

# Northern Territory Licensing Commission

## Reasons for Decision

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<b>Respondent:</b>	Ian Charles William Spooner
<b>Licence Number:</b>	Security Officer Licence Number 1003
<b>Proceedings:</b>	Complaints Pursuant to Section 53A of the <i>Private Security Act</i>
<b>Members:</b>	Mr Richard O'Sullivan (Chairman) Mr Wally Grimshaw Mr David Brooker
<b>Date of Hearing:</b>	9 August 2012
<b>Appearances:</b>	Mr Tim Barrett, Counsel for the Director of Licensing Mr Tom Berkley, Counsel for Mr Holz and Mr Spooner

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### Background

- 1) A complaint lodged by the Director of Licensing in July 2011 alleged that Mr Spooner had breached the *Private Security Act* ("the Act") including Section 19(3) that refers to clause 3.22(f) of the Code of Practice for Security Officers.
- 2) The earlier Hearing into this matter before the Northern Territory Licensing Commission ("the Commission") had determined penalty and considered the complaints settled. Mr. Spooner was found to have contravened the Act and fined \$1,000.00
- 3) After the Commission discovered that the Code of Conduct relied upon at first instance had not been promulgated at the time of Hearing it was determined that the matter should be re-opened in the interests of procedural fairness and natural justice. It is important to stress at this point, and essential to keep in mind for the balance of what appears below, that it was at the instigation of the Commission that the matter was reopened.

### Hearing

- 4) At the commencement of the Hearing Counsel for the Director of Licensing sought the opportunity to make a submission to the Hearing panel. He suggested that being given such a moment would enable a final outcome to be achieved without delay. The panel agreed to hear from Mr Barrett after receiving no objection from Mr Berkley.
- 5) The Commission heard that both parties had concerns about mounting costs pertaining to this matter and as the Commission operates within a "no costs" jurisdiction it was common ground between Counsel that should proceedings continue that this fact be kept in mind by the Commission.
- 6) Mr Barrett, for the Director of Licensing, submitted that the matter had run its course and that the penalty as proscribed by the previous panel need not be paid.
- 7) Mr Berkley concurred in full with the submissions of Mr Barrett while emphasising the strong desire of his client to put the matter behind him and move on.

## Consideration of the Issues

- 8) The panel adjourned and considered the common sense and straight-forward arguments and submissions of both Counsel and determined that an ex-tempore decision was appropriate in all of the circumstances.
- 9) With regards to the submission of Counsel in relation to the on-going financial impost on both the Licensee and the Department, the Commission was unanimous that this was a valid consideration.
- 10) With regards to the submission of Counsel in relation to the length of time between the initial decision of the Commission and the present review the view that the period exceeded what one would call expeditious is shared. The Commission is a strong advocate for timely scheduling and hearing of all matters presented to it, but must operate realistically and cooperatively with all parties to a dispute. The vicissitudes of day to day life mean that on occasion one party, or perhaps both, will feel as though an inordinate delay has deprived them of a just outcome in some way; however, in this matter the Commission panel is united when it finds that no delay in bringing the matter to Hearing can be attributed to it or the conduct of its secretariat.
- 11) The panel considers that the agreed submissions from both Counsel should form the basis of a consensual order. Such order is that any unpaid fines or outstanding conditions surviving from the initial decision be waived.
- 12) The Commission panel on review agreed with Counsel that the cost factor was of concern in this instance and sought placed on the record that the panel had taken serious consideration of this in arriving at its decision. Implicit in this component of the decision is an acknowledgment that the Licensee had incurred costs beyond what may have normally been expected, however, in recognition of this the panel determined to relieve the Licensee of any further expenses by making the orders below.

## Decision

- 13) The Commission confirms advice provided in its ex-tempore Decision handed down on 9 August 2012 and determines that the penalty payment by way of fine imposed by the original panel be now not required.

Richard O'Sullivan  
Chairman

5 November 2012