

Northern Territory Licensing Commission

Reasons for Decision

Respondent:	Mr Craig Anthony Nuttall
Licence Number:	N/A
Proceedings:	Application for Dual Security Officer / Crowd Controller Licence
Heard Before:	Mr Richard O'Sullivan (Chairman) Ms Brenda Monaghan (Legal Member) Mr John Brears
Date of Hearing:	18 November 2010
Appearances:	Mr Craig Nuttall (Applicant) Inspector Merg Mikaelian (Licensing Inspector)

Background

- 1) Mr Craig Nuttall was issued a Dual Security Officer / Crowd Controller Licence in 1999 and this licence was maintained until 17 July 2009 and was not renewed thereafter.
- 2) Mr Nuttall was also the holder of a Security Firm Licence, Stealth Network, which was not renewed beyond 18 April 2008, when it expired.
- 3) In September 2009 following Licensing Inspector investigations, it was found that Mr Nuttall was operating in both the capacity of a Crowd Controller and as a Security Firm employing personnel, through the provision of security services at Palmerston Markets and the engagement of personnel to assist in this task.
- 4) Mr Nuttall admitted to unlicensed activity and subsequently was issued with a Letter of Caution from the Director of Licensing. Prosecution action was considered by the Director but he was persuaded not to pursue this course of action and to only issue a Caution on the basis that Mr Nuttall advised he would not be seeking to operate as a Security Officer or Crowd Controller in the future.
- 5) The Director's Letter of Caution dated 2 November 2009 includes the following:

"Due to your frank admissions and the advice to Inspectors that you have ceased working in the Security industry and will not attempt to renew your licences in the foreseeable future, I will not proceed to prosecution."

- 6) In October 2010 Mr Nuttall made application for a Dual Security Officer / Crowd Controller licence. This application was made less than twelve months after Mr Nuttall assured the Director he was leaving the industry and would not be renewing his licences. On considering the application the Commission in November 2010 determined it wished to consider if Mr Nuttall was a fit and proper person for the issue of a licence through the conduct of a Hearing.
- 7) The Commission's powers in relation to such matters are derived through Section 15 of the *Private Security Act* ("the Act") as follows:

15 (5) In deciding whether a person is an appropriate person to hold a licence, the licensing authority is limited to considering the matters specified in subsections (6) and (7)

(6) *In deciding whether a person is an appropriate person to hold a licence, the licensing authority may consider the following matters as indicating that the person may not be an appropriate person:*

(a) *that in dealings in which the person has been involved, the person has:*

(i) *shown dishonesty or lack of integrity; or*

(ii) *used harassing tactics;*

(d) *that the person is suffering from an illness that makes them unfit to work in the security industry;*

(e) *that the person has been found guilty of an offence;*

(f) *information provided by a person or body responsible for the issue of licences under an Act of the Territory, the Commonwealth or a State or another Territory of the Commonwealth;*

(g) *evidence given in a court of the Territory, the Commonwealth or a State or another Territory of the Commonwealth or a commission of inquiry.*

(7) *A person is not an appropriate person to hold a licence if the person, within 10 years of applying for a licence, has been convicted of:*

(a) *a disqualifying offence in relation to such a licence; or*

(b) *an offence that would be a disqualifying offence in relation to such a licence if committed in the Territory.*

8) Section 15 (8) of the *Private Security Act* further states:

(8) *The licensing authority may, in its absolute discretion, refuse to grant a licence to an applicant if the licensing authority has grounds for believing that the applicant is likely to be of bad character, having regard to the public interest in ensuring that persons of bad character are not employed as security providers, and the licensing authority shall give reasons for its decision.*

Hearing

9) At the commencement of the Hearing the Commission advised that it would publish its decision in relation to the application and sought that parties to the Hearing advise if any matters presented or contained within the Hearing Brief should be excluded from publication. The parties did not identify any matters that should be excluded from the published decision.

10) Inspector Mikaelian advised of the unlicensed activities of Mr Nuttall. Following receipt of information that Mr Nuttall was working unlicensed at the Palmerston Markets, Inspectors Jeffrey Paull and Merg Mikaelian on Friday 4 September 2009 attended the Palmerston Markets. Whilst there Mr Nuttall was seen working as security and was asked to produce his security licence.

11) Both Inspectors Mikaelian and Paull signed Statutory Declarations declaring that Mr Nuttall responded "*I don't have it on me, my daughter must have moved it last night but I am currently licensed*" and further, "*I am also the current Director of a Security Firm named Stealth Network which is also currently licensed and I currently employ one person*".

12) Evidence provided by Inspector Mikaelian was that Mr Nuttall claimed he knew the Inspectors would be coming to the markets as he was aware his former employer's Manager, Mr Ian Spooner of Nocturnal Security Services, had advised he would contact Licensing Inspectors and inform them that Mr Nuttall was working unlicensed at the Palmerston Markets.

- 13) Inspector Mikaelian also tabled (Exhibit 1) a listing of fourteen shifts undertaken by Mr Nuttall for the licensed Security Firm Nocturnal Security Services. These fourteen shifts commenced on 19 July 2009 and ceased on 22 August 2009 when, on evidence provided, Mr Nuttall's services were terminated due to a dispute.
- 14) At all times during the provision of security services for Nocturnal Security Services Mr Nuttall was unlicensed.
- 15) Inspector Mikaelian advised that Mr Nuttall's Dual Security Officer / Crowd Controller licence had expired on 17 July 2009 and the Security Firm licence had expired on 18 April 2008.
- 16) Mr Nuttall admitted to operating both as a Security Firm and as Licensed Security whilst being unlicensed. In his defence he stated that his attention at the time was preoccupied with attending to his daughter who had spent some time in hospital care and who suffered some form of permanent disability.
- 17) In relation to performing security duties for Nocturnal Security Services, Mr Nuttall advised the Commission that his employing company had not advised him that his licence had expired. Mr Nuttall went on to state that he had not been advised by the Licensing section within the Department of Justice that his firm licence had expired.
- 18) The Commission drew Mr Nuttall's attention to a File Note (Folio 31 of the Hearing Brief) prepared by Inspectors Mikaelian and Paull which contains the following in relation to the Inspectors' phone conversations with the Coordinator of the Palmerston Markets on 8 September 2009:

"She (Julie Battison, Palmerston Market Coordinator) also informed Mikaelian that she had spoken to Nuttall the day before regarding last Fridays incident and expressed her disappointment that he had lied to her about his licence being out of date, she said Nuttall told her that his daughter had taken his licence from his wallet but he was still currently licensed even though this was after being caught by inspectors being unlicensed."
- 19) Mr Nuttall's response was that he had no recall of this matter nor this conversation. Mr Nuttall advised the Commission that he had made mistakes in his past life and he had not monitored the currency of his licences but that in his defence he had not been reminded to seek licence renewal.
- 20) Evidence was then tabled (Exhibit 2) that 20 August 2008 Mr Nuttall was sent a letter from a Licensing Supervisor in the Department of Justice reminding him that his Security Firm licence had expired and advising that he must not engage in security business activities and further advising of the application of penalties for such an offence.
- 21) Mr Nuttall reiterated that he had not received this letter and that during the period in question he had changed address a number of times.
- 22) Mr Nuttall was questioned on his Criminal History record which showed a chronology of repeated unlicensed driving and related traffic offences. These are not disqualifying in terms of the application currently before the Commission, but illustrate a repeated pattern of driving unlicensed, driving while disqualified and driving unregistered vehicles, cumulatively showing some endemic contempt or disregard for lawful requirements. Mr Nuttall replied to this pattern of behaviour that it was stupidity on his part. The Commission questioned whether stupidity was a trait consistent with attributes desirable in the crowd controlling and security industry.

Consideration of the Issues

- 23) Mr Nuttall, by his own admission, has provided security services while being both unlicensed as an individual and unlicensed as a firm. The Commission has considered

whether he undertook these activities as a result of not being aware that his licences had expired or that he had a complete disregard for lawful requirements and had provided services in the knowledge that his licences had expired.

- 24) The Commission is mindful that from the date of his initial Dual Security Officer / Crowd Controller licence issue in 1999, he had been able to renew and retain the currency of the licence until July 2009. Both his firm licence and individual licence lapsed without renewal in 2008 and 2009 respectively.
- 25) Prior to this he had followed lawful practice and maintained currency of his licences. It is therefore hard to give credibility to the premise that he had forgotten to renew these licences from 2008 and beyond.
- 26) When Mr Nuttall advised Inspectors at the Palmerston Markets on 4 September 2009 that he was expecting them, as he believed Inspectors had been informed by his former employer that he was unlicensed, Mr Nuttall is providing tacit admission that he was aware of his unlicensed status. Yet forewarned of this he did nothing in the way of seeking licence renewal or desisting from unlawful activity.
- 27) In relation to his performance of security duties for Nocturnal Security Services, his statement that this firm had not advised him that his licence had expired in itself admits to his abrogation of responsibility in this matter. While firms must ensure their staff are duly licensed, it is also incumbent on the individual conducting activities to ensure their licence is current.
- 28) In the Commission's view it is rather cavalier for a security provider to merely state that an employer had not advised them that their licence had expired.
- 29) The issue of Mr Nuttall offering security services for the Palmerston Markets after being advised by Inspectors to cease such activity again puts into question Mr Nuttall's state of denial and cavalier attitude.
- 30) The Commission also needs to consider the sincerity of Mr Nuttall in light of his advice to Licensing Inspectors after the meeting with them at the Palmerston Markets that he would cease working in the security industry and would not attempt to renew his licence in the foreseeable future.
- 31) The effect of his providing this advice was to downgrade the response of the Director of Licensing from that of prosecution of unlicensed activity to that of a caution. The fact that Mr Nuttall has now made re-application for a licence brings into questions his sincerity and credibility in undertaking not to reapply for a licence "*in the foreseeable future*".
- 32) The penalties provided for unlicensed firm activities are up to \$65,000 and for unlicensed individual security activities a fine of up to \$13,000 can be issued. The gravity of the breaches of the Act currently before the Commission need to be considered in light of these severe pecuniary penalties.
- 33) In assessing whether Mr Nuttall is a fit and proper person for the issue of a licence, the Commission accepts advice that in the prior ten years of licensed activity, he has not been found guilty of an assault or an offence or breach of the Act. However, his actions in the non-renewal of his licences, the carrying out of security functions of a licensed firm and the direct contracting of security work for the Palmerston Markets, while unlicensed, are of the utmost seriousness.
- 34) It is apparent to the Commission that Mr Nuttall also intended to continue these unlicensed activities at the Palmerston Markets, even after "being caught in the act" by Licensing Inspectors. The Commission forms this view on the basis that Mr Nuttall has shown a propensity to be untruthful as in the instance where he claimed that his daughter must have taken his licence from his wallet when being questioned by Licensing Inspectors at the Palmerston Markets on 4 September 2009. He must have known at this stage that he was conducting unlicensed activities and this is further verified by his statements that he was

aware that Inspectors were likely to visit him as they had been informed of his unlicensed status by a former employer who had terminated his services.

- 35) Mr Nuttall's history of repeated convictions of driving offences, while unlicensed and driving unregistered vehicles, is relevant only in that this also illustrates a concerning disregard for lawful licence requirements.

Decision

- 36) The Commission finds that Mr Nuttall has not demonstrated that he is fit and proper for the issue of a Dual Security Officer / Crowd Controller licence. In taking this decision the Commission has little faith at present in his accepting his responsibilities and finds that he has been delinquent in complying with the law in his recent unlicensed activities.
- 37) Some period of time would need to expire before the Commission would be disposed to re-assess his fitness and propriety for the issue of the licence applied for. Furthermore any future application would need to be accompanied by evidence that his delinquent behaviour in disregarding lawful requirements had been remedied.

Richard O'Sullivan
Chairman

7 December 2010