

Northern Territory Licensing Commission

Reasons for Decision

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| Premises: | The Cavenagh |
| Licensee: | Malaguena Pty Ltd |
| Licence Number: | 80101040 |
| Joint Nominees: | Mr Daniel Easton Mr Brett Simmonds |
| Proceeding: | Complaint pursuant to section 48 of the <i>Liquor Act</i> |
| Complainant: | Inspector Giovina D'Alessandro |
| Heard Before: | Mr John Flynn (Chairman) Mr John Brears Mr Ian O'Reilly |
| Date of Hearing: | 9 January 2006 |
| Appearances: | Mr Des Crowe for the Licensee Mr Greg Lye for the Director of Racing Gaming and Licensing |

1. This is a complaint pursuant to Section 48(2) of the *Liquor Act*. The basis of the complaint is that the Licensee failed to provide surveillance footage which is required to be recorded and kept for a minimum period of fourteen (14) days up to two (2) months if the Police or Licensing Inspectors takes a copy.
2. Mr Crowe submitted that the Licensee or Nominees were not required to have surveillance equipment at all as the actual licence document did not provide for surveillance. This is factually correct, however it was an administrative error as the licence conditions had been amended by a Notice dated 29 January 2004 which included the following clause in the licence:

Camera Surveillance Requirement:

The licensee shall comply with such requirements for and in relation to camera surveillance as the Commission shall at any time notify to the licensee in writing as being thereafter applicable to the licensed premises.

3. This notice was issued to the Licensee in accordance with Section 33 of the *Liquor Act* in January 2004 and the Camera Surveillance condition became effective upon the expiration of the notice period. In early 2005 a new licence document was issued to include new Nominees and owing to an administrative error, it did not include the Camera Surveillance provision. It appears that no one noticed the error and both the Licensee and Licensing Inspectors continued on the assumption that the condition was contained in the licence. They were right to do so as, despite the administrative error, the camera surveillance provision remains enforceable in these circumstances unless and until the Commission formally advises of a change to those conditions.
4. The hearing proceeded on the basis that the licence required surveillance and the Commission directs that a new licence be issued that correctly reflects all conditions and recommends further that all other licences be checked to ensure they contain the provision.
5. The facts are largely not in dispute. On 24 June 2005 an alleged assault occurred in an area of the hotel. On 30 June 2005 the Police received a complaint about the assault and

on 4 July 2005 Senior Sergeant Bacon and Constable Gray attended at the hotel and viewed the footage that was taken at about the time of the alleged assault. The footage did not show the area that the alleged assault was supposed to have taken place as the video camera was not focused on that area but on the bar area.

6. On 11 July 2005 Constable Gray requested the footage and was told by the Duty Manager that it was available and agreed to have a technician download the footage onto a compact disc. The Police were later told that the footage was unavailable as it had been lost.
7. It should be noted that this is not a complaint by the Police and in any event a complaint by them would not be upheld as the request for the footage was made on 11 July 2005 which is longer than the fourteen (14) days that the surveillance material is required to be kept to the licence.
8. The person who alleged the assault made a complaint, not the subject of this hearing, to the Office of Racing, Gaming & Licensing. As part of the investigation Inspector Graham Tribe asked on 6 July 2005 that the camera surveillance footage at the premises on the night of 24 June 2005 be retained. Inspector Tribe did not give evidence but provided a Statutory Declaration to this effect asking for it to be retained so that presumably a copy could be obtained if required at a later date. One could draw the conclusion that under these circumstances the recording should be retained for two (2) months.
9. One of the Nominees, Mr Brett Simmonds gave evidence that he requested the technician to burn a compact disc of the footage as he was unable to do so himself. He stated that it may have been a day after the request and it may in fact have been two days later as the technician did not attend until 09:30 hours on 14 July 2005. The technician was unable to download or burn a compact disc of the surveillance of 24 June 2005 as it had been lost.
10. The explanation for the loss of the recorded images needs some explanation of the system. The integrated digital system can record images on the hard drive for up to sixteen (16) surveillance cameras although only eleven (11) are installed. The cameras only operate when there is movement and record at a rate of three (3) frames per second. When the hard drive is completely filled with the recorded images the images continue to be recorded but over the earlier images which are therefore deleted. The system at three (3) frames per second can hold all the data for at least fourteen (14) days and probably a lot longer.
11. Mr Ben Espie, the Service Provider, gave evidence that when investigating why the footage of 24 June 2005 had been deleted he found that someone had changed the recording speed to twenty-five frames (25) per second which meant that the hard drive could only hold recorded images for a few days before they were over recorded. Increasing the recording speed from 3 frames per second to 25 frames per second increases the data recorded eight fold. He gave evidence that there was a "button" on the screen which indicated it was a "record button" and when activated actually increased the speed of the recorder to twenty-five (25) frames per second.
12. He only became aware of that fact on 14 July 2005 and was able to override the system so that it was only he, with his password, could change the recording time in the future. This, he said, would ensure that the mistake could not be made again.
13. He also explained that there were a number of other such systems in operation at other licensed premises in the Darwin area and he has attended to every system, and adjusted them, so that the same mistake could not be made elsewhere.
14. The Nominee, Mr Brett Simmonds gave evidence that only he and the other Nominee and three (3) Duty Managers have keys to the office in which the recording equipment is held and no other person had access unless accompanied by any of those five (5) persons.
15. Senior Inspector Greg Lye, for Racing, Gaming & Licensing, submitted there had been recklessness on the part of the Nominees and by so doing had breached their licence conditions.

16. It is clear that the technician who installed the equipment was unaware of the effect of activating the "record button" and as he was the trainer of the Nominees, then if he did not know it would be unreasonable to expect that the Nominees would be aware of the result of activating the "record button".
17. It is clear on the evidence from the Nominee that the room was secure and it would not have been possible for others, other than the Nominees or Duty Managers, to interfere with the system.
18. There is no evidence as to who pressed the button and one can only surmise that it was probably pressed after the Police had viewed the footage by someone who assumed that to re-activate the equipment, the "record button" had to be pushed.
19. Given the circumstances, the Commission could not come to the conclusion that the nominees were reckless when complying with the camera surveillance provisions and we therefore cannot come to the conclusion that the licence was breached.
20. If, on the other hand, it was found that there was a breach of the licence conditions because the footage had been deliberately deleted, either by the Nominees or Duty Managers or able to be deleted by others, because of poor security then the Commission would certainly find that such a breach was deserving of at least a period of licence suspension.
21. It seems to the Commission that the training of those responsible for the operation of the recording equipment leaves a lot to be desired.

The Commission requires that within twenty-eight (28) days the Licensee submit for approval a detailed training proposal prepared together with the system maintenance contractor, engaged by the Licensee, for the Nominees and three (3) Duty Managers, to ensure that all those responsible for the operation of the system are properly trained.

The Licensee is also required to ensure that any new appointments to the positions of Nominee or Duty Manager are trained how to operate the camera system before commencing work.

John Flynn
Chairman

19 January 2006