

Northern Territory Licensing Commission

Reasons for Decision

Respondent:	Mr Gene Hocking
Licence Number:	Security Provider Number 5179
Proceedings:	Complaint Pursuant to Section 53A of the <i>Private Security Act</i>
Members:	Mr Philip Timney (Presiding Member) Mrs Jane Large Mr John Brears
Date of Hearing:	29 October 2012
Appearances:	Licensing Inspector Mark Wood for the Director of Licensing Mr Gene Hocking in person

Background

- 1) On 5 August 2011 a complaint was lodged with the Director of Licensing in relation to Crowd Controller Gene Hocking alleging that he, in company with Crowd Controller Joseph Brown, had acted contrary to Section 19(2) of the *Private Security Act* ("the Act") with reference to clauses 3.13, 3.14, 3.15 and 3.16 of the NT Private Security Code of Practice for Crowd Controllers ("the Code"). The complaint referred to incidents alleged to have occurred on 6 May 2011 at the Monsoons licensed premises.
- 2) The Licensing Commission determined to conduct an investigation pursuant to Section 53C(3)(a) of the Act by way of a Hearing into the complaints. The Hearing was set down to commence on 17 January 2012. At the commencement of that Hearing Mr Rowbottam, who was at some stage engaged as Mr Hocking's legal representative, informed the Commission that Mr Hocking was unavailable to attend the Hearing due to him being overseas on holidays. He sought an adjournment of the Hearing in respect of the complaint against Mr Hocking. This was confirmed in an email from Mr Hocking sent to Inspector Jeff Paull on 13 January 2012, advising that he was currently in Chile and would be unable to attend the hearing. Mr Hocking advised, in his email to Inspector Paull, that Mr Rowbottam and Mr Adrian Franklin (his employer) would be present on his behalf at the Hearing. The Commission granted the adjournment of the Hearing.
- 3) At the resumption of the Hearing on 8 February 2012 Mr Rowbottam informed the Commission that he had been unable to obtain instructions from Mr Hocking with the result he was no longer in a position to represent him. At this point the Commission determined to proceed with the Hearing of the complaint against Mr Brown and advised the parties that it would consider separately how to deal with the non-attendance of Mr Hocking to respond to the complaint and, particularly, the issue of whether his licence should be suspended pending his appearance before the Commission.
- 4) Given the serious nature of the allegations against Mr Hocking, the Commission was not prepared to wait for an indefinite period until he appeared for the resumption of the Hearing. The Hearing was adjourned until such time as Mr Hocking advised that he was available to appear before the Commission and his dual Crowd Controller and Security Officer licence was suspended until the Hearing was concluded.

The Hearing

- 5) Inspector Wood tendered into evidence the hearing brief and reasons for decision in respect of the complaint against Mr Joseph Brown, the Crowd Controller who was engaged with Mr Hocking in the incident that lead to the complaint. Mr Hocking acknowledged that he was aware of the decision published by the Commission, including the penalty imposed on Mr Brown. Mr Hocking also acknowledged that he had reviewed the CCTV footage of the incident and that he took no exception to the same Commissioners presiding in the Hearing in respect of the complaint against him.
- 6) Inspector Wood advised that he had instructions from the Director to proceed only with the complaint alleging a breach of clause 3.13 of the Code. The complaints in respect of alleged breaches of clauses 3.14, 3.15 and 3.16 of the Code were withdrawn.
- 7) Inspector Wood then submitted the following précis of facts in respect of the complaint:

On 10 May 2011 Mr Bradley Tonkin attended Licensing, Regulation and Alcohol Strategy offices and met with licensing inspectors alleging that he had been subjected to undue physical force by Crowd Controllers Gene Hocking and Joseph Brown at licensed premises known as Monsoons on Friday 6 May 2011.

Mr Tonkin stated that he attended Monsoons on Mitchell Street, Darwin at about midnight on Thursday 5 May 2011 with friends. Mr Tonkin left Monsoons for a short period early in the morning of 6 May 2011 to purchase foodstuffs and upon returning towards Monsoons observed an altercation on the corner of Mitchell Street and Nuttall Place between two males. Mr Tonkin stated that, other than giving one of the males back his shirt that was lying on the ground, he had nothing to do with the incident.

A short time later Mr Tonkin went to re-enter Monsoons via Nuttall Place but was refused entry by Crowd Controller Hocking who informed him that the premises were at patron capacity. Mr Tonkin questioned this statement as other patrons continued to gain entry during this time, past his location. Mr Tonkin then proceeded to the front entrance of Monsoons and climbed over the railing and entered the premises to advise his friends of his situation and to retrieve personal property.

Sometime later Mr Tonkin was located at the premises internal ATM where he was approached by security and physically removed from the premises by Crowd Controllers Hocking and Brown. He was then conveyed out through the side entrance onto Nuttall Place and left towards the end of Nuttall Place away from Mitchell Street. During the removal he was held by the Crowd Controllers who had a wrist lock on each of his arms. Mr Tonkin stated that he did not resist but when he was being directed left several metres out from the entrance into a darkened area away from the CCTV cameras he stood his ground, as he was concerned of what might happen to him.

Crowd Controllers Hocking and Brown, while still having Mr Tonkin in a double arm lock, then both crossed their legs in front of Mr Tonkin while each pushed his head down as they tripped him by sweeping his legs up with their legs. Mr Tonkin then landed full force on his face onto the pavement. The Crowd Controllers came down with Mr Tonkin putting elbows into the back of his head and twisting his arms and pushing him into the pavement.

Mr Tonkin sustained serious cuts, abrasions and bleeding to the face and other areas of his body. Police attended the scene and transported Mr Tonkin to the Royal Darwin Hospital for treatment where a medical report was obtained.

- 8) Mr Hocking admitted the breach of the Act and agreed to the précis of facts as presented, with one exception. He stated that Mr Tonkin, in his evidence before the Commission in the earlier Hearing, had downplayed his involvement in the fight that had occurred outside the

premises prior to him being refused re-entry to Monsoons. Mr Hocking stated that Mr Tonkin intervened in the fight and tried to separate the two males involved. Mr Hocking also stated that he refused entry to Mr Tonkin because of his aggressive behaviour and involvement in the fight. Mr Hocking submitted that he explained to Mr Tonkin why he was refused entry and was engaged in a conversation with him over a period of 5 minutes or so, as evidenced by the CCTV footage.

- 9) Mr Hocking confirmed that he had seen the CCTV footage of Mr Tonkin's removal from Monsoons and agreed that the incident looked extremely bad and that it was fortunate that Mr Tonkin did not suffer more serious injuries. He stated that he became aware that Mr Tonkin had re-entered Monsoons when Mr Brown contacted him and asked him to come inside the premises. He stated that he has carried out hundreds of evictions in his time as a Crowd Controller and he decided this was the best means of dealing with Mr Tonkin.
- 10) Mr Hocking submitted that Mr Tonkin was cooperative at first but then began to struggle against the wrist locks. He asked Mr Tonkin "Are you going to walk away?" to which there was no response. He stated that as Mr Tonkin commenced to struggle with the Crowd Controllers they were required to stabilize themselves by widening their stance. Mr Hocking was adamant that there was no intention to ground stabilize Mr Tonkin and that his fall to the pavement was an accident. He added that if the intent was to ground stabilize Mr Tonkin only one of the Crowd Controllers would have crossed their leg in front of Mr Tonkin whilst the other Crowd Controller would have taken his weight and broken his fall. He agreed that Mr Tonkin could have been restrained by holding him against the wall but stressed that they were trying to get Mr Tonkin to walk away and there was no intent to ground stabilize or restrain him.
- 11) In response to a question as to why they did not simply release Mr Tonkin once he was outside the premises, Mr Hocking stated that he had a duty of care to ensure that Mr Tonkin's behaviour did not affect any other patrons and that they continued to restrain Mr Tonkin because he continued to struggle.
- 12) Mr Hocking confirmed that he had been overseas on holiday when the Hearing was first scheduled and that he had informed the Inspectors accordingly. He thought that information would have been passed on to the Commission. Mr Hocking said he did not respond to the show cause notice as he had left that up to his legal representative. Mr Hocking advised that he has held a Crowd Controller licence in the Territory for approximately six years and has also held security positions overseas.
- 13) In respect of penalty, Inspector Wood stated that there was no issue with the decision to eject Mr Tonkin from the premises. He had been refused entry earlier and, regardless of the reason for the refusal, he should not have re-entered Monsoons by climbing over the railing. Inspector Wood submitted that the reason Mr Tonkin resisted the Crowd Controllers was because, when he was restrained, his bank card was still in the ATM and the PIN had been activated. He noted that Mr Hocking did not assert that Mr Tonkin's fall to the pavement was a result of a ground stabilizing technique and noted Mr Hocking's evidence that the fact that all three people fell to the ground showed that the incident was an accident and not a result of a deliberate attempt to harm Mr Tonkin.
- 14) Inspector Wood submitted that Mr Tonkin should have been released as soon as he was outside the premises and that the force used by both Mr Hocking and Mr Brown to continue to restrain him was excessive and unnecessary. He also stated that Mr Hocking had previously been the subject of a complaint of use of excessive force arising from an incident in 2009 for which a penalty of a formal caution was imposed.
- 15) In support of Mr Hocking's reputation as a Crowd Controller, Mr Wood informed the Commission that Mr Hocking was regarded as a good operator both by the Licensing Inspectors and the Police officers engaged in the City Safe program. Inspector Wood referred the Commission to the penalty imposed on Mr Brown in respect of the same incident and submitted that a similar penalty would be appropriate in Mr Hocking's case, that is a six month suspension of licence with 3 months of that penalty suspended for a

period of twelve months. He confirmed that the Director was not recommending any suspension of Mr Hocking's Security Officer licence and any penalty imposed by the Commission should apply only to his Crowd Controller licence.

- 16) Mr Hocking submitted that he accepted, given the outcome of his dealings with Mr Tonkin, that a period of suspension of his licence would be imposed. He agreed that the penalty imposed on Mr Brown was appropriate in the circumstances. He stated that security work was his primary source of income and that, due to the current suspension of his licence, he had been required to take on lower paid employment which does not require a Crowd Controller licence. Mr Hocking stated that, should his Security Officer licence be reinstated, he may be able to obtain employment in remote security work.
- 17) Mr Hocking stated that he had requested the Hearing to be reconvened as soon as he had returned to Darwin from his overseas holiday. He had decided not to engage legal representation and had admitted the breach to the Commission at the first opportunity and had appeared before the Commission unrepresented with the aim of simply admitting the truth of his involvement with Mr Tonkin. Mr Hocking concluded by informing the Commission that he had learnt a valuable lesson from this experience and, with the advantage of hindsight, if a similar incident arises in the future he would deal with it differently than he did in this instance.

Consideration of the Issues

- 18) Mr Hocking has admitted that, in his capacity as a licensed Crowd Controller, he used excessive force in his dealings with Mr Tonkin and in his physical removal from Monsoons on 6 May 2011. The Commission is satisfied that Mr Hocking used excessive force when he and Crowd Controller Joseph Brown applied the wrist locks to Mr Tonkin when he was inside Monsoons and when they failed to release Mr Tonkin once he was outside the premises. The Commission accepts Mr Hocking's evidence that he was not attempting to ground stabilize Mr Tonkin and that when he fell to the pavement that was accidental.
- 19) The Commission also notes Mr Hocking's acknowledgement that the situation with Mr Tonkin could have been better handled and that more effort should have been made to remove Mr Tonkin without resorting to physical force. He also stated that, should a similar situation arise in the future he would handle it differently with a greater emphasis on mediation.
- 20) The Commission views this offending as being at the serious end of the scale for the simple reason there was no need for Mr Brown or Mr Hocking to use any force whatsoever in their dealings with Mr Tonkin on the night in question. In terms of determining the appropriate penalty, the Commission notes that, following a contested Hearing in which no admissions were made, the penalty imposed on Mr Brown was 6 months suspension of his Crowd Controller licence with three months of that penalty suspended for a period of 12 months. Allowing that Mr Brown and Mr Hocking were involved in the same incident the Commission views the penalty imposed on Mr Brown as the starting point in terms of Mr Hocking's culpability.
- 21) In Mr Hocking's favour, in terms of mitigation of the penalty to be imposed, the Commission notes that he admitted the breach and conceded that the situation with Mr Tonkin could have been handled without resort to physical force. That admission gives the Commission some level of comfort in terms of the potential for Mr Hocking to offend again in the future. The Commission notes and accepts the submission of Inspector Wood that Mr Hocking is well regarded as a Crowd Controller by Licensing Inspectors and Police Officers working with the CitySafe team. The Commission also takes account of Mr Hocking's evidence that he was not trying to ground stabilise Mr Tonkin and that his fall to the pavement was an accident and not a result of a poorly executed restraining technique.
- 22) The factors in Mr Hocking's favour in respect of any discount on the penalty the Commission should apply is however countered by the fact he has been found to have

committed a similar breach of the Code arising from an incident at licensed premises. In a decision published by the Commission on 26 May 2010, Mr Hocking was found to have used undue force in removing a patron from licensed premises on 3 August 2009. Mr Hocking was issued with a formal caution in respect of that incident. It should be noted that the patron involved was not injured and the incident was considerably less serious than the incident the subject of this Hearing.

- 23) Taking account of Mr Hocking's prior breach of the Code, the Commission is not inclined to apply the discount to the penalty it may otherwise have imposed on the basis of the mitigating factors in Mr Hocking's favour as set out above.

Decision

- 24) The Commission delivered an ex tempore decision on penalty at the conclusion of the Hearing on 29 October 2012, with reasons for decision to be published in due course. The Commission determined, pursuant to Section 53D(1)(f) of the Act, that the appropriate penalty is a suspension of Mr Hocking's Crowd Controller licence for a period of 6 months, commencing on 29 October 2012. The final three months of that penalty is suspended for a period of 12 months. As a result Mr Hocking will be entitled to have his Crowd Controller licence reinstated from 30 January 2013. Mr Hocking's Security Officer licence was reinstated at the time the ex tempore decision was delivered, also effective from 29 October 2012 and, from that date, he was licensed to obtain employment as a Security Officer.
- 25) Mr Hocking is advised that, pursuant to Section 53E of the *Private Security Act*, he may, within twenty eight days of being notified in respect of this decision, seek a review of the decision under Part 4 of the *Northern Territory Licensing Commission Act*. In accordance with Section 28 of that Act, an application for review of the Commission's decision is required to be lodged in writing, accompanied by the prescribed fee and to set out the grounds on which the request for review is made and the facts relied on to establish the grounds.

Philip Timney
Presiding Member

21 December 2012