

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Todd Tavern
Licensee:	M & J Pascoe and Daughters Pty Ltd Pepity Pty Ltd Bonehead Pty Ltd Wrigm Pty Ltd GRJP Pty Ltd Stewie Pty Ltd
Licence Number:	80102200
Dual Nominees:	Ms Leonie Joan Leach Mr Mark George Pascoe
Proceeding:	Complaint Pursuant to Section 48 of the <i>Liquor Act</i> - Breach of Section 106B
Heard Before:	Mr Richard O'Sullivan (Chairman) Ms Helen Kilgariff Mr Paul Fitzsimons
Date of Hearing:	3 June 2008
Date of Decision:	18 July 2008
Appearances:	Ms Leonie Leach, Dual Nominee Ms Megan Murdoch, FACS Mr David Mogg, Licensed Security Officer Senior Inspector Tony O'Donohoe for the Director of Licensing Inspector Paul Drake

Background

1. A complaint has been lodged against the Todd Tavern for an alleged breach of Section 106B(1) of the *Liquor Act* ("the Act") in that a minor was at the Riverside Bar on 31 January 2008. The complaint is validly lodged under Section 48(2) of the Act. Section 106B states:

106B(1) Licensee or employee not to permit minors to enter, &c., licensed premises.

- (a) *A licensee of licensed premises, or any person employed by a licensee, shall not permit a person to enter or remain on the licensed premises or any part of the licensed premises the subject of a declaration served under section 106 if that person has not attained the age of 18 years or, if that person is purportedly in the company of his parent, guardian or spouse, both that person and the parent, guardian or spouse, have not attained the age of 18 years.*

The Riverside Bar has a 106(1) Declaration in force at the relevant time, stating:

Pursuant to Section 106(1)(a) of the Liquor Act, the area known as RIVERSIDE BAR, being part of the licensed premises known as Todd Tavern (liquor licence number 80102200) is declared a place where a person who has not attained the age of 18 years shall not enter or remain.

2. The information alleging a breach of the Act was initially provided by Ms Megan Murdoch, Team Leader, Your at Risk Team, Department of Family and Children's Service ("FACS") on 14 February 2008 in a letter to Mr Paul Drake, Licensing Inspector, Department of Justice. The facts stated at this time in this correspondence were:

"On the morning Thursday 31 January 2008 I received information that a fourteen (14) year old girl – herein named ("X"), who is in the care of the Minister for Health and Community Services, was drinking at the Riverside Bar. FACS Youth Worker, Mr Anthony Kennedy, and myself went to the bar and spoke outside of the premises with the security officer. I informed him that I was going inside because I believed that there was a child in the bar. We located the child and removed her from the premises. X smelt of alcohol but I did not see her drinking on the premises."

3. In the letter from the Acting Deputy Director South of February 2008 advising the Licensee and Dual Nominee of the complaint the information provided indicated that X had been on the premises for approximately one and one quarter hours.
4. The Dual Nominee and Manager of the Todd Tavern, Ms Leonie Leach, responded to the complaint on 5 March 2008 and tacitly admitted to the presence of an underage patron at the Riverside Bar but contended that she was on the premises for approximately three (3) minutes only. The Riverside Bar is within the overall Todd Tavern licensed complex.

Hearing

5. At Hearing the Commission was advised that camera surveillance footage covering the period of the alleged time X was on the premises was not available. The Commission notes that Inspector Paul Drake had on 7 February 2008 requested the video footage from the time period beginning from approximately 10.30am to 12.30pm on 31 January 2008.
6. Inspector Drake, Ms Leonie Leach and registered Licensed Security and Crowd Controller, Mr David Mogg, all viewed a short excerpt of footage for a period when X was on the premises and up to the time of her removal. X was clearly identified due to her size and colour of clothing as the person being removed.
7. Given that the footage viewed was only of a few minutes duration nothing conclusive can be drawn from the surveillance camera tape on the issue of the time X was on the premises.
8. When Ms Leonie Leach responded to the complaint she admitted that X was on the premises but that this was for only a short period of around three (3) minutes. Ms Leach stated she had viewed the footage a few times following being advised of the incident, and clearly satisfied herself that X was on the premises only for a few minutes. She stated that the presence of the archways at the Riverside Bar probably enabled X to escape the attention of or to be out of sight from bar staff on duty at the time.
9. Ms Leach stated that the Riverside bar area can have dark spots and plans are being developed to modify the premises to improve both lighting and traffic flows in and out of the bar.
10. Ms Megan Murdoch of FACS advised the Commission that she received a call on the morning of 31 January 2008 that X had gone to the Todd Tavern and following this advice she went to the Todd Tavern at around 12.00midday and proceeded to remove X from the premises.
11. Her evidence indicated that she was advised at around 11.00am that X had gone to the Todd Tavern. She assumed that X was on the premises from around this time.
12. Inspector Paul Drake advised that when he attended the Todd Tavern on 7 February 2008 after receiving advice of a minor on premises on 31 January 2008 he sought around two (2) hours of video surveillance footage to cover the time X was alleged to have been on the

premises. He did at that time view footage which evidently was sufficiently clear and within the standards prescribed and it showed X on the premises and also showed her being removed by FACS officers.

13. He did not seek to look at earlier footage of X's entry as following his request to the Dual Nominee he believed he was getting a tape of footage from around 10.30am to 12.30pm.
14. When the footage was not able to be provided Inspector Drake evidently was advised and accepted that a Technician had entered wrong dates and times for the footage in question and in the process scrubbed the entire footage.
15. Mr David Mogg, a licensed Security holder was on the door on the day of 31 January 2008 including at the time when X was on the premises. He advised that there were repeatedly queues and congregation of people outside the entrance door of the Riverside Bar, due in part to there being a cap on the number of people allowed on premises at the Riverside Bar.
16. From his evidence it is also evident that at times minors could be outside the entrance waiting to see parents and relatives. These children are not permitted entry.
17. Mr Mogg stated that he was on the door at all times of the morning of 31 January 2008 with the exception of around two (2) minutes when he was asked to leave his station by the entry door and assist with retrieving a ball or similar problem at the pool table. By inference his contention is that X gained entry in this period of his absence while attending at the pool table.

Consideration of the Issues

18. The issue of the allegation that X was drinking at the Riverside Bar and that she smelt of alcohol at the time of her removal as stated by Ms Megan Murdoch in correspondence of 14 February 2008 (paragraph 2 above) was not raised further at the Hearing. Also, the issue of the time X spent at the Riverside Bar was not conclusively determined. It appears that the allegation that she was on the premises for one and a quarter hours was based on the time Ms Megan Murdoch was advised that X was at the Todd Tavern (11.00am) to the time X was removed (approximately 12.15pm).
19. Given the advice by Mr David Mogg that children regularly congregate outside the Todd Tavern, and more particularly the Riverside Bar, it is highly feasible that X was outside the Riverside Bar area when FACS became aware that she was "*at the Todd Tavern*".
20. The evidence from Ms Leonie Leach and Mr David Mogg that contends she was only on the premises for a few minutes and that she would only have gained entry at the time Mr Mogg was attending the pool table, is plausible.
21. The Commission on the facts before it determines that it was more likely that X was on the premises for only a few minutes rather than one and a quarter hours.

Penalty

22. Mr O'Donohoe for the Director of Licensing submitted two (2) scenarios for penalty.

If the Commission determined that X had been on the premises for longer than one hour then:

- it was a serious matter and the maximum penalty the Commission deems fit should be applied

If the Commission determined to accept the approximate three (3) minute duration of X's presence at the Riverside Bar, Mr O'Donohoe submitted:

- the matter was still of a serious nature but some credit could be given for the matter being dealt with quickly and the minor being removed soon after her entry to the Riverside Bar;
 - on the basis of the above that an appropriate penalty would be a two (2) day fully suspended sentence.
23. Mr O'Donohoe, however made no submission on the likelihood or probability of X being on the premises for one hour or longer period and left it for the Commission to determine.
24. Mr O'Donohoe submitted that some consideration of the Dual Nominee's advice of the intention to modify the internal design of the premises including adding an additional exit door, improved lighting and additional camera surveillance should be factored into the Commission's decision.
25. The Dual Nominee, Ms Leonie Leach, contended that the Commission should take into account that she had acknowledged that a minor was on the premises, albeit for around three (3) minutes and that she would be seeking Building Owner approval to modifications to the bar area which would include a new doorway with one (1) extra Security Officer, one (1) additional surveillance camera and more open and better lit interior. This could involve the removal of the internal archways to increase visibility through the Riverside Bar area. Whether this would require structural alterations was unknown at this stage. She submitted that such measures would make it harder for minors or intoxicated persons to be on the premises and those proposals should be taken into account in mitigating any penalty imposed by the Commission. Ms Leach concurred with a two (2) day fully suspended sentence being applied.

Decision

26. The Commission was persuaded by the evidence of the Dual Nominee and Mr David Mogg that it was highly likely that X had only been on the premises for approximately three (3) minutes. The contrary position of her being on the premises for over an hour was based on advice to FACS that she had gone to the Todd Tavern at around 11.00am – this is not proof that she was on the premises for that time.
27. The Commission views the matter of a minor on the premises as most serious and takes into consideration the need to send a strong message to all Licensees that unlawful presence of minors on premises will not be tolerated and it has therefore imposed a two (2) day penalty with one (1) day to be served on a day at the discretion of the Director. This applies to the Riverside Bar only and the suspended one (1) day penalty is on the basis that no further breach occurs within twelve (12) months of the date of this decision.
28. In providing this penalty the Commission strongly urges the modification to the premises be undertaken as outlined by the Dual Nominee, but notes such improvements will likely involve building owner approvals and will therefore not impose it as a condition on the licence.
29. In suspending one (1) day of the penalty the Commission has taken into account the good record of the current Licensee and Dual Nominees who have had no breach before the Commission during the time of their licence.

Richard O'Sullivan
Chairman

18 July 2008