

# Northern Territory Licensing Commission

## Reasons for Decision

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<b>Premises:</b>	Lazy Lizard Caravan Park
<b>Licensee:</b>	Mrs Jan Bruce
<b>Licence Number:</b>	80316511
<b>Hearing:</b>	A complaint pursuant to section 48 of the <i>Liquor Act</i>
<b>Member:</b>	Brenda Monaghan (Presiding) Paul Costigan Craig Spencer
<b>Hearing Date:</b>	27 July 2005 and 18 October 2005

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- 1) A complaint has been brought by the Sgt Chris Bentham of the Northern Territory Police against the Lazy Lizard. The substance of the complaint is contained in a series of emails between RGL and the Sgt Bentham on 21 and 23 May 2005. The complaint was formalised by way of letter to the Licensee from the Director of Licensing on 30 May 2005.
- 2) In summary, the written complaint was described in the following manner:
  - a) On Saturday 21 May 2005, the licensed premises continued to trade after the closing time of 2am in breach of the liquor licence;
  - b) On 21 May 2005 during licensed hours, police attended on the licensed premises and found Mr Rod Haines to be involved in the sale and service of liquor; and
  - c) On 21 May 2005 during licensed hours, Mr Rod Haines refused to obey the direction of a police officer by refusing to close the bar when requested by police to do so. He appeared to be intoxicated.
- 3) A hearing proceeded in this matter over 2 days on 27 July 2005 and 18 October 2005. Parties were advised on 19 October that a decision in this matter would be handed down in writing.
- 4) The first matter to consider is the form and substance of the complaint itself. Counsel for the applicant Mr Davis, submitted at the outset that the complaint was not properly laid and that it should be dismissed. This application was considered by the Commission which ruled that the complaint, whilst poorly prepared, was not defective in form and that the hearing into the matter would proceed.
- 5) On the face of it, there is a valid complaint referred to in both Sgt Bentham's initial emails and in the letter of 30 May to the Licensee. The complaint is that the licensed premises continued to trade after closing time in breach of the licence. Whether the evidence put before us was sufficient to substantiate that complaint is a matter to be later considered.
- 6) The further complaints referred to in paragraphs 2b) and c) above are ill founded. It appears on the evidence that at the time the police attended the licensed premises on 21 May, they were under the mistaken belief that there was a condition in the licence preventing Mr Rod Haines from being involved in the sale of liquor at the premises. Thus, they considered that a breach of the licence had occurred when they witnessed Mr Haines selling alcohol to a customer and that a further breach occurred when he later had the bar open and refused to close it.

- 7) All are now agreed that there was no such limitation on Mr Haines' involvement in the business contained in the licence itself. Thus, Mr Haines' actions at that time in being involved in the sale of liquor during licensed hours do not amount to a breach. The fact that he appeared to be intoxicated whilst the bar was open however, remains a concern but this issue was not developed in any depth at the hearing by either party. The Commission comments however that it takes a dim view of any person being found intoxicated on licensed premises and an even dimmer view if that person was in charge of the premises at the time.
- 8) In summary, it appears to the Commission that the only validly laid written complaint that should be considered are whether or not there is sufficient evidence before us to support the claim that the licensee through her agents or employees was trading after hours.
- 9) On the first day of hearing, Ms Worsnop, Counsel for the police, submitted that a further implied complaint made was that Ms Bruce was not a fit and proper person to act as a licensee. Her submission was that Ms Bruce -whilst personally quite capable of fulfilling a licensee's duties properly - was failing to "conduct the business", as a licensee should. This over-arching complaint was not detailed in any way in writing to the Licensee and we are reluctant to consider it a formal complaint for that reason. We make the comment however, that it is always open to the Commission to take on board and respond to information provided to it through a hearing or through other means.

#### 10) **First Complaint- Late Closing after 2am**

This complaint is denied. We have received into evidence the following:

- a) Statutory Declaration from Owen Laurie dated 22 July 2005. As regards the closing time issue it states: *Everything was fine until closing time at 1.45am. I called last drinks and when it got to 2am I started shutting the bar, the only shutter left open was the one in front of Rod Haines who was sitting with some guests. At the time there was about 10 to 12 people in the bar. Chris Schussler was not there, he had gone to his van earlier in the night, he goes to bed early and did that night as well.*

*One of them was a bloke called Ray, he works for Kings Constructions (Raymond Davis) also Lesley Turley, Gaye Taylor and another group around the corner. One was Shannon Wooldridge, her partner Kye, Sam, (Maurice Buggins partner), Sue and Tom Conway and the two Robertson brothers, Chris and Anthony and his wife Debbie. They were all fine they were leaving without any trouble. Ray said to me that if I closed the bar there would be a blue. I told him that the licence goes to 2 and that I was closing.*

*Rod said don't panic, its not 2 o'clock, I looked at the clock again and saw that someone had moved the hands back to 20 minutes to 2. The clock was on the eastern wall outside the bar area. When I saw that I looked directly at Rod and said "That's it, I'm finished". ...He didn't reply. That was about 2 minutes past 2. I walked out and went to my caravan, which is situated half way down the park about 40 metres away well within earshot of the bar. The noise in the bar went on for some time after 2am, I can't say what the time was because I had no clock in the van.*

- b) A signed but undated letter from Leanne Glover (Folio 26) that states that she was on duty behind the bar from 4pm to 2 am and that the bar was closed from 2am onwards with all patrons cleared by 3am;
- c) A signed but undated letter from Chris Schussler who states that he was a guest at the Lazy Lizard Caravan Park on 20 and 21 May 2005. He states: *20 May 2005 -I attended the Country & Western night, I left for my caravan approx 11pm. I returned to the bar approx 1.45-2am to purchase a soft drink, on arrival to the bar area, I find the Bar closed, I returned to my caravan.*

- d) Signed, undated letter from Mr Owen Laurie, bar manager at Lazy Lizard on 21 May 2005 stating that there was no argument between Haines and himself about closing the bar at closing time (2am). The letter further states that at 2am, Mr Laurie left the bar area and went back to his caravan. He does not know when the bar closed.
- 11) Mr Laurie also gave evidence at the hearing. He challenged the contents of Mr Schussler's letter and said Schussler could not have returned to the bar between 1.45 and 2am because Laurie would definitely have seen him-and he didn't. Mr Laurie commented that he was aware that Mr Haines had asked Schussler, himself and Leanne Glover to write letters of support for him at the time. The letter from Laurie referred to in paragraph 9d) above is the letter in question. Mr Laurie stated that he considered it only a draft, that Haines had not been happy with it and that he had assumed Haines would destroy it.
- 12) Mr Laurie stated in evidence that he was sure that Mr Haines knew that the hands on the clock had been moved but that he himself had not seen this happen.
- 13) The licensed hours for the Lazy Lizard end at 2am daily. There is no evidence before us that liquor was sold on the licensed premises after 2am. There is evidence however, that persons remained on the licensed premises after 2am. Section 104 of the *Liquor Act* states:

**104. Persons on licensed premises after hours**

- (1) *Subject to this section, a person shall not enter, or remain on or at, licensed premises in respect of which a licence is in force for the sale of liquor for consumption on or at those premises unless those premises are open for the sale of liquor in accordance with the conditions of the licence.*
- (2) *A person does not commit an offence against subsection (1) by remaining on or at licensed premises for a period not exceeding 30 minutes after those premises cease to be open for the sale of liquor.*
- (3) *Nothing in this section applies to, or in relation to –*
- (a) the licensee of premises;*
  - (b) a member of the family of the licensee;*
  - (c) a person who enters, or remains on or at, licensed premises in the course of his employment;*
  - (d) a person who enters, or remains on or at, licensed premises at the invitation of, and as a guest of, the licensee or a member of the family of the licensee;*
  - (e) a lodger occupying residential accommodation provided on the licensed premises;*
  - (f) a person who enters licensed premises at the invitation of, and as a guest of, such a lodger; or*
  - (g) a person authorized by the Commission, either on application or on the motion of the Commission, to enter licensed premises.*

Did patrons remain on the premises after 2.30am? Ms Glover's letter suggests that some people were there until 3am. The evidence in this case however, identifies by name the persons who were present in the bar at 2am but does not identify whether they are residents of the caravan park, guests of those residents or of Mr Haines or outsiders. Thus we cannot be satisfied on the evidence that any breach of the licence conditions has occurred.

## The Conduct of the Business

- 14) Whilst we do not find the complaint upheld, we cannot ignore the evidence we heard from Ms Bruce and Mr Haines that leads us to conclude that Ms Bruce is not fulfilling her duties as a licensee. Ms Bruce gave sworn evidence on 18 October 2005. She stated that she had regular phone calls with Mr Haines but she appeared to leave all of the day to day management of the business to him. She and Mr Haines have a child together and despite their separation and her wish never to return permanently, they remain on civil terms. Ms Bruce stated that she has travelled to Pine Creek about once a month since the premises reopened in May 2005. She is also responsible for the book-keeping for the business but did not appear to be confident when responding to simple questions about the day to day conduct of the business or its finances. Mr Haines confirmed that he has in essence been acting as the licensee over recent months.
- 15) The *Liquor Act* does not require a licensee to be present at the licensed premises at all times and in fact s47C (conduct of business after death) and s47D (Conduct of business after bankruptcy) are two instances where the approved person would normally conduct the business of the licensee from elsewhere. The Act does however, require a licensee to “conduct the business” of the licensed premises. It is clear that this is not happening.
- 16) The Commission cannot ignore this situation. We note however, that whilst there appear to be serious concerns from the local police about Mr Haines, we have little evidence before us at this hearing to substantiate those concerns. We note their comment that on 21 May, Mr Haines appeared to be affected by alcohol at a time when we presume he was attending the bar-although he denies this. There was also a mention of a further complaint looming but we do not have that matter before us. It is clear however that the relationship at present between Mr Haines and local police is not a good one and we take that on board in reaching a decision on the best way forward.
- 17) Mr Davis on behalf of the licensee has put forward a proposal to the Commission that we allow the current situation to continue with two variations to the licence conditions. The first is that the Licensee employ as Bar Manager a man named Clive Winworth. Mr Winworth has past experience as a licensee in WA and has known both Mr Haines and Ms Bruce for 3 years. He is currently assisting Mr Haines with the business and we are advised that he is willing to take on the position and to be subject to the same scrutiny (ie police checks) by the Director of Licensing as is imposed on a nominee. Mr Haines described Mr Winworth as his friend and mentor.
- 18) The second suggested condition is that Mr Haines takes no part in the sale of liquor at the licensed premises. He would however continue to act as chef, manager of the Caravan Park and the facilities generally and public relations entrepreneur.
- 19) Both counsel for the Police and the Director of Licensing do not support this proposal. They submit that this is a situation where we should suspend the licence on the basis that Ms Bruce, by failing to act in her role as a licensee, is no longer a fit and proper person to hold a licence. They state that Mr Davis’ proposal on behalf of the licensee is unworkable and that unless Mr Haines is completely banned from the premises, they would not support such a proposition.
- 20) The Commission does not intend to consider a suspension at this stage, as there is simply insufficient evidence before us to lead us to consider that such a move is justified in all the circumstances. We find no breach on this occasion and there is no strong, uncontested evidence that the licensed premises are being so mismanaged that suspension is the appropriate response. For the same reasons, we will not consider some sort of general blacklisting of Mr Haines. The evidence that has been put before us does not support such drastic steps being taken.
- 21) Deciding what is the best option in these circumstances is not easy. We do not condone Ms Bruce’s continued failure to conduct properly the business of a licensee. We can,

however, give a period of grace to allow Ms Bruce to consider her options and make proper arrangements for the longer-term conduct of the business.

22) We note that whilst he was never an approved appointment, Mr Haines appears to have been acting as Licensee for some five (5) months now. We look for guidance to Sections 47 (4) & (5) of the *Liquor Act* which place a time limit on temporary arrangements where a licensee is likely to be permanently unable to conduct their business. It states:

*(4) Unless the Commission otherwise determines, a person appointed under subsection (1) or (3) shall not act in place of a licensee for more than 42 days during any period of 12 months that the licence is in force.*

*(5) Where –*

*(a) a licensee's inability to conduct the business of a licensee is, or is expected to be, permanent; and*

*(b) an application for transfer of the licence of that licensee is not made in accordance with section 41 within the period referred to in subsection (4) of this section,*

*the Commission shall cancel that licence at the expiration of that period, unless arrangements which are satisfactory to the Commission are made during that period to conduct the business of the licensee.*

23) We intend to accept the Licensee's proposal as an interim measure only. We note that both Ms Bruce and Mr Haines are hoping to find a buyer for the premises-but, whilst there is interest, there is no certainty that that will happen in the short term. If the premises don't sell in the interim, it is also quite possible that Ms Bruce will elect to close the premises for three (3) months during the quiet season in early 2006.

24) To this end, we decide the following:

For a period of some three (3) months ending 31 January 2006

- a) Ms Bruce to remain as Licensee on the understanding that she takes a greater interest in the conduct of the business of the premises including regular contact by phone or in person with the Bar Manager;
- b) That within seven (7) days of the date of this decision, Mr Clive Winworth or other appropriate person to be appointed by the licensee as Bar Manager;
- c) That the Bar Manager be subject to the same police checks that a nominee is subject to and that he or she ensure that those checks are conducted within a reasonable time;
- d) That from the date of this decision, Mr Rod Haines plays no part in the sale of liquor on or away from the licensed premises; and
- e) That at the end of the 3-month period, the Commission shall conduct a review. The licensee is placed on notice that if at the time of review she is unable to satisfy the Commission that she can properly conduct the business of the licensee or that proper arrangements have been made for the transfer of the licence to another person, then it is highly likely that the licence will be cancelled.
- f) Should the Licensee elect to close the premises and suspend the licence during the quiet period, then she may apply to the Commission for the review referred to in paragraph 24 e) above to be deferred to a later date.

25) This arrangement has its sceptics and will only work with the goodwill and support of all of those involved - Ms Bruce, Mr Haines and Mr Winworth.

Brenda Monaghan  
Legal Member

31 October 2005