alleging breaches of Section 102 of the *Liquor Act* (“the Act”) (serving an intoxicated person) was dismissed and the complaint alleging breaches of Section 121 of the Act (allowing an intoxicated person to remain on premises) was upheld. A written decision was published by the Commission on 23 March 2009.
- 2) Written submissions on penalty have now been received from Counsel for the Director of Licensing and the Licensee and have been considered by the Commission. In reaching its decision on the appropriate penalty to impose, the Commission has taken particular account of the following matters:
 - a) The Nominee Ms Haseldine, strenuously defended the complaint that she allowed a highly intoxicated patron to remain on premises in breach of Section 121. Her evidence and those of her witnesses was found to be less than frank on some vital issues and carried the indicators of collusion.
 - b) There is a significant obligation on remote licensees to properly manage their premises both to ensure that responsible service of alcohol practices are maintained and that any patrons who are intoxicated, violent, quarrelsome, disorderly or incapable of controlling their behaviour are promptly removed. The safety of their patrons and of the surrounding community necessitate licensees maintaining high standards-particularly as remoteness can mean that there is little immediate support from police or health professionals if things go wrong.
 - c) The Commission has found on the evidence that Mr Webb was intoxicated, quarrelsome, disorderly and incapable of controlling his behaviour and that he was not removed. Instead, Ms Haseldine simply told Mr Webb to leave the bar and then proceeded to leave herself so as to serve other customers wanting supplies or petrol. In no time, Mr Webb became violent towards another patron tackling him to the ground and smashing a bain marie.

- d) Telling an intoxicated, volatile patron such as Webb to leave and simply assuming they will do so is not sufficient compliance with Section 121. Under the Act, the licensee/nominee must remove such a patron and may use such force as is reasonably necessary to do so. The Commission notes that there were other staff members in and around the premises at the time that could have assisted in removing an intoxicated patron. It is also not an acceptable excuse to leave the bar to attend to other duties prioritising them over a Nominee's duty under Section 121 to keep licensed premises safe and well managed. If short staffing meant that the Back Bar could not be properly managed on the day in question, then it should have been closed for the day.
- e) In the Nominee's favour are the following matters:
 - i) This is the first time the Top Spring Hotel has been before the Commission to face a complaint. This past good record is taken into account.
 - ii) Whilst not excused, Ms Haseldine's actions on the day may have been those of a busy Licensee who 'cut corners' rather than a person with a blatant disregard for responsible management practices. It is noted that she had required Mr Webb to leave the bar earlier in the day when he had been intoxicated and unruly.

Decision

- 3) When considering penalty, the Commission is mindful of the need to protect the public from future breaches. The deterrent effect of any sanction imposed is of vital importance both for the licensee in question and as a warning to other licensees. With these issues in mind, the Commission intends to require the licensee to install and maintain camera surveillance equipment in the licensed areas. Further, the Commission intends to impose a suspension of the licence but to suspend part of that suspension to act a 'good behaviour bond' in recognition of the licensee's status as a first offender and to encourage responsible behaviour in the future.
- 4) The penalty imposed is as follows:
 - a) The liquor licence shall be suspended for a period of two (2) days. The first day of the suspension shall be imposed on **Monday 27 April 2009**. The second day of the suspension will remain suspended for a period of twelve months from the date of this decision. If the same, similar or a more serious breach of the licence condition occurs within the twelve (12) month period, then the suspension will be imposed in addition to any other penalty for the further breach. If no further breaches of the *Liquor Act* occur in the twelve (12) month period, the "suspended suspension" will lapse; and
 - b) A condition is placed in the liquor licence requiring the Licensee to comply with the requirements outlined in the Camera Surveillance Requirements and Guidelines issued by the Commission in August 2008. The Licensee must submit a Camera Surveillance Plan to the Director within three (3) months of the date of this decision

Richard O'Sullivan
Chairman

20 April 2009