

Northern Territory Licensing Commission

Reasons for Decision

| | |
|----------------------------|--|
| Respondent: | Capital Security (NT) Pty Ltd |
| Licence Number: | Security Firm Licence Number 256 |
| Proceedings: | Complaint Pursuant to Section 53A of the <i>Private Security Act</i> |
| Commission Members: | Mr Richard O'Sullivan (Chairman) Ms Cindy Bravos Mr Walter Grimshaw |
| Date of Appearance: | 23 July 2013 |
| Appearances: | Ms Sandra Mary Mattiazzo (Licensee) Inspector Don Lawless for the Director of Licensing |

Background

- 1) Pursuant to Section 53A of the *Private Security Act* ("the Act") a complaint has been lodged against Capital Security (NT) Pty Ltd ("Capital Security") alleging that Capital Security employed unlicensed persons to carry out the functions of a Security Provider in breach of Section 13(2) of the Act:

13 Requirement to be licensed

- (2) *A person shall not, directly or indirectly, engage another person to carry out the functions of a security provider unless the other person holds the appropriate licence.*

Penalty: In the case of a natural person – 100 penalty units.

In the case of a body corporate – 500 penalty units.

- 2) Furthermore the complaint alleged that an unlicensed person was employed to carry out the functions of a Crowd Controller in breach of Section 57 of the Act:

57 Person not to hire crowd controller with disqualifying offence

*A person (the **employer**) shall not engage another person to carry out the functions of a crowd controller if the employer knows, or ought reasonably be expected to know, that the person has been convicted of a disqualifying offence, unless the Local Court has, knowing of the offence, granted a licence to the person.*

Penalty: In the case of a natural person – 100 penalty units.

In the case of a body corporate – 500 penalty units.

- 3) The particulars of the complaint which was conveyed to the Licensee on 22 May 2013 are that:
 - During the period 13 October 2011 to 30 September 2012 Mr Damien Seubert, an unlicensed person, was employed to carry out the functions of a

Security Officer at the Batchelor Institute of Indigenous Tertiary Education and other locations in the Darwin area.

- From the period 27 December 2011 to 3 April 2012 Mr Matthew Hibble, an unlicensed person, was employed to carry out the functions of a Security Provider at the BIITE.
- From 16 August 2012 to 22 September 2012 Mr David Paull, an unlicensed person, was employed to carry out the functions of a Security Officer at BIITE and other locations in the Darwin area.
- From 11 July 2012 to 26 July 2012 Mr Cameron Heath, an unlicensed person, was employed to carry out the functions of a Security Officer at BIITE.

4) Additionally the complaint alleges:

- Mr Damien Seubert was employed to carry out the functions of a Crowd Controller when unlicensed.

5) In response to being advised of the complaint Ms Sandra Mattiazzo, Director, Capital Security (NT) Pty Ltd on 7 June 2013 admitted to the complaints in relation to persons being employed to carry out the functions of a Security Provider when unlicensed. The letter of response contested that Mr Seubert *“was engaged to carry out the functions of a Crowd Controller when he did not hold an appropriate licence”*.

6) Ms Mattiazzo stated she did not consider that the work undertaken by Mr Seubert was that of a Crowd Controller and therefore she contends that no such licence was required.

7) When the matter was put to the Northern Territory Licensing Commission (“the Commission”) dated 2 July 2013 the complaint alleging the employment of Mr Seubert as a Crowd Controller was withdrawn by the Director of Licensing with the remainder of the allegations of the employment of unlicensed persons for Security Officer employment being maintained.

8) The matter was presented to a Special Commission meeting with the recommendation of a substantial fine. The formal Minute of the Commission’s determination in response to the recommendation reads as follows:

“Commission determined pursuant to Section 53C(3)(b) of the Private Security Act to invite Ms Mattiazzo to appear before the Commission over this matter before determining a penalty”.

Appearance before Commission

9) Parties were convened before a three member panel of Commission Members on 5 July 2013.

10) Inspector Lawless outlined to the Commission the particulars of the complaint and the investigations undertaken, including interviews with Ms Mattiazzo and other persons in relation to the alleged employment of unlicensed Security Providers.

11) Inspector Lawless outlined that Mr Seubert had been convicted of a disqualifying offence and initially advised that he was not carrying out the activities of a Security

Provider but rather was undertaking administrative tasks for Capital Security. The Commission was advised that Mr Seubert was not eligible to hold a Security Officer Licence due to a prior conviction of an offence which disqualified him from holding a licence.

- 12) In respect of the complaint against the employment of Mr Paull the Commission was advised that Mr Paull was in the process of completing his required security training when the Registered Training Organisation ("RTO") providing the relevant training modules closed its doors and therefore Mr Paull did not complete all modules required to obtain a full licence. During the time he was employed as a Security Officer in breach of the Act, that is 16 August 2012 to 22 September 2012, his provisional licence had expired.
- 13) Inspector Lawless referred to the period Mr Cameron was employed while unlicensed (11 July 2012 to 26 July 2012) and advised that Mr Cameron had previously held a licence, but that this had expired on 8 July 2012.
- 14) In relation to the unlicensed status of Mr Hibble, Inspector Lawless repeated the facts outlined in the complaint that he was employed by Capital Security from 27 December 2011 to 3 April 2012 when he was not the holder of a Security Officer Licence.
- 15) In reference to the complaint Ms Mattiazzo confirmed her admissions provided on 7 June 2013 in a response to the Director of Licensing in relation to the complaint. Ms Mattiazzo outlined to the Commission the background to the employment of the four persons to provide security services.
- 16) With regard to unlicensed persons employed she advised that in the case of Mr David Paull, he had since completed all the required competency modules. It was explained by parties at the meeting that Mr Paull at the time of his unlicensed employment had been unable to complete the required modules for his licence as the RTO had ceased operations.
- 17) Ms Mattiazzo indicated that at the time she thought it was likely Mr Paull's training was still in effect despite difficulties with the RTO. Notwithstanding the discontinuance of courses by the RTO, she did not realise that his provisional licence was no longer operative.
- 18) In relation to Mr Matthew Hibble, she stated that he was a family friend who needed employment to get his self-respect back and she confirmed her advice provided in her letter of 7 June 2013 that she "*took him under her wing to help him out in this regard*".
- 19) With respect to Mr Cameron Heath, she understood that his former licence had expired but at the time she was also of a belief that he had lodged the appropriate documentation at the Territory Business Centre and believed therefore that his licence was likely to be current. Ms Mattiazzo advised that since the presentation of the complaint to her by the Director she has realised that Mr Heath was unlicensed for the period stated.
- 20) Ms Mattiazzo submitted that while she was aware of Mr Seubert's conviction for a disqualifying offence, initially she considered his work to be of a supervisory and administrative role. However, she advised the Commission that she now concedes some of his duties were that of a Security Provider, requiring an appropriate licence.

- 21) In relation to the severity of the actions of Ms Mattiazzo and the Licensee, Capital Security, Inspector Lawless submitted to the Commission that the initial response during interviews with Ms Mattiazzo she denied that all four named persons were employed as Security Officers. In particular, she had advised that Mr Seubert was engaged in a supervisory role rather than a Security Provider role. It was Inspector Lawless' contention that this lessened the mitigation due to Ms Mattiazzo, however he did credit that in her response to the formal complaint from the Director she did concede that he was carrying out the functions of a Security Provider, whilst also contesting that Mr Seubert was undertaking Crowd Controller work. The Commission notes that in relation to the matter of the alleged engagement of Mr Seubert to do Crowd Controller work, that this aspect of the complaint had been dropped.
- 22) Inspector Lawless sought a total penalty of thirty-five penalty units per each of the four admitted breaches. In each of the four counts Inspector Lawless particularised the penalty of thirty-five units be applied, which at the time of the breaches was \$141.00 per unit, totalling \$19,740. Ms Mattiazzo, in response, advised that she had instituted remedial action to her management and oversight of the provision of Security personnel. This system included a data base containing rosters, licence expiry dates, risk management practices and policies of Capital Security and she provided a compendium of these current documents. She submitted that the monitoring of licences and their currency had been stepped up to include maintaining a copy of all licences issued for personnel she employed.
- 23) Ms Mattiazzo advised the Commission that while the work at BIITE constituted a large portion of her business, she also undertook security provision at other locations. She explained to the Commission that at the time the four identified employees were working unlicensed, she was under some pressure and had personal family issues to contend with. She expressed the view that she would have some difficulty in paying off any fine of around \$19,000 as submitted by Inspector Lawless.
- 24) In response to probing from the Commission as to the profitability of her business and the monetary gain derived from the employment of unlicensed personnel Ms Mattiazzo advised of some of the pay rates applicable to employees at BIITE and the remuneration received. At this point the Commission sought the provision of documentation on the contract between Capital Security and BIITE, including the payment rates by BIITE.
- 25) Additionally Ms Mattiazzo was also asked to provide the calculation of any profit level she derived from such employment allowing for superannuation, worker's compensation, public liability insurance, provision of shirts, radios and other running costs. This information was provided to the Commission subsequent to the meeting with the Licensee.
- 26) Ms Mattiazzo also advised the Commission that prior to coming before it and during investigations undertaken by Inspector Lawless, she had obtained legal advice from Barrister and Solicitor Mr Peter Elliott at some cost to her.
- 27) In final submissions Ms Mattiazzo stated she should have been more aware of the provisions of the Act and the duties involved with the provision of security services requiring a licence. She expressed remorse and advised the Commission that she had taken remedial action in respect of her business management systems and her own training to ensure that breaches currently before the Commission did not occur again.

Consideration of The Issues

28) The Commission during its meeting with Ms Mattiazzo and Inspector Lawless was appraised of the nature and scope of the engagement of unlicensed personnel for security work. The evidence gathered by Inspector Lawless, including witness statements, documentary records and other information provided by colleagues and associates of the unlicensed persons all indicate the extent and gravitas of the breaches.

29) While initially Ms Mattiazzo may have contested that all four persons were engaged in the provision of security services, she later recanted on this position. In part her initial denial was based on her stated belief that some of these persons were employed in an administrative or supervisory capacity rather than as purely or strictly as Security Officers.

30) The Commission can provide some leniency towards Ms Mattiazzo's understanding in that there was some confusion of the exact role of Mr Seubert in particular. In this regard the Commission notes the information provided by a licensed Security employee of Capital Security, Mr Chris Hanlon who, in an email to Inspector Lawless of 28 March 2013 stated:

"I only saw Damien at Batchelor four to five times in total. The first of these occasions was in late July early August when Damien came to Batchelor with our Director Mrs Sandra Mattiazzo to conduct my site specific training. On this occasion Damien showed me how to operate company equipment, site alarm systems, explained operational and emergency procedures and conducted a general orientation. This occasion was one of only two occasions when Damien and Sandra were onsite for the entire shift. The other three occasions that I saw Damien on site was when he was performing administrative duties or driving the campus bus, his and Sandra's presence was not usually recorded in the log book as it was not for purpose of shift security duties."

"Mr Damien Michael Seubert was my direct supervisor, he hired me, conducted my induction and training, communicated my roster, drove the BIITE bus, checked CCTV footage, collected time and meal sheets, helped other guards with compiling incident reports and other minor administrative duties."

31) Nonetheless, as an entity providing Security Services through the engagement of personnel, the Licensee and Ms Mattiazzo have a heightened duty of care to be aware of licensing requirements within the Security and Crowd Control industry.

32) The Commission has found Ms Mattiazzo to be contrite and apologetic for her actions. The Commission has been provided with documents attesting to the improved systems and data base employed by Ms Mattiazzo to ensure similar breaches do not occur in the future.

33) In relation to deriving monetary gain through employment of unlicensed personnel, the Commission has examined both the contractual remuneration details for the provision of Security Services at BIITE and payments and overheads incurred by the business. Shift rosters for the identified unlicensed personnel have also been provided. From this evidence the Commission is able to assure itself that only a very small profit margin was derived through the provision of security services at BIITE through employing unlicensed personnel.

- 34) In view of the financial details provided to the Commission, it is of the view that the imposition of a fine totalling over \$19,000 would be onerous on the Licensee and harsh in the circumstances.
- 35) A number of the persons engaged by Ms Mattiazzo when unlicensed have since obtained full and complying licences. Messrs Paul, Hibble and Heath now have dual Security Officer and Crowd Controller Licences. The Commission has determined that in light of the above to impose a fine of \$500.00 for each of the four unlicensed persons employed through the provision of Security Services.

Decision

- 36) The Commission notes the admission of breaches by Ms Mattiazzo, Director of Capital Security. These breaches relate to the engagement for the periods stated earlier in this Decision of Messrs Seubert, Paull, Hibble and Heath while these persons did not have the appropriate licence required for the provision of Security Services.
- 37) Taking into account the mitigating circumstances the Commission has determined to impose a fine of \$500.00 for the employment of each of the four above persons. This fine totalling \$2,000.00 is to be paid within twenty-eight days of this Decision.
- 38) Ms Mattiazzo 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

29 August 2013