

Northern Territory Licensing Commission

Decision

Respondent:	Mr Darryn Baillie
Licence Number:	6469
Proceedings:	Complaint Lodged Pursuant to Section 53A of the <i>Private Security Act</i>
Heard Before:	Mr Richard O'Sullivan (Chairman) Mr Paul Fitzsimons Ms Helen Kilgariff
Date of Hearing:	14 December 2011
Appearances:	Senior Licensing Inspector Wayne Sanderson Mr Darryn Baillie, Licensee

Background

- 1) Following an interview with Ms Angela Aversch, a former employee of the Heavitree Gap Supermarket ("the Store") on 23 September 2011, Licensing Inspector Chris Wade made out a complaint under Section 53A(1) of the *Private Security Act* ("the Act") alleging Mr Darryn Baillie breached Section 19(2) of the Act in that the Code of Practice was not complied with on the evening of 21 September 2011. Mr Baillie holds a joint Crowd Controller / Security Officer Licence, Licence Number 6469.
- 2) The Deputy Director of Licensing on 6 October 2011 accepted the complaint and consequently it was forwarded to the Northern Territory Licensing Commission ("the Commission") which determined to conduct an Inquiry in the form of a Hearing into the matter.
- 3) At the time of interview with Inspector Wade, Ms Aversch outlined a series of events during which Ms Aversch believed licence holder Baillie used excessive force and overacted to circumstances. Ms Aversch stated that on the evening of 21 September 2011 Ms Oriel Palmer presented at the Heavitree Gap Supermarket when intoxicated but without showing signs of aggression or being argumentative or loud.
- 4) Ms Aversch advised that during a conversation with Ms Palmer there was a difficulty in comprehending what she was requesting. Ms Aversch stated that Mr Baillie intervened in the situation by slapping Ms Palmer in the side of the head and placing her in a headlock and removing her from the Store.
- 5) Ms Aversch's presentation of information led to Inspector Wade reviewing the CCTV footage of the night in question and following this review of the footage, Inspector Wade then laid a complaint against Mr Baillie for specified breaches of the Code of Practice, namely Clauses 3.4, 3.5, 3.13 and 3.15, applying to Crowd Controllers as follows:
 - (3.4) *Mr Baillie made a false written record of the incident in that he stated that he clipped the female customer under the ear to get her attention and physically restrained the male customer as he threw punches. A review of the footage shows Mr Baillie slapping the female customer from behind and the male customer shaping up but not throwing any punches at Mr Baillie.*

- (3.5) *Mr Baillie failed to control monitor the situation in that he left the store to confront the female customer's partner and then used undue force. Mr Baillie then allowed both customers to re-enter the store on two more occasions.*
- (3.13) *Mr Baillie used undue force in that he struck the female customer to the side of the face, from behind, and then applied a headlock to remove her from the premises.*
- (3.15) *Mr Baillie failed to prevent violence occurring in that he left the store to physically confront the male customer who did not pose any physical threat to him.*
- 6) The above complaint alleges Mr Baillie breached his licence conditions by not adhering to the Code of Practice as required by Section 19(2) of the Act which states:
- (2) *A licence is subject to:*
- (a) *such conditions, if any, as are prescribed in relation to such a licence;*
- (b) *the conditions, if any, specified in accordance with subsection (1) and amended, if at all, in accordance with Section 20; and*
- (c) *where a code of practice has been approved under Section 48 in relation to such a licence, the condition that the code shall be complied with and not contravened.*
- 7) The complaint above is specific to the Provisions of Clauses 3.4, 3.5, 3.13 and 3.15 of the Code of Practice outlined below:
- 3.4 *Not make or sign any false verbal or written statement in relation to their employment as a Crowd Controller.*
- 3.5 *Where employed to do so, carefully control and/or monitor the behaviour of patrons so that problems can be detected early and where necessary act swiftly with the aim of protecting the health and safety of all patrons, including those who might need to be removed because of their own behaviour.*
- 3.13 *Not use undue force in the course of his or her duties.*
- 3.15 *In the course of their duties take action to prevent violence occurring.*

Hearing

- 8) The Hearing was convened on 14 December 2011 with Senior Inspector Wayne Sanderson outlining the complaint before the Commission. CCTV footage from cameras at the Store was shown during the outline of the complaint by Senior Inspector Sanderson.
- 9) In relation to Clause 3.4 of the Code which requires that a licence holder "*not make or sign any false verbal or written statement in relation to the employment as a Crowd Controller*", Senior Inspector Sanderson referred the Commission to Mr Baillie's Incident Register entry contained within the Hearing Brief.
- 10) In this entry Mr Baillie refers to clipping Ms Palmer under the ear to get her attention. He also refers to her husband Mr Garnet Raymond throwing punches at him following which Mr Raymond was grabbed and put to the ground.
- 11) Senior Inspector Sanderson stated that the CCTV footage does not show Mr Raymond throwing punches, rather Mr Raymond presents at the supermarket doorway in an aggressive stance, best described as "shaping up", after his wife had been evicted from the premises.

- 12) Senior Inspector Sanderson also referred the Commission to the CCTV footage where Mr Baillie is shown to have slapped Ms Palmer on the side of the head after which he places her in a headlock and removes her from the Store. Mr Baillie has described this as a clip under the ear to get her attention.
- 13) Senior Inspector Sanderson claims that Mr Baillie's presentation of the facts in relation to clipping Ms Palmer under the ear and in putting Mr Raymond to the ground are untrue and constitute a breach of the Code through making false statements.
- 14) Senior Inspector Sanderson outlined the alleged breach of Clause 3.5 of the Code where a Crowd Controller is to "*carefully control and/or monitor*" patron behaviour. He claims that Mr Baillie left the Store to deal with Mr Raymond and during the time in doing so was not monitoring the Store. It is also alleged that Mr Baillie allowed both customers to re-enter the Store in breach of this Code condition. The Commission has assumed this applied to that of "carefully control".
- 15) In relation to the alleged breach of Clause 3.13 of the Code relating to undue force, Senior Inspector Sanderson presented that in striking the female customer to the side of the head and applying the headlock to remove her from the Store, Mr Baillie had used undue force. It was pointed out to the Commission that Ms Palmer is of small build and height, compounding the lack of need to use excessive force in her removal from the Store.
- 16) Provision 3.15 of the Code requires the Crowd Controller to "*take action to prevent violence occurring*". Senior Inspector Sanderson advised the Commission that Mr Baillie had failed to prevent violence occurring when he left the Store to subdue Mr Raymond.
- 17) Mr Baillie addressed the Commission on the full complaint matters outlined by Senior Inspector Sanderson. He stated that the Heavitree Gap Supermarket had experienced ongoing problems with Ms Palmer and her husband Mr Raymond. He also stated that the original complainant, Ms Aversch had only worked at the Store for just over a week and therefore was not fully aware of the problems experienced by the Store with Ms Palmer and her husband. He added that she was also unaware of the need to place restrictions on the sale of alcohol under Northern Territory legislation, including the use of legally recognised identification and the refusal of service to intoxicated persons.
- 18) He also advised the Commission that Mr Raymond was on the Banned Persons Register and was unable to be sold alcohol by the Store. Mr Baillie also advised that subsequent to the incident trespass notices had been issued to Ms Palmer and Mr Raymond.
- 19) He stated that leading up to the incident where he slapped Ms Palmer and removed her from the Store, he had entered the Store and remonstrated with Ms Palmer whom he had reason to believe may have been attempting to steal food or goods from the Store.
- 20) A verbal altercation ensued, following which Ms Palmer threw a container of food onto the floor and this provoked his making contact with her head and removing her while she was in a headlock. He admitted this was a heat of the moment action in contravention to Clause 3.13 of the Code. Further, he advised the Commission that such behaviour was not appropriate and that he regretted the action and felt shamed by his conduct during the incident.
- 21) Although provoked by verbal abuse by Ms Palmer and by her throwing a can onto the floor, Mr Baillie stated that it did not qualify for the response he undertook.
- 22) In relation to the alleged breach of Clause 3.5 of the Code "*failure to monitor the situation*" he responded that part of his responsibilities are to monitor the Store and the Store environs, including the car park and therefore when he left the Store to deal with Mr Raymond who was outside, he was acting in accordance with the Jasp Security Firm's Procedures for Heavitree Gap Supermarket.

- 23) Mr Baillie presented a similar defence to the alleged breach of Provision 3.15 of the Code relating to taking action to prevent violence. Mr Baillie contended that his actions in leaving the Store and dealing with Mr Raymond were in line with this Code condition.
- 24) On the matter of the alleged breach of Provision 3.4 of the Code in relation to making false records of an incident, Mr Baillie admitted to inadequate report writing skills and his coverage of the incident in referring to clipping Ms Palmer behind the ear to get her attention and in grounding and restraining Mr Raymond as he had thrown punches, could be a sleight of the truth.

Submissions on Penalty

- 25) Senior Inspector Sanderson advised the Commission that Mr Baillie had admitted to use of undue force in hitting Ms Palmer and holding her in a headlock (3.13 of the Code). He further maintained that Mr Baillie failed to control the situation (3.5 of the Code) and failed to prevent violence occurring (3.13 of the Code). He also contended that Mr Baillie had breached Clause 3.4 of the Code, through falsifying records in explaining his action.
- 26) On the basis of the candid admission by Mr Baillie of the use of undue force and the recognition by him that his Incident Register record had not completely conveyed the situation of the incident, Senior Inspector Sanderson recommended the imposition of a fine. He drew the Commission's attention to a recent Hearing involving Mr Storrier who had been found to have used excessive force in carrying out his Crowd Controller duties.
- 27) In this matter Mr Storrier was fined \$1,000 in a recent decision handed down by the Commission in July 2011. Senior Inspector Sanderson sought that the fine be reduced to \$300 and also that Mr Baillie be compelled to undertake a specific component of the Crowd Controller training package, that is he be required to successfully complete the "Monitor and Control Individual Crowd Behaviour" module.
- 28) In making this recommendation Senior Inspector Sanderson acknowledged that since the incident at the Heavitree Gap Supermarket, Mr Baillie had on his own recognisance undertaken, during November and December 2011, a number of the nationally accredited modules of Certificate III in Security Operations.
- 29) Mr Baillie responded by accepting the penalty recommended by Senior Inspector Sanderson. He tabled a document from Eagle Training Services NT outlining the twelve units of competency he had undertaken in security operations since the incident of 21 September 2011.

Consideration of the Issues

- 30) Following the viewing of CCTV footage, the Commission is in no doubt that Mr Baillie used excessive force in slapping Ms Palmer, who is of slight or diminutive stature, to the side of the head and in using a headlock when removing her from inside the Store premises. The footage also conveys to the Commission the likely atmosphere giving rise to this incident as it shows Ms Palmer attempting to conceal a store item and then remonstrating with Mr Baillie while being questioned and contemptuously throwing the item onto the floor.
- 31) The CCTV also shows that after Ms Palmer's ejection from the Store, Mr Raymond appears at the doorway in a boxing like stance where it appears to the Commission that he is inviting Mr Baillie outside for a fight. The footage then shows Mr Baillie walking outside the Store and pushing Mr Raymond to the side of the building where he then puts him to the ground and restrains him.
- 32) During evidence at the Hearing and through the viewing of the CCTV footage it does not appear that Mr Baillie's actions in putting Mr Raymond onto the ground and restraining him involve the use of undue force or undue aggression on his part. Following his dealing with

Mr Raymond he is seen to use his mobile telephone which he explains was to call Police and Police subsequently arrive at the scene.

- 33) Ms Palmer is also sighted using the public telephone and Senior Inspector Sanderson's explanation of this is that she was attempting to telephone the Police to likely complain over the handling of her husband and herself by security. Mr Baillie is then seen to re-enter the Store and conduct a conversation with Mr Raymond, following which Ms Palmer and Mr Raymond leave the premises.
- 34) The Commission is advised that much of this interaction with Mr Baillie after the subduing of Mr Raymond is in relation to the misunderstanding that Ms Palmer had money owing or left at the counter. This proved to not be the case. This may also have been the issue which gave rise to Ms Palmer allegedly phoning the Police.
- 35) It is the Commission's view following careful review of the footage and questioning of parties to the dispute, that Mr Baillie has not contravened Clause 3.5 of the Code, ie to carefully control and/or monitor patron behaviour and has not contravened Clause 3.15 of the Code, the requirement to prevent violence occurring. Mr Baillie is employed by JASP Security whose "Procedures for Heavitree Gap Supermarket" require the Security Officer to patrol the car park and front of the Shop. The time engaged outside of the Shop premises in dealing with Mr Raymond is not inconsistent with this procedure requirement.
- 36) The only remaining complaint relates to the alleged breach of Clause 3.4 of the Code relating to making false statements. The Commission notes the candid admission by Mr Baillie that his report writing skills are not his strong suit and in his tacit admission to playing down the nature of the action against Ms Palmer and of playing up the behaviour of Mr Raymond wherein in the Incident Register he refers to him throwing punches.
- 37) If, as Senior Inspector Sanderson claims, the misleading nature of the entries into the Incident Register by Mr Baillie constitute false written statements, this could be construed as limiting a Security Officer from presenting information as he or she perceive it, particularly when written up in the heat of the moment. Mr Baillie's Incident Register comments were assumedly written contemporaneously or immediately after the incident and therefore may not have been conceived in a way to mitigate or lessen the likelihood of being charged with Code breaches. Rather, they are more likely slanted portrayals of an event in a light most favourable to Mr Baillie, with no intent in distorting the possible course of events, including that of a complaint being laid against him.
- 38) In these circumstances Mr Baillie can be given the benefit of the doubt and the Commission therefore does not find the breach of Clause 3.15 upheld.
- 39) In all therefore the Commission finds Mr Baillie has used excessive force against Ms Palmer and this is the matter of most concern to the Commission.

Decision

- 40) As Mr Baillie has used undue force in the course of his duties he has breached the Code of Practice and therefore the Act which governs his conduct and licence. The use of undue force against a diminutive patron who was obviously intoxicated at the time is not condoned in any way by the Commission.
- 41) In determining penalty the Commission does take into account the frank and candid evidence of Mr Baillie, his admission to use of undue force and his expressed shame and regret for his conduct at the time. The Commission also gives credit, along with Senior Inspector Sanderson, for the initiative taken by Mr Baillie in undertaking a number of units of the Certificate III in Security Operations since the incident at the Heavitree Gap Store.
- 42) In recognition of the above, the Commission imposes a fine of \$300 to be paid within twenty-eight days of this Decision. Additionally, and noting the submission of Senior Inspector Sanderson that Mr Baillie be compelled to undertake a unit in the Crowd

Controller package entitled "Monitor and Control Individual Crowd Behaviour", the Commission suggests that this be undertaken as soon as practicable and advice be conveyed to the Deputy Director (South) of Licensing on completion. Had not Mr Baillie voluntarily undertaken twelve of the units of a Certificate in Security Operators following the incident, the Commission would have issued a directive to undertake the additional unit referred to by Senior Inspector Sanderson.

- 43) Mr Baillie is advised that Section 53E of the Act provides that 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 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

13 February 2012