

Northern Territory Licensing Commission

Reasons for Decision

Respondent:	Mr Mark Scott
Licence Number:	Dual Licence 6468
Proceedings:	Complaint Pursuant to Section 53A <i>Private Security Act</i>
Members:	Mr Philip Timney (Presiding Member) Mr Paul Fitzsimons Mr John Brears
Date of Hearing:	7 June 2012
Appearances:	Licensing Inspector Bernard Kulda for the Director of Licensing No appearance by Mr Mark Scott

Background

- 1) On 24 April 2012 the Licensing Commission, in its capacity as the Licensing Authority under the *Private Security Act* ("the Act") determined to conduct an investigation, by way of a Hearing, into a complaint lodged against licensed Crowd Controller Mr Mark Scott. The complaint arose from an incident that occurred at licensed premises known as Monsoons on 27 October 2011 during which it is alleged that Mr Scott breached the provisions of the Code of Practice for Crowd Controllers by using excessive force in the eviction of a patron from the premises.
- 2) The Hearing was set down to commence on Thursday 7 June 2012.

Preliminary Issue

- 3) On the day prior to the commencement of the Hearing the Commission was informed that Mr Scott would not be attending the Hearing. The Commission was also informed that Mr Ian Rowbottam, who was thought to be Mr Scott's Counsel, would also not be in attendance for the Hearing.
- 4) On Friday 1 June 2012 Inspector Mark Wood sent an email to Mr Rowbottam asking if he was still acting for Mr Scott. On 5 June 2012 Mr Rowbottam responded via email as follows:

From: Ian Rowbottam [mailto:ian.rowbottam@hotmail.com]
Sent: Tuesday 5 June 2012 12.18PM
To: Mark Wood
Subject: RE: Mark Scott

Nope. I know who he is but he hasn't retained me.

Ian

- 5) That email advice is completely at odds with the earlier advice forwarded by Mr Rowbottam to Inspector Kirstenfeldt, the Officer tasked with investigating the complaint against Mr Scott. In an email dated 10 December 2011 Mr Rowbottam stated:

From: Ian Rowbottam [mailto:ian.rowbottam@hotmail.com]
Sent: Saturday, 10 December 2011 12.18PM
To: Jodi Kirstenfeldt

Subject: RE: Mark Scott - Complaint

Dear Jodi –

*I refer to this matter and to your letter dated 21 November 2011 to Mr Scott. **My client** has attempted to obtain advice from me in relation to this matter and has, to this end, attended upon your Office yesterday in an attempt to obtain a copy of the security video of the incident in question.*

*I understand that **there have been difficulties in supplying my client** with a copy of the security video. Accordingly **neither my client**, nor I have been able to view the video. As you can understand, it is imperative that we both at least see the video before responding (and, after hearing the comments from the Commission in the Evans matter, **my client has accepted my advice** and intends to respond in detail).*

*My difficulty is, **having arranged to meet with my client** neither of us have still been able to see the video.*

I leave Australia for a month tomorrow, returning on 9 January 2012, however I arrive at 5am and a few hours later commence a trial in the Supreme Court.

***I therefore request an extension of time in which to respond on behalf of my client to Monday 16 January 2012.** I will of course respond sooner if my Supreme Court trial finishes early for any reason.*

*Ian Rowbottam
Barrister-at-Law*

(Emphasis added)

- 6) The clear inference from Mr Rowbottam's email is that he had instructions from Mr Scott at the time and that Mr Scott was his client. Mr Rowbottam's email of 5 June 2012 is not only dismissive of the legitimate query from Inspector Wood but is completely contradictory of his earlier advice that he had been retained as counsel by Mr Scott. The Commission also notes that whilst Mr Rowbottam sought and was granted an extension of time within which he would "respond on behalf of his client" no such response was received from Mr Rowbottam and, in fact, Mr Scott responded to the complaint personally. As anticipated following his email of 5 June 2012, Mr Rowbottam did not attend the Hearing on 7 June to represent "his client".
- 7) The Commission expresses its strong disapproval of the manner in which Mr Rowbottam has dealt with the Inspectors, and the Commission, in this matter and the misleading manner in which he responded to the email from Inspector Wood who, quite rightly, sought confirmation as to whether Mr Rowbottam would be attending the Hearing to represent his client. Mr Rowbottam's actions were not in the best interests of his client and demonstrate a somewhat dismissive attitude towards the Commission.
- 8) Having said that, the Commission is satisfied that all possible steps had been taken to ensure that Mr Rowbottam, who had identified himself as Mr Scott's counsel in December 2011, was aware of the Hearing. Mr Rowbottam elected to not appear at the Hearing for reasons known only to himself. The Commission does not accept the explanation in Mr Rowbottam's email of 5 June 2012 for the simple reason it flies completely in the face of the information contained in the earlier email of 10 December 2012 which stated unequivocally that Mr Scott had retained Mr Rowbottam as his Counsel.
- 9) It should also be noted that despite obtaining an extension of time until Monday 16 January 2012 within which to provide a response to the complaint on behalf of his client, no response was actually received from Mr Rowbottam. The response to the complaint, under Mr Scott's own hand, was received by the Inspectors on 8 February 2012.

- 10) Mr Scott was advised of the date and time of the Hearing in a letter from the Chairman dated 10 May 2012 and forwarded to his email address. In addition, at the commencement of the Hearing Inspector Kulda handed up to the Commission an email from Mr Scott dated 2 June 2012. Mr Scott's email was received in response to a message from Inspector Kulda inquiring as to whether he would be attending the Hearing on 7 June 2012. Mr Scott informed Inspector Kulda as follows:

"Will not be attending the hearing as I now live in Townsville. Please advise myself of the outcome."

- 11) Based on the matters set out above the Commission is satisfied that Mr Scott and Mr Rowbottam were adequately informed of the time and date of the Hearing and provided with an opportunity to attend. Both declined the opportunity to attend the Hearing. In the circumstances the Commission is satisfied that it was appropriate for the Hearing to proceed in the absence of Mr Scott.

The Hearing

- 12) Inspector Kulda provided the Commission with the following précis of facts in respect of the complaint against Mr Ronald Scott.
- 13) Mr Scott is currently licensed as a dual licensed Crowd Controller/Security Officer, Licence Number 6468 which expires on 28 September 2013. On 26 October 2011, Mr Scott was employed by Proactive Security which is contracted to supply security services to the licensed premises known as Monsoons, Liquor Licence Number 80315790. Mr Scott was on duty between 23:00 hours until 04:30 hours the following day.
- 14) Camera surveillance reveals that on 27 October 2011 at 01:05 hours, Mr Scott was located at the front entrance of Monsoons, screening patrons prior to them entering the premises. A male patron, Mr Louis Fawcett, attended the entrance to Monsoons and produced a form of identification to Mr Scott. Mr Scott assessed the identification and then requested another crowd controller provide his opinion on the authenticity of the identification. Crowd Controller Callum MacLachlan examined the identification produced by Mr Fawcett. It was determined that the picture of the person on the Driver's Licence was not the person who was presenting the identification. The identification was seized and Mr Fawcett was refused entry.
- 15) At approximately 01:06 hours, Mr Fawcett walked down Nuttal Place and after looking around, he then jumped the side fence into Monsoons alfresco smoking area. Mr Fawcett then sat on a chair at a table which was next to the fence.
- 16) At approximately 01:15 hours, Mr Fawcett and a male companion walked from the alfresco area to the inside bar area and sat at a high table to the right of the entrance closest to Nuttall Place. The male companion attended the bar and purchased what seemed to be alcoholic beverages for himself and Mr Fawcett.
- 17) At approximately 01:42 hours, Mr Scott entered the inside bar area and noticed Mr Fawcett sitting at the table. He then approached Mr Fawcett and engaged in a short conversation with him. Mr Scott then placed his arm around the shoulders of Mr Fawcett as he walked him towards the entrance on Mitchell Street. Mr Fawcett showed no sign of resisting. Mr Scott then walked towards the exit with Mr Fawcett and appeared to suddenly force Mr Fawcett's head into a high set bar table, after which Mr Fawcett fell to the ground. Mr Scott then picked up Mr Fawcett off the ground and physically removed him from the premises via the front entrance.
- 18) After being removed from the premises, Mr Fawcett conversed with Crowd Controllers at the front of the premises and then received minor medical treatment from Monsoons staffs.

- 19) As a result of the actions of Mr Scott whilst he was escorting Mr Fawcett from the premises, Mr Fawcett sustained laceration to the left side of his forehead which required further medical treatment when he was conveyed by Police to the Royal Darwin Hospital.
- 20) It has been established that Louis Fawcett is a minor, date of birth 17 April 1995 and his male companion, Bradley Ouwerkerk was also a minor at the time of the incident, his date of birth being 20 July 1995.
- 21) Whilst he did not appear at the Hearing, Mr Scott provided a written response to the complaint in a letter dated 8 February 2012. He noted that Mr Fawcett had entered Monsoons after being denied entry earlier and having been found to be in possession of false identity. Mr Scott confirmed that he had reviewed the CCTV footage of the incident in question.
- 22) Mr Scott submitted that Mr Fawcett was a trespasser and so needed to be ejected. He states that he approached Mr Fawcett and made it very clear that he was to remove himself from the premises without delay. Mr Scott stated that Mr Fawcett was not immediately compliant and so he moved a chair aside so as to physically remove him. Mr Scott submitted that he took hold of Mr Fawcett around the shoulders following which Mr Fawcett "quickly stooped and elbowed me sharply just below the solar plexus as I attempted to walk him out". He noted that the CCTV footage did not show Mr Fawcett's actions clearly however "there is a flash of his hand in making that movement".
- 23) Mr Scott stated further that after being struck by Mr Fawcett he threw him away in self-defence at which point he struck the nearby table. Mr Scott stated that he made no apologies for his actions as he was merely carrying out his duties as required by liquor laws and acting in self-defence.
- 24) The Commission then viewed the CCTV footage of the incident taken from camera 2 at Monsoons. At approximately 1.15 am Mr Fawcett is seen sitting at a high set table with his companion. At 1.42 am Mr Scott is seen approaching the table where Mr Fawcett was seated and engaging in a brief conversation with him. Mr Scott moved a chair that Mr Fawcett's companion was sitting on so that he and Mr Fawcett could pass. At approximately 1.43 am Mr Scott was observed pushing Mr Fawcett's head into a high set table located a few metres from where Mr Fawcett was originally seated.
- 25) The Commission viewed the CCTV footage on several occasions, including in slow motion. At no point were the Commissioners able to detect Mr Fawcett elbowing Mr Scott or making any other attempts to resist his removal him from the premises. In the CCTV footage Mr Fawcett appeared to be compliant in his brief dealing with Mr Scott.

Consideration of the Issues

- 26) 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 been 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*

- 27) 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. The Commission, having viewed the CCTV footage of the incident and taken account of Mr Scott's explanation of his actions in dealing with Mr Fawcett, is in no doubt that Mr Scott committed a breach of the Code of Practice by pushing Mr Fawcett's head into a table causing an injury.

- 28) The Commission does not accept Mr Scott's assertion that he was acting in self-defence or that the use of force was necessary to control the behaviour of Mr Fawcett or that forcing his head into the table was reasonable in the circumstances. The CCTV footage clearly indicates otherwise. In the Commission's view the use of force against Mr Fawcett by Mr Scott was gratuitous, unnecessary and unprovoked.
- 29) As a result of Mr Scott's actions Mr Fawcett suffered physical injury. On attendance at the Emergency Department of the Royal Darwin Hospital Mr Fawcett was diagnosed as having a 4 cm laceration to his forehead which required 4 sutures.
- 30) The Commission is satisfied that Mr Scott, in his dealings with Mr Fawcett at Monsoons on 27 October 2012 has breached section 19 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.
- 31) The Commission regards breaches of this nature at the more serious end of the scale of offending by Crowd Controllers. The Code of Practice 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. In this instance the CCTV footage reveals that the situation required no use of force and that Mr Fawcett should simply have been escorted from the premises.
- 32) The offending in this instance is aggravated by the fact Mr Fawcett was a minor at the time. Mr Scott was aware of this, that being the reason he was initially refused entry when he presented someone else's ID at the door. The Commission also notes Mr Scott's outright denial of any wrongdoing and his statement that he was merely carrying out the duties required of him under the *Liquor Act*. Clearly that is not the case as that Act does not condone or dictate the use of gratuitous and unwarranted violence.
- 33) The Commission received no evidence as to Mr Scott's personal circumstances or the impact a suspension of his Crowd Controller licence may have in his income earning capacity. The Commission is aware that Mr Scott currently resides interstate however it is not known when, if at all, he intends to return to the Territory or whether he intends to engage in work in the security industry in the future. Those are matters that Mr Scott could have addressed at the hearing had he elected to attend.
- 34) In all the circumstances the Commission is of the view that the appropriate penalty taking account of the matters set out above is the cancellation of Mr Scott's dual Crowd Controller / Security Officer Licence.

Decision

- 35) The Commission determines, pursuant to Section 53D(1)(g) of the Act, to cancel Mr Scott's dual Security Officer and Crowd Controller licence, effective from the date of this decision.
- 36) Mr Scott is advised that Section 53E of the Act provides that he may, within twenty eight days of being notified in respect of this decision, seek a review of the decision under Part 4 of the *Northern Territory Licensing Commission Act*. In accordance with Section 28 of that Act, an application for review of the Commission's decision is required to be in writing, accompanied by the prescribed fee and to set out the grounds on which the request for review is made and the facts relied on to establish the grounds.
- 37) The Commission requests that the Director of Licensing arrange for a copy of this decision to be placed on Mr Scott's file for future reference. It is also requested that Mr Adrian Franklin of Proactive Security, Mr Scott's former employer, be advised of the Commission's decision.

Philip Timney
Presiding Member

11 July 2012