

# Northern Territory Licensing Commission

## Reasons for Decision

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<b>Respondent:</b>	<b>Mr Conrad William Bruppacher</b>
<b>Proceedings:</b>	Application for a Dual Security / Crowd Controller Licence
<b>Heard Before:</b>	Mr Richard O'Sullivan (Chairman) Ms Brenda Monaghan (Legal Member) Mrs Kerri Williams
<b>Date of Hearing:</b>	23 and 24 November 2009
<b>Appearances:</b>	Mr Conrad William Bruppacher Mr Tom Anderson for the Director of Licensing

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### Background

- 1) An application has been made by Conrad Bruppacher (the applicant) for a dual Security Officer and Crowd Controller licence. The Commission held a hearing to consider the matter and to allow both the Director and Mr Bruppacher the opportunity to address the Commission on whether or not a licence should be granted.
- 2) At the hearing, Counsel for the Director, Mr Anderson, tendered a number of documents as exhibits, called several witnesses to give evidence and made submissions as to why the applicant should not be granted a licence. The applicant gave evidence, cross examined the witnesses called by the Director, called two (2) witnesses of his own and made submissions in support of his application. The Commission then adjourned to consider its decision.

### The Hearing

- 3) The Director submits that the applicant is not an appropriate person to hold a licence or is of bad character. Evidence was called on the following matters:

- i) **Conviction for Assault on Scott Alderson and subsequent licence history**

Documentary evidence was provided to the Commission regarding the conviction entered against the applicant on 14 September 1998 for an aggravated assault on Mr Alderson. The Presiding Magistrate sentenced the applicant to four (4) months jail. The assault occurred when the applicant while acting as a Security Officer evicted a patron from a nightclub. The applicant placed the victim in a headlock and dragged him downstairs and out onto the street where the victim fell to the ground. As the victim started to stand back up, the defendant drew back his right hand in a fist and punched the victim in the face hard causing the victim to lose consciousness and fall back face first in the gutter. The applicant then went inside the nightclub leaving the victim lying unconscious in the road. As a result of the assault, the victim suffered bodily harm including facial bruising and lacerations and a broken nose and tooth.

The applicant's dual licence was cancelled as a result of the 1998 conviction. In 2003 he reapplied to the Commission for a licence but was refused. His appeal before Bradley J was unsuccessful. Following a further refusal by the Commission in 2003, a dual licence was granted by Cavenagh J on appeal in early 2004. A renewal of that licence was refused by the Commission on 5 April 2007 on the basis that only the Local Court can consider licence applications or renewals in

circumstances where the applicant has a current conviction for a disqualifying offence. No further application was made for a licence until the current application was lodged on 9 March 2009

ii) **Alleged Assault on Ronald White on 2 June 2006 at Lost Arc**

The allegation is that the applicant grabbed Mr White, a patron at Lost Arc at the time, punched him in the face a few times causing injury and dragged him out of the premises in a headlock. Mr White did not give evidence but he and others with him had previously made statutory declarations about the events of that night. His statutory declaration dated 2 June 2006 states:

*"I had been drinking but I was not intoxicated and the bouncers let me in with no problems. We were drinking at the bar for about an hour. During this hour I had gone outside to talk on my mobile phone and the bouncers let me back inside with no problems. The bouncer (Bruppacher) came up to our group and told me "You're too drunk, you're out". He only spoke to me and I don't think he spoke to anyone else in the group. I thought that the bouncer was joking so I just stood there. for about another 10 minutes. I looked up and saw the (same) bouncer coming towards us and there were two or three other bouncers with him. (Bruppacher) pointed at me and said "you're out". He then went to grab me and I said to him " I'll walk, don't touch me" or words to that effect. I went to put my drink down and before I could put it down, he grabbed me in a headlock and hit me a few times in the face while he dragged me outside. I had my head down because I was in a headlock. I didn't fight or struggle with him. It all happened so quickly and the next thing I knew I was outside and blood was pouring out of my face the police turned up not long after."*

One of Mr White's companions, Mr Andrew Wilkie, gave evidence by phone. Mr Wilkie's evidence is that eight (8) to ten (10) males were at Lost Arc as part of a buck's party to celebrate Mr White's wedding two (2) days later. They had been at various licensed premises before arriving at Lost Arc at about 12.30am. He denies seeing anyone misbehaving, being warned by Security or being offered water rather than alcohol from the bar staff. He denies that his party was asked to leave on several occasions before they were forcibly removed. Mr Wilkie remembers four (4) to five (5) bouncers approached their group of eight (8) to ten (10) persons. His statutory declaration says that *"without saying anything to Ronnie first, one of the Bouncers (Bruppacher) had Ronnie in a headlock he dragged him outside the club onto the footpath. Once I was outside I saw Ronnie standing to one side and bleeding heavily from lacerations to the bridge of the nose and right eyebrow. I also noticed a large lump on the left hand side of his cheek."*

A Statutory Declaration made by Craig Curby on 6 March 2007 tells a similar story. Curby states:

*"I was right behind them as they were dragged and when they got to the front door, I saw the security guard that had Ronnie (White) throw him to the ground. Ronnie hit the concrete footpath with full impact. As soon as they hit the ground, the security guards that had hold of Ronnie and Mark then started kicking and punching Ronnie and Mark while they were laying in the gutter. Ronnie and Mark had no opportunity to defend themselves." "the other security guards were holding the guard who was kicking and punching Ronnie".*

Further evidence tendered at the hearing was in the form of statutory declarations and told similar accounts of the White being placed in a headlock by Bruppacher and forcibly removed from Lost Arc.

The Applicant does not deny that he forcibly removed White from the premises but he states that his actions were reasonable. His evidence is that the men in the Bucks Party group were drunk and were groping women, being abusive to their boyfriends and tipping water onto the floor when they were turned 'off tap'. Patrons and bar staff had both complained to security about the unacceptable behavior of this group. The applicant says that he asked White politely to leave, then walked away and gave him time to do so. He was ignored. The applicant then called the police on his mobile and also rang Shenannigans security for back up. Bruppacher states that he again approached White and asked him to leave. When he refused, then Bruppacher got him in a restraint hold (ie headlock). The other members of the group all got irate and tried to "jump" the security. He denies punching or assaulting White at any time.

iii) **Alleged Assault on Jonathon Van Wyk on 4 July 2006**

Mr Van Wyk, a Security Officer, gave evidence at the hearing. The allegation is that the applicant, while on duty at Lost Arc was unnecessarily rough and abusive with Mr Van Wyk and three (3) times pushed him onto the road way. The pushing was admitted to by the applicant who alleged that Mr Van Wyk held a personal gripe against the security firm that the applicant was employed with at the time. The applicant relied on the defence of reasonable force in the circumstances. He gave evidence that Mr Van Wyk was trying to sneak drinks into the premises and that he refused to leave when asked. As a result of the incident, Police were called and Mr Van Wyk was charged with disorderly and offensive behaviour to which he ultimately pleaded guilty. No conviction was entered but a fine was imposed.

iv) **Alleged Assault on Tom Markos on 10 December 2006 at Lost Arc**

Mr Markos gave evidence by phone in support of his earlier signed statement sworn 5 November 2009. The allegation is that Mr Markos was hit in the face twice by the applicant who was on duty as a Security Guard at the time. Mr Markos states that he had had a run in with the applicant a couple of nights earlier when he had tried to intervene to assist a friend who was being held by the applicant in a headlock at the time. He alleges that he was also threatened by the applicant and later punched by him when they met by chance at the Vic in town.

The applicant alleges that on 10 December 2006 at the Lost Arc, Markos put his drink down, looked threatening and swore at him when Markos was told he was banned. The applicant says he felt threatened and responded physically to defend himself by pushing Markos a couple of times. When they later met by accident at the Vic, the applicant admits he punched Markos when Markos spat at him.

v) **Incident at Shenannigans involving Aaron Altiner on 3 March 2007**

The allegation is that Mr Altiner was assaulted by the applicant when he was held in a headlock, dragged out of Shenannigans and held down by the applicant and others with unnecessary force. He strained against them on the ground as he was finding it hard to breathe. His thumb was broken during the incident. Mr Altiner, who gave evidence by phone, acknowledges that he had stupidly jumped up and torn down a small decorative flag about an hour before he was removed. What he cannot understand is why, an hour later, the applicant saw fit to smash the glass from his hand and drag him from the premises in a headlock. At the time of the incident, Mr Altiner had had about five (5) middies and was in a happy mood. He wasn't intoxicated and this was the first pub he and his friend had visited that evening. When cross examined, Mr Altiner vehemently denied that he had sworn at a woman or that he or any of his group had earlier been asked to leave the hotel by management. He appeared amazed by the allegation.

vi) **Melaleuca on Mitchell Complaint – April to August 2007**

On 5 April 2007, the Commission advised the applicant by letter of its decision to refuse to renew his licence on the grounds that it did not have the jurisdiction to do so but that the Local Court did. The allegation is made that the applicant continued to work unlicensed as a Security Officer from April to August 2007. Evidence was provided by Mr Peter Wilson, who was General Manager of Melaleuca on Mitchell and Value Inn at the time and is now General Manager of Kakadu Lodge Jabiru. Mr Wilson remembered the applicant and gave evidence by phone that the applicant worked at Melaleuca on Mitchell as a Security Guard during the relevant period. He was never employed as a porter or grounds man. Mr Wilson remembers seeing the applicant performing his duties as a Security Officer whilst wearing a Proactive Uniform. As soon as he found out that the applicant was unlicensed, he immediately contacted Mr Franklin of Proactive Security and had the applicant removed. When giving evidence at the Hearing and on earlier occasions when questioned by Licensing Inspectors and Police, the applicant repeatedly denied the allegation and said that he was employed variously as a Porter and Grounds Man at Melaleuca on Mitchell during the relevant period.

## Final Submissions

- 4) In final submissions, Mr Anderson for the Director carefully analysed each of the above events and put forward the submission that the Commission should find that the applicant is not an appropriate person to hold a licence under the *Private Security Act* and/or is of bad character.
- 5) In response, Mr Bruppacher stated that he had never heard so much slander before in his life and that it was affecting his livelihood. It is all hearsay, none of it is proven. Mr Bruppacher asked whether the Director trying to say that these patrons were model citizens? If so, his response was that these characters who are now witnesses against him are not model citizens; they were removed for a reason. Mr Bruppacher called evidence from Brett Whitley and Hayden Summers to support his submissions. He also stated the following:
  - Mr Markos had been arrested across the street the day before for fighting in a brawl. He suggested that if one of the Licensing Inspectors had seen him drinking in a licensed premise the next day and knew he had been in an 'all in' brawl and arrested, would they not ask what's going on here. He also submitted that Mr Markos is in fact the person who is of bad character.
  - As regards the 'bucks party' incident at Lost Arc, Mr Bruppacher suggested that if one of the Inspectors saw 'a whole bunch of drunks' at the bar behaving badly, they would ask why are they still in here? That is why they weren't removed when they did not go when asked to leave.
  - As regards the incident with Mr Altiner, Mr Bruppacher stated: "*Then you have the oil rigger swinging off one of the rafters pulling a flag down. He was asked by management to leave, again we actually got him to the door, then he was trying to say that a Security Guard broke his thumb, grabbed him threw him down. no Security Guard is going to torture someone out the front with 150 people watching.*" Mr Bruppacher questioned Mr Altiner's evidence that his head was pushed into the curb when Shenanigans has a railing right across the front of it which would make this unlikely.
  - Following the Alderson case which lead to a conviction against him and a period of imprisonment, Mr Bruppacher advised that Mr Cavanagh SM looked at all the documents and references put before him when considering whether or not he should be granted his Security Officer and Crowd Controller licence. He also looked at school records that showed that Mr Bruppacher was not involved in fights at

school, that the Alderson case was basically his first assault and after considering all the evidence, he granted the licence.

- Mr Bruppacher advised that the 'headlock' technique used on the patrons involved in these matters is a neck restraint hold that Security Officers were taught to use but that it is no longer accepted as an appropriate method of restraint.
- Finally he advised that, rather than being 'uncontrollable' in a challenging situation, he was the opposite. He has not sat around while he has had no Security Licence but instead he has got into formwork, joined the Army Reserves and shown he can work in a team environment supervised and unsupervised. Mr Bruppacher is unable to even consider moving back into the hospitality industry because if he was seen on premises, Inspectors would assume he was acting as unlicensed security.
- Finally, Mr Bruppacher submitted that the allegation he was working unlicensed at Melaleuca was a big misunderstanding. The Day Manager says in evidence that he was there all the time but where is the evidence of the Night Manager? The evidence is incomplete.

## Consideration of the Issues

- 6) Counsel for the applicant, Mr Anderson has made the submission that the applicant is not an appropriate person to hold a Security Officer or Crowd Controller licence. He relies in particular on Section 15(6)(a)(i) and (e) and Section 15(8) of the Act. The relevant sections of the *Private Security Act* are underlined as follows:

### **15. Entitlement to licences – natural persons**

- (1) *This section applies if an application is made for the grant of a licence to a natural person.*
- (2) *[Omitted]*
- (3) *Subject to subsection (8), a person is entitled to be granted a provisional licence if –*
- a) *the Minister has approved a code of practice under section 48, and competency standards and training under section 53, in relation to that category of licence; and*
  - b) *the licensing authority is satisfied that the person is an appropriate person to hold the licence.*
- (4) *Subject to subsection (8), a person is entitled to be granted a crowd controller's licence, a security officer's licence, or a category of licence (other than a provisional licence) declared under section 8, if –*
- a) *the Minister has approved a code of practice under section 48, and competency standards and training under section 53, in relation to that category of licence;*
  - b) *the licensing authority is satisfied that the person has successfully completed the course in training approved under section 53 in relation to that category of licence; and*
  - c) *the licensing authority is satisfied that the person is an appropriate person to hold the licence.*
- (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;*
  - b) *that the person habitually consorts with reputed criminals;*
  - c) *that the person has taken advantage, as a debtor, of the laws of bankruptcy;*
  - 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) *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.*

#### **16. Inquiries about person's appropriateness to hold licence**

- (1) *The licensing authority shall notify the Commissioner of Police of each inquiry of the licensing authority under this section.*
- (2) *The licensing authority may make inquiries about a person to assist in deciding whether the person –*
- a) *is an appropriate person within the meaning of section 15 for the grant of the licence, or is a person of bad character; or*
  - b) *continues to be an appropriate person within the meaning of section 15 to hold a licence or have a licence renewed, or is a person of bad character.*
- (3) *As soon as reasonably practicable after receiving a signed authority under section 14(5) in relation to an application for a licence under this Act or an inquiry by the licensing authority under this section, the Commissioner of Police shall give the licensing authority –*

- a) a written report of the criminal history of the person who signed the authority or person in relation to whom the inquiry is being held, notwithstanding that part of the criminal history is a spent conviction within the meaning of the Criminal Records (Spent Convictions) Act; and
- b) such evidence as may assist the licensing authority to determine if the person who signed the authority is of bad character.

(4) Subsection (3)(a) applies to the criminal history –

- a) that is in the Commissioner of Police's possession; or

- 7) One of the main aims of the *Private Security Act* is to provide for the registration of Private Security Services and to ensure that they properly protect the community. It is the Commission's task to satisfy itself that only appropriate persons are granted licences in the private security industry. The Commission cannot help but be concerned by the sheer number of allegations made against the applicant by patrons of licensed premises. As a whole the complaints and the consistent concerns expressed in them would appear to indicate that the applicant is overly aggressive and abusive towards patrons when acting in his role as a Crowd Controller.
- 8) When looking at these incidents more closely, the difficulty for the Commission is that most of the witnesses who were either allegedly assaulted by the applicant or who witnessed assaults had been drinking alcohol for some time before the incident. Whilst this factor does not in all circumstances discount their evidence, it is a matter that the Commission must take into account when it considers the reliability of such evidence. Further, the quality of the CCTV footage provided at hearing is variable and the footage is generally of limited use apart from 'setting the scene'. The Commission has had to rely instead on witness testimony and statutory declarations to consider whether on the balance of probabilities, the applicant should be granted a licence.
- 9) The Commission comments as follows:

**i) Assault Conviction on Scott Alderson and subsequent licence history:**

This aggravated assault occurred on 30 January 1998 and, following a guilty plea, the applicant was convicted and sentenced to four (4) months jail. On appeal, the decision of the lower Court was upheld by Angel J who made specific comments condemning the use by the applicant of a headlock as a means of restraining a person. He stated at page 32 of the transcript:

*'Whatever else may be said about the occupation of bouncers it should be fairly borne in mind that a licence to be a crowd controller is not a licence to bash people, nor is it a licence unnecessarily to place people in headlocks. The action of placing a person in a headlock and taking them down a flight of stairs in the headlock self-evidently is a dangerous act. People can trip down stairs and necks can be broken quite easily, one would have thought, in a situation such as that. The act of head locking people unnecessarily is in itself an assault and scant provocation, let alone any reason, arose for the necessity of placing a victim in a headlock. He might have been taken gently by the arm and lead out of the premises. The victim at 4am in the morning was in a state of insobriety. Not only was the headlock unnecessary, it was an act that I think is to be deplored.'*<sup>1</sup>

The above portion of the transcript has been included because it appears to the Commission that the applicant's continued use of this method of restraint has been a cause of concern for many of the patrons giving evidence and leads one to

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<sup>1</sup> The Queen v Conrad Bruppacher JA No 85 of 1998 (9802531) at 32

consider whether the applicant took any notice whatsoever of the strong words of Angel J.

In 2004, the applicant was granted a Crowd Controller Licence by Cavenagh J who was satisfied that, despite the above conviction, he was an appropriate person to be employed in the security industry. The Commission notes Cavenagh J's decision, but considers that it is still able to take account of the circumstances of the assault and conviction when considering whether or not the applicant is an appropriate person to hold a licence.

**ii) Alleged Assault on Ronald White on 2 June 2006 at Lost Arc:**

It is difficult to reach any firm conclusion regarding the events of this particular evening as most of the witnesses had been drinking alcohol for many hours. There is certainly a consistency in the various accounts which supports a view that the applicant asked White to leave but White did not. A short time later, the applicant removed White from the Lost Arc by dragging him out in a headlock, that White did not struggle and that as a result of the incident, White sustained injuries to his face. Whether a headlock was an appropriate restraint to be used in the circumstances and quite how Mr White's facial injuries were sustained are the salient questions. The evidence was that White did not struggle so one might think an attempt at a less aggressive approach would have been more appropriate. On the other hand, the fact that both police and security backup were sought cannot be ignored. Based on the evidence before it, the Commission is reluctant to reach a conclusion on the balance of probabilities that the applicant assaulted Mr White. There is insufficient clear evidence to support such a finding.

**iii) Alleged Assault on Jonathon Van Wyk on 4 July 2006**

Mr Van Wyk gave evidence at the hearing. The allegation is that the applicant, while on duty at Lost Arc, was unnecessarily abusive and rough with Mr Van Wyk and three (3) times pushed him onto the road way. The pushing was admitted by the applicant who alleged he was trying to prevent Van Wyk from entering the premises with an unopened bottle of alcohol in his pocket. Whilst the Commission on the evidence before it is unable to conclude on the balance of probabilities that Mr Van Wyk was assaulted by the applicant, it is left with a clear view that this matter could have been handled better and that an aggressive approach to Mr Van Wyk was inappropriate and unnecessary in the circumstances. Crowd Controller are supposed to protect patrons and keep them safe and to only use physical force as a last resort. In this situation, a physical response was the applicant's first and only response.

**iv) Alleged Assault on Tom Markos on 10 December 2006**

There is clearly bad blood between Markos and the applicant and neither gave sufficient evidence on these incidents to satisfy the Commission on the balance of probabilities as to what actually happened on the nights in question.

**v) Incident at Shenannigans involving Aaron Altiner on 3 March 2007**

The allegation is that Mr Altiner was assaulted by the applicant when he was held in a headlock, dragged out of Shenannigans and held down by the applicant and others with unnecessary force. His thumb was broken at some stage during the incident. Despite the fact that he gave his evidence by phone, the Commission was impressed by the evidence of Mr Altiner. He answered all questions in a frank manner and appeared to be telling the truth without embellishment. His responses to questions under cross examination by the applicant were believed by the Commission.

In summary, Mr Altiner's evidence of the applicant's dealings with him on the night is preferred to that of Mr Bruppacher. Whilst the Commission does not find on the evidence before it that the applicant was responsible for breaking Mr Altiner's thumb, it does find that he used excessive force in removing Mr Altiner for no good reason.

**vi) Melaleuca on Mitchell complaint –April to August 2007**

The Commission accepts the evidence of Mr Peter Wilson that the applicant was employed through Proactive Security to work as a Security Guard at Melaleuca on Mitchell between April and August 2007. The documentary evidence in the form of pay records supports such a conclusion. The Commission is not impressed with the fact that the applicant continues to deny the obvious - even when giving evidence under oath.

## **Decision**

10) When considering whether the applicant is an appropriate person to hold a Security Officer or Crowd Controller licence, the Commission has taken particular note of the following evidence:

- a) The applicant's complete and continued denial that he was working as a Security Officer at Melaleuca on Mitchell between April and August 2007 when the evidence clearly supports a conclusion that he was so employed. The applicant has clearly shown dishonesty and a lack of integrity in its dealings with Police, a Licensing Inspector and the Commission regarding this issue.
- b) The applicant's unacceptable use of force in his dealings with Mr Altiner on 3 March 2007 at Shenannigans and his inappropriate handling of Mr Van Wyk on 4 July at Lost Arc as outlined above. Further, these incidents should not be considered in complete isolation but should be seen as the actions of a man who has not learned to control or modify his behaviour - despite the very clear comments made by Angel J some years earlier about the danger of Crowd Controllers using headlocks or similar physical force without good reason.

11) This leads the Commission to the conclusion that Mr Bruppacher is not an appropriate person to be granted a licence pursuant to both Section 15(6)(a)(i) and (e) and Section 15(8) of the *Private Security Act* and his application is refused.

Richard O'Sullivan  
Chairman

15 January 2010