

# Northern Territory Licensing Commission

## Reasons for Decision

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<b>Respondent:</b>	<b>Mr Ezrone Monaghan</b>
<b>Licence Number:</b>	Crowd Controller Number 8143
<b>Proceedings:</b>	Complaint Pursuant to Section 53A of the <i>Private Security Act</i>
<b>Members:</b>	Mr Richard O'Sullivan (Chairman) Ms Cindy Bravos Mr John Brears
<b>Date of Hearing:</b>	17 July 2013
<b>Appearances:</b>	Licensing Inspector Ms Penelope Nicholas for the Director of Licensing

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### Background

- 1) On 29 April 2013, a complaint was lodged with the Director of Licensing in relation to Crowd Controller Mr Ezrone Monaghan alleging that he had acted contrary to Section 19(2)(c) of the *Private Security Act* ("the Act"). The complaint referred to an incident alleged to have occurred on 27 April 2013 outside the Victoria Hotel, Darwin in the Northern Territory.
- 2) Mr Monaghan was advised of the complaint and provided the opportunity to respond to the complaint by way of correspondence to him from the Director of Licensing dated 13 May 2013. No response from Mr Monaghan has been received to date by the Director of Licensing.
- 3) The matter was then referred to the Northern Territory Licensing Commission ("the Commission") which on 1 July 2013, determined to conduct an investigation pursuant to Section 53C(3)(a) of the Act by way of a Hearing into the complaint. The Hearing was set down to commence on 17 July 2013 and Mr Monaghan was advised of this by way of correspondence from the Chairman of the Commission dated 2 July 2013. In that correspondence, Mr Monaghan was invited to advise the Commission if he wished to be present at the Hearing in order to respond to the allegations regarding his alleged conduct on 27 April 2013.
- 4) Mr Monaghan did not respond to that correspondence nor did he attend the Hearing.

### The Hearing

- 5) Inspector Nicholas advised the Commission that the incident that was alleged to have occurred in the early hours of 27 April 2013 involving Mr Monaghan also involved another Crowd Controller Mr Con Farrell (Crowd Controller number 7986). However, the Director of Licensing had directed that the Farrell matter be put on hold whilst another separate incident, which had resulted in criminal assault charges being laid against Mr Farrell, was finalised. Inspector Nicholas submitted that the actions of Mr Monaghan on 27 April 2013 should be dealt with on its merits

and therefore be dealt with separately to the complaint against Mr Farrell for his actions during the same incident. Additionally the Commission was advised that Mr Farrell's dual licence had in fact expired on the day of this Hearing.

- 6) The Commission was then invited to review the Closed Circuit Television (CCTV) of the incident involving both Mr Monaghan and Mr Farrell outside the Victoria Hotel on 27 April 2013.
- 7) Upon review of the CCTV footage, the Commission noted that shortly after midnight of 26 April 2013 an incident occurred involving two Crowd Controllers and a male person in the mall area directly in front of the Victoria Hotel. Licensing Inspector Nicholas identified the two Crowd Controllers as Mr Erzone Monaghan and Mr Con Farrell and also identified a male person involved in the incident as Mr William Stewart. Licensing Inspector Nicholas advised the Commission that Mr Stewart had been escorted from the licensed premises a short time earlier by Mr Monaghan due to his state of intoxication. The CCTV footage recorded the following sequence of events:
  - Mr Monaghan can be seen leaning against the barrier directly in front of the entrance whilst Mr Farrell is positioned approximately one metre further into the mall area;
  - the male person identified as Mr Stewart approaches Mr Farrell having come towards him from the mall area;
  - Mr Stewart can be seen attempting to engage in conversation with Mr Farrell. Both Mr Farrell and Mr Monaghan remain in their positions;
  - Mr Stewart is approached by an unknown male and handed a shirt. Mr Farrell moves away from Mr Stewart and the unknown male;
  - a short time later Mr Stewart approaches the front of the premises and engages in a conversation with Mr Monaghan. During that conversation Mr Stewart brushes his shirt up towards Mr Monaghan's face. Mr Stewart then moves away from Mr Monaghan and engages in a conversation with Mr Farrell. Mr Stewart clenched his fist and raises it to hit Mr Farrell but does not do so;
  - Mr Farrell then hits Mr Stewart to the right side of his face. He then hits Mr Stewart a second time and then pushes Mr Stewart to the ground with two hands against his chest. Mr Stewart landed head first, face down having landed about 2 metres from where he had been standing;
  - Mr Farrell then grabs Mr Stewart by his neck and arms and flips Mr Stewart over. Mr Stewart's head is again seen hitting the ground;
  - Mr Farrell then stands astride Mr Stewart and slaps him a couple of times to the head with his left and right hands;
  - Mr Stewart attempts to get off the ground. Mr Farrell then pushes him to the ground again which causes Mr Stewart to knock over an advertising board located on the ground;
  - Mr Monaghan remained nearby throughout this incident but took no action to assist either Mr Farrell or Mr Stewart;

- Mr Farrell and Mr Monaghan move to the front of the premises leaving Mr Stewart on the ground. Mr Stewart then gets up, picks up the advertising board and throws it in the direction of Mr Farrell who deflects the sign with his hand;
  - Mr Monaghan then grabs Mr Stewart in a hold similar to a 'choker hold' and drags him to the ground. Mr Monaghan stands over Mr Stewart and after a short time leaves Mr Stewart on the ground and returns to the front of the premises;
  - Mr Stewart is then helped up off the ground by an unknown male and moved away from the premises.
- 8) Inspector Nicholas submitted that the actions of Mr Monaghan were in breach of Clauses 3.8, 3.13, 3.14, 3.15 and 3.16 of the *NT Private Security Code of Practice for Crowd Controllers* ("the Code") as he stood close by whilst the incident between Mr Stewart and Mr Farrell took place and at no time assisted either person. Inspector Nicholas submitted that had Mr Monaghan intervened, then the incident between Mr Stewart and Mr Farrell would not have escalated to the state that it did.
- 9) In respect of penalty, Inspector Nicholas stated that a substantial penalty should be imposed as in her view, Mr Monaghan's actions were at the higher end of the scale. Inspector Nicholas submitted that the Commission should suspend Mr Monaghan's dual licence until its expiry on 8 September 2013. Inspector Nicholas also submitted that should Mr Monaghan reapply for his licence after this time and that application resulted in the issuing of a licence, that only a Security Officer's Licence should be issued and in the first three months of its validity Mr Monaghan should be assessed as to whether he should be issued with a Crowd Controller's Licence at that time.

## Consideration of the Issues

- 10) The Commission notes that given Mr Monaghan's non-appearance at Hearing that it does not have Mr Monaghan's version of events before it, however, the Commission does note that incident was recorded on CCTV. Following a viewing of this evidence, the Commission is of the view that the incident did occur as detailed above.
- 11) As such, the Commission must now determine whether the actions taken by Mr Monaghan were in breach of the Code, specifically Clauses 3.8, 3.13, 3.14, 3.15 and 3.16 which read as follows:
- 3.8. Not threaten any patron with physical violence
- 3.9. Act responsibly with regards to the *Liquor Act* by abiding by it and regulations made under it and other legislation that directly affects their employment and specifically by -
- (g) being an employee of a licensee within the meaning of the *Liquor Act* - not permit indecent, violent, quarrelsome or riotous conduct to occur on or at licensed premises.
- 3.13. Not use undue force in the course of their duties
- 3.14 Not participate or encourage others to participate in assault

- 3.15. In the course of their duties take action to prevent violence occurring
- 3.16. In the course of their duties use mediation, negotiation, communication and conciliation as the primary methods of dealing with clients.
- 12) It is not for the Commission following this Hearing to determine whether the actions of Mr Farrell were appropriate or not, but to determine whether the actions of Mr Monaghan were in breach of the Code.
- 13) In this regard the Commission is minded to examine the incident in two parts. Firstly Mr Monaghan's non-action during the altercation between Mr Stewart and Mr Farrell and secondly, the actions of Mr Monaghan when he did interact physically with Mr Stewart.
- 14) With respect to the first part, the Commission is of the view that the lack of action by Mr Monaghan was not appropriate. The altercation between Mr Stewart and Mr Farrell appears to have escalated beyond what in the Commission's view was necessary and had Mr Monaghan stepped in at some stage during this interaction, the Commission is of the view that the incident would not have escalated to the point that it did. In this respect, the Commission is of the view that Mr Monaghan did not in the course of his duties, take action to prevent violence occurring. However, as the altercation took place in the Darwin CBD Mall and not on the licensed premises, this therefore is not a breach of Clause 3.9(g) of the Code.
- 15) With respect to the second part of the incident in which Mr Monaghan does interact directly with Mr Stewart, the Commission has formed the view that Mr Monaghan was justified in taking some action at this point given that Mr Stewart was continuing to behave badly and was taking action that may injure others around him. The Commission, however, does not agree with the force of the action taken by Mr Monaghan in that he had grabbed Mr Stewart in a hold similar to a 'choker hold' prior to dragging him to the ground. The use of this type of hold is not condoned by the Commission nor should it be encouraged. Most Police forces have abandoned the use of this type of hold as a restraining method due to the injuries that it has the potential to cause. As such the Commission is of the view that Mr Monaghan did use undue force in the course of his duties.
- 16) The Commission therefore finds that Clause 3.13 relating to use of "undue force" has been infringed by the actions of Mr Monaghan. Additionally through not intervening in the altercation between Mr Stewart and Mr Farrell, Mr Monaghan has infringed Clause 3.15, that is he did not "in the course of their duties take action to prevent violence occurring".
- 17) The finding that "undue force" has been used in contravention to Clause 3.13 does not itself extend to participating in an assault pursuant to Clause 3.14. Certainly there is no allegation that Mr Monaghan did "encourage others to participate in assault". However, Mr Monaghan's action in the use of a 'choker style hold' and in dragging Mr Stewart to the ground and leaving him there need to be considered in the context of a potential breach of Clause 3.14 and whether through this action he did "participate in assault", albeit at the lower scale. The Commission, in consideration of this matter and that Mr Monaghan was dealing with a difficult and drunken person, finds that Clause 3.14 has not been breached.
- 18) It is not apparent whether Mr Monaghan has used or failed to use, in the course of his duties, "mediation, negotiation, communication and conciliation as the primary methods of dealing with clients" pursuant to Clause 3.16. From the Commission

viewing of the CCTV footage it is evident that Mr Stewart was heavily intoxicated and perhaps beyond reason. His statement following 27 April 2013 where he indicated no recall of the events adds to the likelihood that Mr Stewart would have been uncomprehending in relation to mediation attempts. The vision of the interaction between Mr Monaghan and Mr Stewart shows some engagement between the two and then Mr Stewart pushes or thrusts his shirt at Mr Monaghan's face. The conversation between the parties at this time may or may not have involved attempts to mediate Mr Stewart's evident aggrieved state at being removed from The Victoria Hotel. The Commission therefore makes no finding in relation to conduct in breach of Clause 3.16.

- 19) With respect to the alleged breach of Clause 3.8 "not threaten any patron with physical violence", the Commission has already determined that undue force was used. Whether Mr Monaghan's action constituted acts of "threaten" is problematic and the Commission is unable to find that a breach of this Clause has been made out.
- 20) In determining the exact facts of what took place during the incident on 27 April 2013 the Commission must rely on the evidence as presented, noting the very person present and the subject of the complaint, Mr Monaghan, has failed to reply to the complaint as outlined by the Director of Licensing and failed to appear before the Commission to provide his view of events. This failure to respond to the complaint or show courtesy through attending the Hearing has led the Commission to issue a letter of reprimand in respect of this failure.
- 21) The Commission has considered the submission from Inspector Nicholas as to penalty if breaches were to be determined. Inspector Nicholas sought that Mr Monaghan's dual Licence be suspended and that upon re issue that it only apply to the Security Officers Licence with the Crowd Controller Licence assessed in the first three month of the re-issue of the Security Licence. The Commission is not disposed to this course of action.

## Decision

- 22) The Commission has determined that Mr Monaghan has acted contrary to Clause 3.13 and 3.15 of the Code and as a result has breached a condition of his Licence pursuant to Section 19(2) of the Act.
- 23) The Commission views this offending as being at the serious end of the scale for the simple reason that had Mr Monaghan taken some action earlier on during the interaction between Mr Farrell and Mr Stewart, it is likely that the incident would not have escalated to the point that it did. The force subsequently used by Mr Monaghan on Mr Stewart was not reasonable in the circumstances.
- 24) The Commission has determined, pursuant to Section 53D(1)(f) of the Act, that the appropriate penalty is a suspension of Mr Monaghan's Crowd Controller licence for a period of three months, commencing fourteen days after the publication of this Decision. Three weeks of this suspension is to be served with the remainder suspended. Should Mr Monaghan have a complaint laid and made out against him within twelve months of this Decision the full and remaining suspension penalty will be activated.
- 25) Mr Monaghan 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.

Richard O'Sullivan  
Chairman

20 August 2013