

# Northern Territory Licensing Commission

## Reasons for Decision

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| <b>Premises:</b>         | Alice Springs Plaza Hotel  |
| <b>Licensee:</b>         | CJHA Wonderland Pty Ltd  |
| <b>Licence Number:</b>   | 80303189   |
| <b>Nominee:</b>          | Mr Ian Loan  |
| <b>Proceeding:</b>       | Complaint of a breach of Camera Surveillance Licence Conditions and Guidelines                 |
| <b>Heard Before:</b>     | Mr Richard O'Sullivan (Chairman)<br>Ms Brenda Monaghan<br>Ms Helen Kilgariff                   |
| <b>Date of Hearing:</b>  | 14 February 2007   |
| <b>Date of Decision:</b> | 5 March 2007   |
| <b>Appearances:</b>      | Senior Inspector W Sanderson for the Director of Licensing<br>Mr B O'Loughlin for the Licensee |

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1. This complaint is made by the Director of Licensing alleging that the Licensee breached their licence conditions (and therefore breached Section 110 of the *Liquor Act*) by failing to comply with camera surveillance guidelines (the Guidelines). The circumstances of the breach related to the failure of the Nominee to supply camera surveillance footage at the request of Racing Gaming and Licensing. At the hearing, the breach was admitted and Counsel for the Licensee, Mr O'Loughlin limited his submissions to two issues - a factual dispute between the Director of Licensing and the Alice Springs Plaza Hotel Nominee as regards the circumstances of the breach and mitigating factors relating to penalty.
2. After hearing evidence from both parties on the circumstances of the breach, the Commission accepts that the failure of the Nominee, Mr Loan to provide camera surveillance footage was caused by an inadvertent error and was not deliberate. Mr Loan knew that under the Guidelines, camera surveillance footage has to be retained for a minimum of fourteen (14) days. He was mistaken however about the length of time information was stored on The Alice Springs Plaza Hotel particular system. Mr Loan was under the impression that information was stored for one month when in fact the storage capacity was only fourteen (14) days. This error meant that when Mr Loan attempted to retrieve the tape some eighteen (18) days after the incident, it was no longer available.
3. As both Senior Licensing Inspector Sanderson and Licensing Inspector Whyte accepted that this breach was caused by inadvertence, the only dispute between the parties was with respect to the matters discussed by Mr Loan and Ms Whyte on or about 12 September 2006. Ms Whyte contacted Mr Loan by phone on that day to ensure that the camera surveillance tape requested by her a few days earlier from another senior staff member, Mr McHarry was available for collection.
4. In her evidence, Ms Whyte stated that she specifically remembers telling Mr Loan that the tape was required for the night of Friday 1 September and the morning of 2 September. Her recollection is that she did not tell him the reason why the tape was required because no formal complaint had been made. Mr Loan, in his evidence, stated that he has no recollection of ever being told the date of the incident or any details and in fact he was annoyed by this secrecy at the time. He found out much later that the alleged incident involved him.

5. After speaking to Ms Whyte, Mr Loan states he remained unaware of the degree of urgency of the request. As a result, he left the task of downloading the footage to Mr McHarry on his return from holiday the following Monday.
6. Mr O'Loughlin asks the Commission to make a finding of fact as to whether or not Ms Whyte provided information to Mr Loan regarding the date of the alleged incident that the footage related to. He points to differences in writing style in the formal file note prepared by Ms Whyte and suggests that these differences support his client's recollection that he was not told the date of the incident.
7. The difficulty for the Commission is that we found both witnesses to be open and honest with respect to their recollection of the telephone conversation in question. We were particularly impressed with Ms Whyte's evidence but we are well aware that even if she did tell Mr Loan of the date, he may have simply failed to acknowledge the significance of the information. Ms Whyte is not suggesting that she reminded him of the fourteen (14) day time limit nor does she allege that he was trying to avoid producing the tape. It appears likely therefore that a simple error has been made. We are reluctant to make a ruling on this issue and we do not intend to additionally penalise Mr Loan for the breaching the time limit but only for his inability to ultimately produce the footage.
8. There are a number of mitigating factors that we intend to take into account when considering penalty for this breach. They are as follows:
  - a) There was no element of self interest alleged by the Director of Licensing in the loss of this footage. It is accepted that the loss was caused by an error.
  - b) At the time of the breach, the Licensee had recently purchased The Alice Springs Plaza Hotel and Mr Loan had taken over the very difficult management task of running the premises. At the time, he was extensively involved in improving patron behaviour and in removing unwanted clientele and refusing them future access to the premises. Mr Loan is commended for the strong stance he has taken on some very challenging issues. He was also in the process of significantly improving the standard of security on the premises including the camera surveillance equipment and coverage.
  - c) Mr Loan has completed a full review of The Alice Springs Plaza Hotel camera surveillance capacity to ensure that the premises operate in accordance with the new Camera Surveillance Guidelines. He also provided Racing and Gaming with the relevant documentation sought by them by the nominated deadline. We understand that The Alice Springs Plaza Hotel was one of the few premises to meet that deadline.
  - d) Mr Sanderson on behalf of the Director of Licensing confirmed at the hearing that Racing and Gaming is more than satisfied with the improvements made in camera surveillance equipment and coverage at the premises. They are also satisfied with the level of assistance they have consistently received from Mr Loan and his team in every other request they have made for footage. Even on this occasion, licensing staff gave evidence that once he realised his error, Mr Loan did all that he could to assist them.
  - e) This is the first time Mr Loan has ever faced the Commission or any similar body interstate for any breach and the Commission notes that this breach was admitted at the commencement of the hearing.
9. Mr O'Loughlin submitted that in these circumstances, the maximum penalty that should be imposed is a suspended suspension but that a reprimand is sufficient. Mr Sanderson on behalf of the Director of Licensing submitted that despite the mitigating circumstances referred to above, a meaningful penalty of three (3) days suspension is appropriate. He submitted that Licensees must ensure that they comply with Camera Surveillance Guidelines. If they do not, they must accept the consequences. Mr Sanderson submitted that a meaningful penalty would send a message to the industry that the Commission was serious about this issue.

10. The Commission has considered all of the evidence and submissions put forward by both parties. We fully accept that this was an inadvertent breach caused by a Nominee who was new to the Territory. We are aware however that over the past year or so, there have been at least four (4) other premises who have appeared before the Commission claiming that they too have inadvertently breached various aspects of the Camera Surveillance Guidelines. Whilst we do not intend to make an example of the Licensee and Nominee in this case, we will not be so reticent in the future when the "period of grace" for the implementation of the new Guidelines has passed. We cannot however ignore the fact that a licensed premise (ie The Alice Springs Plaza Hotel) which attracts a young, diverse clientele has been unable to provided camera footage upon request.
11. In these circumstances we impose a suspension of (1) one day, that suspension to be fully suspended for twelve (12) months from the date of the decision. Should the Licensee breach the Camera Surveillance Guidelines during this period, then the suspension will come into effect and will be served on a Tuesday. Should no breach of the Camera Surveillance Guidelines occur during the twelve (12) month period, then the penalty will lapse at the end of that period.

Richard O'Sullivan  
Chairman

5 March 2007