

Northern Territory Licensing Commission

Interim Decision

| | |
|--------------------------|--|
| Premises: | Lazy Lizard Caravan Park |
| Licensee: | Jan Bruce |
| Licence Number: | 80316511 |
| Proceeding: | S 48 complaint |
| Date of Decision: | Interim decision on 30 August 2003 |
| Decided By: | Mr John Withnall Ms Jill Huck Mr Paul Costigan |
| Date of Hearing: | (Did not proceed) |
| Appearances: | Written submissions from: Mr David Francis for Licensee Ms Kerry Wakelin for Complainant |

1. A written complaint by the nominee of the Pine Creek Hotel against several aspects of the operations of the Lazy Lizard tavern licence was scheduled to be heard at Pine Creek by three members of the Licensing Commission on 2 September 2003.
2. Although that aspect of the complaint as was directed to the Lazy Lizard's trading hours appeared prima facie misconceived, nevertheless other issues raised by the complaint were to be canvassed at the hearing, viz.
 - permitted external signage
 - predominant trading appearance
 - involvement of Mr Rod Haines in the operation of the licence
 - cane toad racing events being in breach of restrictions on wagering and gaming facilities and events
3. In relation to the last mentioned issue, licensee Ms. Jan Bruce responded in writing that she did not "host" the Lazy Lizard Cane Toad Races, but has "had" them at the licensed premises with monies going to the Pine Creek Rodeo and Pine Creek Sports & Social. Ms. Bruce described these two organisations as being non-profit organisations with a representative conducting the races, and thus in compliance with the relevant licence condition.
4. For convenience of record, we reproduce the relevant licence condition in its entirety:

The premises at all times shall trade predominantly as a family-type bistro, with no poker machines and no TAB, gambling, gaming, wagering or raffling facilities or events whatsoever.

Further, in terms of fitout, facilities, signage and ambience, the premises at all times must maintain the appearance of trading predominantly as a family oriented bistro, and will have a range of meals available at all times that the premises shall be open for the sale or supply of any alcoholic beverage.

Exempted from the restriction on raffles are raffles conducted by charitable, sporting or other non-profit organisations. This exemption does not cover raffles conducted by any commercial organisation for reward, even if as manager or agent for and on behalf of any charitable, sporting or non-profit organisation. Raffles benefiting such organisations are permitted only if run directly by members of the non-profit organisations for whose benefit they are being conducted.

5. The third paragraph of the above licence condition was added in consequence of a Decision of the Commission on 23 July 2002, following the hearing of an application by the licensee for a variation of trading conditions.
6. By letter dated 28 August 2003 from solicitors David Francis & Associates on behalf of the Lazy Lizard licensee, Mr Francis described the cane toad racing as being fundraising activities of the Pine Creek Turf Club, and argued (inter alia) that the cane toad racing "in broad terms" constitutes a raffle, but that

"For the present time, however, Ms Bruce undertakes to the Commission, that in the future, such activities will not be permitted."
7. Mr Francis asked that the hearing not go ahead but be adjourned "on the basis that my client and the Commission attempt to resolve the matter on an administrative basis in the first instance if at all possible but that if such attempt ultimately fails then, the hearing be reconvened".
8. The Commission caused notice of this undertaking to be communicated to the complainant, as a consequence of which the complainant wrote to the Commission by letter dated (and faxed on) 28 August 2003 formally advising that the Pine Creek Hotel no longer wished to proceed with the hearing.
9. The Commission then caused Mr Francis to be notified that the hearing would not be proceeding on 2 September 2003.
10. The hearing stands adjourned sine die. In effect the Commission has acceded to the licensee's application, through Mr Francis, to put the hearing off pending further consideration of relevant matters. The complaint itself does not stand withdrawn; the complainant only withdrew from the hearing. That is, she would not have been offering any further evidence to that which she has already submitted. However, there remain issues arising from the licensee's responses to the complaint that the Commission needs further investigated before reaching a decision as to how the proceeding is to be finalised.
11. Of serious concern to the Commission is the suggestion by Ms Wakelin that the responses by and on behalf of Ms. Bruce may have been factually incorrect, a circumstance which at core would go to whether the licensee remains a fit and proper person to hold the licence. Ms. Bruce is certainly to be given an opportunity to address that concern, but first we will request the Director of Licensing to conduct further investigations with a view to obtaining answers to the Commission's following questions:
 - Which of the organisations Pine Creek Turf Club, "Pine Creek Rodeo" and "Pine Creek Sports & Social" have received money raised at or from cane toad racing at the Lazy Lizard, in what amounts on what occasions;
 - Which of these organisations is or are incorporated under the *Associations Incorporation Act*, and in what names; and
 - Which of these organisations record Mr Rod Haines as a member of the respective association.
12. This is by no means a trivial investigation. The "core concept" for the Lazy Lizard as presented to the Commission at the hearing of the original application for the liquor licence was instrumental in persuading the Commission to grant the licence, and the Commission demands absolute good faith in the licensee's continuing adherence to the resultant

restrictive licence conditions in that regard. Any lack of transparency or economy with the truth in the licensee's submissions in response to Ms Wakelin's complaint could have serious repercussions for the licensee, as already indicated.

13. As also indicated, the Commission will not act on anything in the Director's further report which may be adverse to the licensee's interests before the Commission without disclosing the same to the licensee and affording her an opportunity to respond in detail.
14. In the meantime, we note the licensee's undertaking by her legal representative to desist from activities in the nature of the cane toad racing. We need to sound the warning that any breach of this undertaking would in all likelihood lead to a suspension of the licence, or even an examination of the licensee's continuing fitness to hold the licence (vide s.72(5)(c) of the *Liquor Act*).
15. Any intervening application by Ms Bruce to further vary her liquor trading conditions is to be notified to Ms Wakelin or the then nominee of the Pine Creek Hotel.

John Withnall
Presiding Member

02 September 2003