

Northern Territory Licensing Commission

Reasons for Decision

Respondent:	Mr Mark Brian Creagh
Licence Number:	Security Officer Number 4055
Proceedings:	Suspension of Licence Pursuant to Section 27(6) <i>Private Security Act</i>
Heard Before:	Mr Richard O'Sullivan (Chairman) Ms Philip Timney (Legal Member) Mrs Kerri Williams
Date of Hearing:	16 November 2010
Appearances:	Licensing Inspector Shane McCorkell Mr Daniel Kyr representing Mr Mark Creagh

Background

- 1) The Director of Licensing lodged a complaint, pursuant to Section 53A of the *Private Security Act* ("the Act") alleging a breach of Section 27(6) of the Act on the part of Mr Mark Creagh. Mr Creagh is the holder of a Dual Crowd Controller / Security Officer Licence, number 4055. The complaint arises from an incident that occurred near the entrance to the Lost Arc premises on Mitchell Street in the early hours of Saturday 24 July 2010 involving Mr Creagh and a person, Mr Leigh Sullivan, who had attempted to enter the premises.
- 2) The Director's complaint alleged that Mr Creagh, in the course of his duties as a Crowd Controller engaged at Lost Arc, used undue force against Mr Sullivan. The incident came to the attention of the Director when Police forwarded footage of the incident, obtained from the Public Safety CCTV system in Mitchell Street.
- 3) The particulars of the complaint are that on Saturday 24 July 2010, at approximately 02:57 hours, Mr Creagh struck Mr Sullivan, who was standing in front of him near the entrance to Lost Arc, with such force as to propel Mr Sullivan off the sidewalk and onto his back on Mitchell Street whilst vehicles were passing. The Director's complaint alleges that the force used by Mr Creagh against Mr Sullivan was undue, gratuitous and manifestly excessive in the circumstances and constituted a breach of sub-Section 19(2)(c) of the Act, with reference to Clause 3.13 of the Code of Practice for Crowd Controllers.
- 4) By Letter dated 7 September 2010, the Director wrote to Mr Creagh inviting him to show cause as to why his licence should not be cancelled pursuant to Section 27(1) of the Act. Mr Creagh responded by letter dated 20 September 2010. By decision dated 5 October 2010, the Commission determined to conduct a Hearing in respect of the complaint. At that time no criminal charges had been brought against Mr Creagh in respect of the incident. On 5 November 2010 Inspector McCorkell ascertained that Mr Creagh has been charged with an offence against Section 188(2) of the *Criminal Code* (aggravated assault) which is a disqualifying offence under the Act.

Hearing

- 5) Mr Daniel Kyr sought and was granted consent from the Commission to represent Mr Creagh in the capacity of a friend at the Hearing. Inspector McCorkell informed the Commission that the CCTV footage of the incident was raised at a Citysafe meeting and that Police had referred the incident to the Director due to their concerns about Mr Creagh's

actions. Further investigations were conducted resulting in the complaint currently before the Commission.

- 6) Inspector McCorkell advised that Mr Sullivan had provided a Statutory Declaration dated 1 September 2010 (Folios 16 to 19 of the Hearing Brief) in respect of the incident involving Mr Creagh. Mr Sullivan was aware of the conduct of the Hearing but had declined or was unable to attend. Inspector McCorkell advised that there was no power under the Act for the Commission to summons witness as is the case with other legislation within the Commission's jurisdiction.
- 7) The Commission viewed the CCTV footage of the incident commencing at 02.47 am on 24 July 2010 and made the following observations. The footage shows a queue of people waiting to gain access to Lost Arc. At 2.48 am Mr Sullivan was removed from the queue by a Crowd Controller (identified at the Hearing as Michael Campbell). Shortly afterwards Mr Sullivan is observed remonstrating with Mr Campbell on the footpath outside Lost Arc. A short time afterward Mr Creagh exits from Lost Arc to the footpath and is seen in conversation with Mr Sullivan. At 2.54 am Mr Creagh pushes Mr Sullivan away from him towards Mitchell Street. A few minutes later Mr Creagh is observed striking Mr Sullivan to the head area, causing him to stumble backwards and fall on his back onto Mitchell Street. Mr Sullivan is helped to his feet by Mr Creagh and another person (identified as Adrian Folkers, an employee of the Licensee of Lost Arc).
- 8) After being helped to his feet, Mr Creagh is observed speaking on a mobile phone. Shortly afterwards several Police officers arrive and speak with Mr Creagh and Mr Sullivan. Mr Sullivan is out of view of the camera for a short period and is then observed moving on to the road, following which he is restrained and taken into custody by Police officers on the opposite side of the road to the Lost Arc.
- 9) Inspector McCorkell referred the Commission to the Statutory Declaration of Mr Sullivan and noted that, on his own admission, Mr Sullivan was intoxicated at the time he tried to enter Lost Arc. He stated that he was asked for his ID by a "bouncer" (Mr Campbell) and handed him his Driver's Licence. Mr Campbell decided that Mr Sullivan was too drunk to enter the nightclub. Mr Sullivan stated that instead of returning his licence Mr Campbell flicked it onto the road. Mr Sullivan took offence at this and requested the Mr Campbell retrieve his licence from the road and said he was not leaving until he did so.
- 10) Mr Sullivan stated that he saw Mr Campbell talking to another person (Mr Creagh) who then approached him. He states that he again asked that Mr Campbell retrieve his licence from the road. Mr Sullivan stated that he was then punched in the face by Mr Creagh with what he assumed was a closed fist, following which he fell backwards and hit his head on the road. Mr Sullivan says he was helped up from the road by another person (Mr Folkers), pushed up against a wall and told to "Just fuck off". Mr Sullivan said he then approached Mr Creagh and stated that the punch was unnecessary as he just wanted his licence back and to go home. He stated that in response Mr Creagh just laughed at him.
- 11) Mr Sullivan says that he then called the Police to advise that he had been assaulted and took a photo of the Crowd Controller (Mr Creagh) using his mobile phone. Mr Sullivan confirmed that he informed Police who arrived at Lost Arc what had occurred, however he stated they did not appear concerned. Mr Sullivan stated that he then moved on to Mitchell Street to retrieve his licence and put up his hand to stop an approaching vehicle. Mr Sullivan says that Police then removed him from the roadway and restrained him on the footpath on the opposite side of the road to Lost Arc. He recalls experiencing considerable pain when his arms were twisted behind his back by Police, causing damage to his shoulder which had recently undergone reconstruction. Mr Sullivan was then conveyed by Police to hospital where he says he remained for 2 ½ hours whilst his shoulder was x-rayed.
- 12) Apart from his conveyance to hospital and the extent of the alleged injuries, the facts stated by Mr Sullivan in his Statutory Declaration are borne out by the CCTV footage.

- 13) Inspector McCorkell noted that there was no audio available with the CCTV footage so it is not possible to determine what was said between Mr Sullivan and Mr Creagh or whether the language was abusive or aggressive. He submitted however that the Commission could be satisfied from the CCTV footage that Mr Sullivan was not acting in a physically aggressive manner or demonstrating any intimidating behaviour whilst on the footpath outside Lost Arc. The incidents involving Mr Campbell and Mr Creagh lasted several minutes and no other people in the area seemed to be concerned by what was happening, suggesting that if Mr Sullivan was abusive, it was not of such a loud or outrageous nature so as to attract attention. Inspector McCorkell submitted that at no stage did Mr Sullivan appear to clench his fists or make any other move likely to raise concern or fear in the mind of Mr Creagh. Inspector McCorkell observed that, just prior to being struck by Mr Creagh, Mr Sullivan was standing with his hands by his side in a “statue like” position” and not posing any noticeable threat to Mr Creagh.
- 14) Inspector McCorkell submitted that, given the circumstances as shown on the CCTV footage, there was no need for Mr Creagh to use any force at all against Mr Sullivan and that the blow to the head was excessive and unwarranted. In addition, the blow caused Mr Sullivan to stumble or fall back onto the road where he was exposed to the risk of serious injury from a passing vehicle. Inspector McCorkell noted that the CCTV footage showed a vehicle actually stopping so as to avoid running over Mr Sullivan.
- 15) Mr Kyr asked that the Commission note several inconsistencies in Mr Sullivan’s statutory declaration, including his failure to recognise that Mr Creagh was not the Crowd Controller who had asked to see his ID. He also asked that the Commission note that Mr Folkers had not thrown Mr Sullivan against a wall as was alleged. The CCTV footage shows that Mr Sullivan was not pushed against a wall by anyone.
- 16) Mr Kyr conceded that Mr Campbell had thrown Mr Sullivan’s licence on to the road when he refused him entry and suggested that a reasonable person would simply have collected the licence themselves and gone home.
- 17) Mr Kyr disputed Inspector McCorkell’s evidence that during the course of the incident Mr Sullivan was standing still with his hands by his side. He submitted that the CCTV footage showed clearly that he was moving about and waving and clapping his arms around. He submitted that, just prior to being struck to the head by Mr Creagh, Mr Sullivan had made a lunging motion forward and that Mr Creagh’s action was a response to that situation, aimed at preventing Mr Sullivan from assaulting him.
- 18) Mr Kyr submitted that, prior to the blow to the head, Mr Creagh had tried to move Mr Sullivan on with a light push. This had no effect on Mr Sullivan and he remained on the footpath close to Mr Creagh and continued with the verbal abuse and threats of violence. Mr Kyr submitted that Mr Creagh could have tried to wrestle Mr Sullivan away from the scene however this could have lead to both of them being put in danger were they to fall on the road whilst grappling.
- 19) Mr Kyr submitted it was clear from the CCTV footage that Mr Sullivan was arguing with Mr Creagh. He had been refused entry to the premises and was refusing to leave the area. Straight after being knocked to the ground Mr Sullivan was helped to his feet and moved away from Lost Arc by Mr Folkers. Mr Kyr noted that Mr Sullivan immediately returned and continued remonstrating with Mr Creagh.
- 20) Mr Kyr conceded that the action of Crowd Controller Mr Campbell in throwing away Mr Sullivan’s Driver’s Licence was provocative, however Mr Creagh had intervened and directed Mr Campbell inside the venue in an attempt to diffuse the situation. Mr Kyr noted the CCTV footage showed both Mr Creagh and another employee of Lost Arc looking for Mr Sullivan’s driver’s licence on the road.
- 21) The Commission was referred to Mr Creagh’s response to the Show Cause Notice and the statements that Mr Sullivan was verbally abusive and threatening to Mr Campbell, Mr Folkers and Mr Creagh. Mr Kyr stated that several times Mr Sullivan challenged Mr Creagh

to a fight. Mr Sullivan was asked numerous times to move away from the venue and refused to do so. He submitted that Mr Creagh thought Mr Sullivan was about to assault him and used the force he felt necessary to prevent that from happening. In his letter in response to the Show cause Notice, Mr Creagh states that he did not punch Mr Sullivan but rather slapped him on the left side of the cheek. On behalf of Mr Creagh, Mr Kyr submitted that the degree of force used against Mr Sullivan was not excessive in the circumstances.

Evidence of Mr Adrian Folkers:

- 22) Mr Folkers works on the door of Discovery / Lost Arc and has done so for the past five to six years. During this period he has come to know Mr Creagh. Mr Folkers is not engaged as a Crowd Controller nor does he hold a licence for that role. Mr Kyr tendered into evidence a statement prepared by Mr Folkers dated 29 September 2010.
- 23) Mr Folkers stated that he observed Mr Sullivan verbally abusing Mr Campbell and that Mr Creagh intervened. Mr Sullivan then verbally abused Mr Creagh and Mr Folkers and, despite several requests, he refused to leave the area. Mr Folkers stated that Mr Sullivan's level of abuse escalated and that he challenged Mr Creagh to a fight. After approximately 10 minutes of being abused Mr Creagh slapped Mr Sullivan with an open hand causing him to lose his balance and fall backwards. Mr Folkers helped Mr Sullivan back to his feet and directed him towards the hot dog stand away from the premises. Mr Folkers stated that Mr Sullivan was abusive and aggressive to Police when they arrived and that one of the officers stated "If you were talking to him (Mr Creagh) the way you are talking to me I can understand why".
- 24) Mr Folkers stated that Mr Sullivan then entered onto the road and refused to move following which he was forcefully removed by Police and restrained on the other side of the road before being taken away in a Police car.

Evidence of Mr Brett Whitley:

- 25) Mr Whitley has held a Crowd Controller Licence for approximately eight years and was on duty at Discovery on the night of the incident the subject of the Hearing. Mr Whitley confirmed that he regards himself as a friend of Mr Creagh, having worked with him for several years. He stated that he was called in to work at Discovery on 24 July 2010 as it was a busy night and he was rostered on door duty.
- 26) Mr Whitley confirmed that he did not see much of the altercation between Mr Creagh and Mr Sullivan nor did he witness Mr Creagh striking Mr Sullivan. In a statement tendered to the Commission Mr Whitley states that at approximately 2.45 am he was standing at the front door of Lost Arc when he heard a male verbally abusing Crowd Controller Michael Campbell. After a few minutes Mr Creagh intervened and sent Mr Campbell inside to try and diffuse the situation. The male then directed abuse towards Mr Creagh, including threatening to assault him. Mr Whitley then turned his attention to his duties on the door.
- 27) After a few minutes Mr Whitley noticed Police officers talking to Mr Creagh and Mr Sullivan. The officers then moved to the other side of the street. He then observed Mr Sullivan walk into the middle of the street and hold up traffic. The male was physically removed off the road by Police and restrained face down on the side of the road until taken away in a Police van.
- 28) Mr Whitley stated that it was a commonly used and effective tactic to change over Crowd Controllers when a dispute arises with a patron. However it did not work in this case and the argument escalated when Mr Creagh intervened. Mr Whitley acknowledged that he had not seen the CCTV footage prior to the Hearing and did not directly witness the physical altercation. He stated that he did hear Mr Sullivan challenging Mr Creagh to a fight and that he sounded agitated throughout the incident.
- 29) Mr Whitley advised the Commission that he is aware of the "shock tactic" of slapping a patron who is being abusive. He stated that he rarely used that tactic himself and would

only do so if he felt threatened or perhaps where a person was approaching him in an aggressive manner. Mr Whitley advised that he did not consider calling for back up security to deal with the incident as there were already 3 Crowd Controllers in the vicinity.

- 30) The Chairman made the point that patrons waiting to enter Lost Arc did not seem to be perturbed by Mr Sullivan's behaviour, including the fact that Mr Sullivan was alleged to be swearing and shouting at Mr Creagh and challenging him to a fight. Mr Whitley stated that in his experience many patrons were often amused by scuffles between patrons and security.
- 31) That concluded Mr Whitley's evidence and the evidence presented on behalf of Mr Creagh.
- 32) At this point the Chairman raised the issue of the criminal charges against Mr Creagh and queried whether the parties had any submissions in respect of the impact of the Commission making its decision prior to the outcome of the criminal matter. Mr Kyr submitted that the Mr Creagh would be defending the criminal charges, including the aggravating factor of the injuries allegedly suffered and whether they arose from the incident with Mr Creagh or when he was restrained and arrested by Police. Mr Kyr suggested that, in the circumstances a stay of the Commission Hearing pending the conclusion of the criminal proceeding would be an appropriate course.
- 33) Inspector McCorkell advised that he had no instructions in respect of a stay of the proceeding. He was concerned however that the criminal proceeding may not be resolved for some considerable time allowing the charges would be defended.
- 34) Inspector McCorkell submitted that the incident involving Mr Sullivan had not been handled properly or professionally by Mr Creagh or Mr Campbell and that their actions had in fact escalated the situation. He noted that the use of force by Crowd Controllers was regularly reported in the media and that the use of excessive force was specifically prohibited by the Code of Conduct. Inspector McCorkell submitted that the degree of force used by Mr Creagh against Mr Sullivan, even accepting if he was slapped and not punched to the side of the head, was excessive and unwarranted in circumstances where Mr Sullivan posed no physical threat to Mr Creagh.
- 35) Mr Kyr submitted that it would be an unfair penalty were the Commission to suspend Mr Creagh's licence pending the Hearing of the criminal matter as that could take some considerable time to resolve. Mr Kyr submitted that Mr Creagh had worked in the security industry in the Territory since 2003 and this was the first time he had appeared before the Commission in relation to a complaint. In addition, he advised that Mr Creagh intends to leave the security industry and has obtained full time employment in another line of work. Mr Creagh does however wish to retain his Licence to enable him to work on a part time basis. Mr Creagh informed the Commission that he currently does security work on two or three nights a week or when he is contacted to fill in for another licence holder.
- 36) Mr Creagh advised the Commission that he had in fact been issued with a Show Cause Notice relating to an incident that occurred in 2007. His licence was suspended pending the Hearing of a criminal charge of aggravated assault. Inspector McCorkell confirmed that the charge was dismissed by the Court of Summary Jurisdiction on 1 August 2008. The Commission does not intend to take that issue into account in reaching its determination of the current complaint.

Consideration of the Issues

- 37) The Commission is tasked with determining, on the balance of probability and in accordance with the Briginshaw test, whether Mr Creagh in his dealings with Mr Sullivan on 24 July 2010 used undue force in carrying out his functions as a licensed Crowd Controller. In that respect, the Commission's findings can have no impact on the pending criminal proceeding which will require the prosecutor to prove beyond reasonable doubt that the elements of an assault and the elements of the aggravating circumstances are made out.

- 38) The Commission is mindful of the requirement of Section 53C of the Act that it must consider each complaint in a manner that is fair and expeditious. On that basis, and for the reasons set out in the preceding paragraph, the Commission has determined not to stay the current proceeding or to delay its decision for an indeterminate period until the conclusion of the criminal proceedings. In addition, as was raised during the course of the Hearing, in the event Mr Creagh is found guilty of an offence against Section 188(2) of the *Criminal Code* his licence will be automatically cancelled and he will be precluded from reapplying for a period of ten years.
- 39) Section 19 of the Act provides that a security officer licence is issued subject to the condition that, where a Code of Practice has been approved under Section 48 of the Act, the Code will be complied with by the licence holder. A Code of Practice was approved for Crowd Controllers. The following condition of the Code of Practice is relevant in respect of this complaint:

Professional Standards and Conduct:

Crowd controllers shall:

3.13 Not use undue force in the course of their duties

- 40) In this instance the Commission was greatly assisted by the opportunity to view the CCTV footage of the incident with vision that was of reasonably good quality and clarity. The footage clearly shows Mr Sullivan being removed from the queue of people lining up at the Lost Arc entrance by Crowd Controller Michael Campbell. The footage does not clearly show Mr Campbell throwing Mr Sullivan's Driver's Licence on to the road, however Mr Kyr confirmed at the Hearing that it did in fact occur. The CCTV footage also shows Mr Creagh and Mr Folkers looking for something on the road after Mr Sullivan had been denied entry.
- 41) The Commission finds Mr Campbell's behaviour in that regard to be particularly disturbing. Whilst Mr Sullivan was not available for cross examination at the Hearing the Commission is entitled to afford some weight to his executed Statutory Declaration, particularly where the evidence in his declaration is corroborated or not contradicted at the Hearing. Mr Sullivan says that after being refused entry to the Lost Arc he was happy to leave as requested but would not do so until Mr Campbell retrieved his licence from the road.
- 42) Similarly, the Commission would have benefited from Hearing from Mr Campbell as to why he threw Mr Sullivan's licence on to the road. Mr Kyr informed the Commission that Mr Campbell was to have attended the Hearing to give evidence on behalf of Mr Creagh but had failed to turn up as arranged.
- 43) Mr Sullivan said in his statement that he did not deserve to be treated the way he was by Mr Campbell. The Commission agrees and notes that it was Mr Campbell's actions that escalated the situation that ultimately resulted in the physical altercation between Mr Creagh and Mr Sullivan. Had Mr Campbell acted in a more professional manner it may well be that Mr Creagh would not have needed to confront an agitated Mr Sullivan at all and this complaint would not have arisen. The Commission recommends that the Director write to Mr Campbell reminding him of the requirements of the Code of Conduct for Crowd Controllers and informing him that his behaviour on the night in question was neither professional nor appropriate.
- 44) Unfortunately the CCTV footage does not have audio with the result the Commission is unable to confirm whether Mr Sullivan's language towards Mr Creagh was abusive or aggressive. The witnesses to the incident who gave evidence at the Hearing said that was the case and the Commission is prepared to accept that evidence.
- 45) The argument between Mr Creagh and Mr Sullivan continued for some minutes. The Commission is satisfied that Mr Sullivan was asked to move away from the entrance to the Lost Arc, first by Mr Campbell and then by Mr Creagh, and that he refused to do so for the reason he wanted someone from security to retrieve his Driver's Licence from the road.

- 46) Mr Creagh admits that, towards the end of the altercation, he struck Mr Sullivan to the face with what he described as an open handed slap. In his statutory declaration Mr Sullivan says he assumed he was punched in the face with a closed fist. The CCTV footage does not assist in determining whether Mr Creagh used an open or closed fist. What is obvious from CCTV footage is that the blow was of sufficient force to knock Mr Sullivan from his feet causing him to stumble backwards until he fell on to Mitchell Street. The Commission notes the submission made by Inspector McCorkell that it was a matter of good fortune that Mr Sullivan was not further injured by a passing vehicle.
- 47) At the Hearing two explanations were provided for Mr Creagh's action in striking Mr Sullivan. Firstly, Mr Kyr submitted that Mr Sullivan lunged forward as if he was about to physically attack Mr Creagh. The Commission does not accept that argument as it is not supported by the CCTV footage. Mr Sullivan's head moves forward slightly just prior to him being struck but the Commission is of the opinion that movement was not sufficient to cause alarm to Mr Creagh that he was about to be assaulted.
- 48) Mr Creagh himself suggested that he slapped Mr Sullivan as a "shock tactic" to get his attention and so that he would comply with the request to move away from Lost Arc. The Commission is not satisfied that this type pre-emptive physical action is an appropriate response by a Crowd Controller towards a troublesome patron unless there is a clear threat to the Crowd Controller.
- 49) In this case the Commission is not satisfied that Mr Sullivan's actions and behaviour warranted any physical contact by Mr Creagh. He was clearly in an agitated and argumentative state, justifiably so considering Mr Campbell's action is throwing his Driver's Licence on to the road. There were options available to Mr Creagh that may well have ended the dispute without the need for any physical action against Mr Sullivan. He could have walked away, Mr Sullivan was not on the licensed premises. Alternatively, he could have retrieved Mr Creagh's licence allowing that one of his colleagues had escalated the situation by throwing it on to the road. The Commission is not persuaded by Mr Kyr's submission that Mr Sullivan could and should have ended the situation by retrieving the licence himself.
- 50) The Commission is satisfied that Mr Creagh used unnecessary force in dealing with Mr Sullivan and that the blow to his head was not a necessary or reasonable response in the circumstances. On that basis the Commission finds that Mr Creagh has breached sub-Section 19(2)(c)(2) of the Act, with reference to Clause 3.13 of the Code of Practice for Crowd Controllers, in that he used undue force in the course of his duties as a Crowd Controller.

Penalty

- 51) The Commission acknowledges that the use of force by Crowd Controllers is sometimes necessary to prevent injury to other patrons, the Crowd Controllers or the person themselves. The Code of Conduct recognises that fact however the level of force able to be used is limited to that which is necessary in the circumstances and not undue. In addition, where a Crowd Controller is compelled to use force for safety reasons the level of force must be commensurate with the degree of danger posed by the unruly or intoxicated patron. In this instance Mr Sullivan was not posing any physical danger to the general public on the street at the time, to Mr Creagh or to himself. He may well have been abusive and rude however he was not presenting a physical danger to anyone in the vicinity.
- 52) The Commission has stated in the past that it will impose periods of actual suspension of licence where a Crowd Controller uses force that is more than what is required to control a particular situation. In this instance the Commission is satisfied that the force used by Mr Creagh against Mr Sullivan was at the higher end of the scale so far as unreasonableness was concerned. The blow was sufficient to knock him from his feet and on to the road, raising the very real risk of further serious injury to Mr Sullivan.

- 53) It is not necessary for the Commission to determine which, if any, of the injuries allegedly suffered by Mr Sullivan were a direct result of the blow by Mr Creagh. The Commission's finding that Mr Creagh used excessive force is sufficient for the Commission to determine the complaint is made out. It is a matter for the Court to determine whether Mr Creagh caused any physical injury to Mr Sullivan as a component of the aggravated assault charges.
- 54) In determining the appropriate penalty the Commission also takes note of the following mitigating factors. The Commission takes no account of the 2007 incident that was ultimately dismissed by the Court and accepts that Mr Creagh has an unblemished record as a Crowd Controller in the Territory since February 2003, working predominantly in CBD late trading venues on Mitchell Street. Mr Creagh indicated to the Commission that he has entered a different line of employment, due in part to the risks attached to working in the Crowd Controller industry at licensed venues. The Commission also takes account of the manner in which Mr Creagh conducted himself at the Hearing and his apparently genuine, but mistaken, belief that the amount of force used against Mr Sullivan was reasonable.
- 55) However, given the seriousness of this type of offending and the specific risk to which Mr Sullivan was exposed when Mr Creagh struck him and caused him to fall onto road, the Commission is of the view that a suspension of licence is appropriate in this instance.

Decision

- 56) The Commission finds that Mr Mark Creagh has breached sub-Section 19(2)(c) of the Act, with reference to Clause 3.13 of the Code of Practice for Crowd Controllers, in that he used undue force in the course of his duties as a Crowd Controller in striking Mr Sullivan to the head on 24 July 2010.
- 57) The Commission determines, pursuant to Section 53D(1)(f) of the Act, to suspend Mr Creagh's dual Security Officer and Crowd Controller licence for a period of seven days. The suspension is to be served for the week commencing Monday 13 December 2010.

Incident Registers

- 58) The Commission notes again the adverse comments it made in a recent matter concerning Crowd Controller Owain Morgan (published on 15 November 2010) and the statutory requirement to include in the incident register details of incidents where force is used by security staff against patrons. Inspector McCorkell tendered the extract from the incident register from Lost Arc for 24 July 2010. It is impossible to decipher any reference to the incident involving Mr Creagh and Mr Sullivan from the incident register.
- 59) The Commission reiterates that Section 56 of the Act requires the employer of Crowd Controllers, and not the Licensee of the premises, to maintain the Incident Register. Regulation 8(d) of the *Private Security (Crowd Controller) Regulations* provides that the information to be kept in the Incident Register includes the date of, and details in relation to, each incident in which physical force was used by or against a Crowd Controller whilst he or she is providing services as a Crowd Controller.
- 60) Mr Creagh has admitted he used force against Mr Sullivan with the result the incident should have been noted, with the prescribed details, in the Incident Register, more so as Mr Sullivan was allegedly injured and ultimately taken into custody by Police. Failure to comply with Section 56 renders the employer of a Crowd Controller liable to a maximum fine of \$13,300 for an individual and \$66,500 for a corporation.
- 61) The Commission again notes its surprise that the statutory requirements relating to the Incident Register were not complied with by Mr Creagh's employer and no useful record was made in the Incident Register at all. The Commission requests that the Director of Licensing take note of these failures when investigating any future incidences of the use of force by Crowd Controllers against patrons with a view to prosecuting employers in the

appropriate cases where recordings in the Incident Register are defective or non-existent. The Commission requests that a copy of this decision be forwarded to Mr Creagh's employer and to Crowd Controller Michael Campbell.

Richard O'Sullivan
Chairman

7 December 2010