Northern Territory Licensing Commission

Reasons for Decision

Premises:	Istanbul Café 12 Knuckey Street Darwin NT 0800
Licensee:	Istanbul Kebab Pty Ltd
Licence Number:	80518182
Nominee:	Mrs Nilufer Kavouklis
Proceeding:	Complaints Pursuant to Section 48(2) of the *Liquor Act*-Sections 104(1), 108, 107(1) and 110
Heard Before:	Mr Philip Timney (Legal Member) Mrs Kerri Williams Mr Wally Grimshaw
Date of Hearing:	31 August 2010
Date of Decision:	21 September 2010
Appearances:	Mr Mark Wood, Counsel for the Director of Licensing Ms Nilufer Kavouklis in person

Background

1) By a report dated 21 July 2010 the Director of Licensing lodged a complaint against the Licensee of the Istanbul Café, Istanbul Kebab Pty Ltd, alleging the following breaches of the *Liquor Act* ("the Act"):

   - Section 104 (1): persons remaining on licensed premises after closing hours;
   - Section 108: failure to produce liquor licence on demand of licensing inspector;
   - Section 107: liquor licence not kept on premises;
   - Section 110: contravention of the condition of licence requiring a copy of the liquor licence to be kept on the licensed premise and available for inspection.

2) The complaints arose following an inspection of the licensed premises by Licensing Inspectors in the early hours of 27 June 2010. A précis of the background to the complaints is set out below.

3) On 30 June 2010 the Director of Licensing wrote to the Nominee, Mrs Nilufor Kavouklis, providing the opportunity for her to respond to the substance of the complaints. A response was requested by 7 July 2010. The complaint was referred to the meeting of the Commission convened on 3 August 2010. At that stage no response had been received from the Licensee to the Director's letter.

4) Whilst the Commission determined that the complaints as alleged were at the lower end of the scale in terms of seriousness, the fact that the Licensee had not bothered to respond to the Director's letter persuaded the Commission that the appropriate course was to conduct a Hearing into the complaints.

5) Subsequent to the Commission meeting, by letter dated 24 August 2010 Mrs Kavouklis responded the Director's letter of complaint and admitted the breaches alleged. The response set out submissions in mitigation and advised of remedial measures taken by the Licensee since the occurrence of the breaches.

Hearing

6) The Hearing was conducted on 31 August 2010. Mr Wood provided the Commission with the following précis of events leading to the laying of the complaints.

7) On 14 May 2010, Istanbul Kebab Pty Ltd, trading as Istanbul Café located at 12 Knuckey Street, Darwin, was granted a full restaurant liquor licence to trade from 11:30 am to 02:00 am the following day, Monday to Sunday. On 21 June 2010, the Licensee applied for a variation of licensed trading hours to extend trading hours from 02:00 am to 04:00 am on Sunday 27 June 2010. The application stated that the variation was required for a social gathering of Greek and Turkish families, including children, at the premises. The gathering was not to be by invitation only and would be open to the general public.

8) Police and Darwin City Council did not support the application for extended trading hours. On 22 June 2010 Licensing Inspectors met with Ms Kavouklis and her husband and advised them of the objections. Following that meeting the Licensee withdrew the temporary variation application.

9) At approximately 2:40 am on Sunday 27 June 2010 Licensing Inspectors observed the premises of Istanbul Café to be open with approximately 30 patrons in the decking alfresco area. Some of the patrons were seated and several were dancing. The Inspectors observed that alcohol was on several of the tables. Mrs Kavouklis was present and spoken to by the Inspectors. Ms Kavouklis stated that she had stopped serving alcohol at 2:00 am. Ms Kavouklis was requested to remove the patrons and close the premises, which she did.

10) Following a request from the Inspectors Mrs Kavouklis was unable to produce the liquor licence stating that it was not at the premises.

11) Mr Wood conceded, correctly, that the complaints in respect of Sections 107, 108 and 110 all related to the failure of the licensee to have a copy of the liquor licence on the premises. Mr Wood informed the Commission that the complaints arising under Sections 107 and 108 of the Act were made in the alternative and, allowing for the admissions of the Nominee, were now withdrawn.

12) Ms Kavouklis, on behalf of the Licensee, acknowledged to the Commission that the breaches in respect of persons being on the premises after closing time and the failure to have a copy of the licence on the premises were admitted.

13) The Commission noted the admissions made by Ms Kavouklis and formally found that the allegations against the Licensee in respect of breaches of sections 104(1) and 110 of the Act were made out.

14) By way of mitigation, Ms Kavouklis referred the Commission to the matters set out in her letter to the Director dated 24 August 2010, namely:

- Istanbul Kebab Pty Ltd has held the licence since May 2010 and has previously held other liquor licence for in excess of 5 years without breach;
- A copy of the front page of the liquor licence was on display at the premises and the failure to have a full copy was an oversight on Mrs Kavouklis part;
- On the night in question the sale of alcohol had ceased at 2.00 am as required by the licence condition although it was admitted that patrons remained on the premises beyond the time they should have departed, that is by 2.30 am;

- There were approximately 15 patrons on the premises when the Inspectors arrived and they were promptly removed as directed by the Inspectors;

- Mrs Kavouklis was under the impression that patrons could remain on the premises to finish their drinks until 3.00 am. She stated that she is now aware that all patrons must vacate the premises by 2.30 am.

15) Mrs Kavouklis submitted that the breach of Section 104 of the Act was a result of a misunderstanding on her part for which she accepted full responsibility. She conceded that her belief that patrons could remain till 3.00 am was her error and not a result of misinformation form the inspectors. She emphasised that the breach was a not a deliberate attempt to try and get away with extra hours of trading. Mrs Kavouklis apologised to the Commission for the breaches and for the fact the Commission was required to convene a Hearing into the complaint.

16) Similarly with the failure to have a full copy of the licence on the premises, Mrs Kavouklis accepted that was her fault and that the licence was stored in her office across the road. She noted that a full copy of the licence was now kept on the premises.

17) In response to a query from the Commission as to why she did not respond to the Director's letter of complaint within the time specified, Mrs Kavouklis stated that she read part of the letter when it arrived and then tried unsuccessful to contact her solicitor for advice. The solicitor has not returned the call and she simply forgot about the letter. Mrs Kavouklis conceded frankly that this was a mistake on her part and she was not seeking to share the blame.

18) In respect of the withdrawal of the application for extended trading hours, Mrs Kavouklis stated that she had withdrawn the application after being advised by Licensing Inspectors that it was unlikely to receive approval from the Commission given the objections lodged. Mr Wood confirmed that was in fact the advice provided to Mrs Kavouklis by the relevant Inspectors.

Submission on Penalty

19) Mr Wood noted that the offending in respect of Section 104 was at the of the lower end of the scale in terms of the seriousness given that the offence of patrons remaining on licensed premises occurred at 2.40 am and patrons could have legitimately remained on the premises until shortly before 2.30 am. Mr Wood submitted however that the penalty imposed should include elements of specific and general deterrence so as to reinforce to Licensees the requirement to adhere to licence conditions. Mr Wood also conceded, rightly in the Commission's view, that the failure to have the full licence on the premises was also a breach at the lower end of the scale of seriousness.

20) Mr Wood submitted that Mrs Kavouklis should have been fully aware of the conditions associated with her liquor licence having recently completed a Licensee's examination. He submitted that, in the circumstances, the Commission should consider a suspension of licence for a period of one day with that period suspended for 12 months subject to there being not further breaches by the Licensee.

21) Mrs Kavouklis asked that the Commission note that there was no deliberate intention on the part of the Licensee to breach the Act or conditions of licence and that, in her submission, any penalty imposed should be at the lower end of the scale.

Considerations of the Commission

22) The Commission notes that in terms of seriousness of offending this complaint falls at the very lower end of the scale, involving persons remaining on the licensed premises for a period of approximately 10 minutes beyond the period permitted. The complaint was initially referred to the Commission at its meeting held on 3 August 2010. At that stage the

Licensee had not responded to the letter of complaint from the Director of Licensing, despite the fact the Director's letter requested a response by 7 July 2010.

23) The response from the Licensee was actually submitted on 24 August 2010 and set out the submissions made by Mrs Kavouklis at the Hearing. Those matters included the misunderstanding of the time patrons were to have left the premises and the reasons behind the failure to have a full copy of the licence at the premises. The letter also set out the steps the Licensee has taken to ensure that no further breaches occur. The Commission accepts Mrs Kavouklis' evidence that she partly read the Directors letter when she received it, promptly contacted her Solicitor and then forgot about the letter when the solicitor failed to return her call.

24) That was an unfortunate oversight on the part of Mrs Kavouklis as, had she responded to the Director within the time stipulated, it is highly probable that the Commission would have declined to conduct a Hearing on the basis of the relatively minor breaches of licence conditions, the acknowledgement of the breaches by the Licensee and the remedial action taken.

25) As a side issue, the Commission expresses its concern in respect to the advice provided by Licensing Inspectors to Mrs Kavouklis when she applied for extended trading hours for a proposed function to be held at the Istanbul Café on 26 / 27 June 2010. Police and the Darwin City Counsel objected to the application for extended trading hours. When asked by the Commission why she subsequently withdrew the application Mrs Kavouklis responded that she had been advised by the Inspectors that the application was unlikely to be approved due to the objections. Mr Wood confirmed that was in fact the advice provided by the Inspectors.

26) In the opinion of the Commission, that advice goes beyond the scope of advice that Inspectors should be providing to Licensees. Whether or not an application for a temporary licence variation is approved is a matter entirely within the powers of the Commission. It is for the Commission to determine what weight is to be given to objections to an application to extend trading for a one-off event. Whilst the lodgement of a legitimate objection almost invariably results in a Hearing it is not prudent or appropriate for Inspectors to pre-emp the decision the Commission may make at the conclusion of such a Hearing.

Decision

27) Section 66 of the Act provides that the Commission may suspend the licence of a Licensee where the Licensee has contravened or failed to comply with the licence, the Act or the Regulations and the Commission is satisfied that the contravention or failure is of sufficient gravity to justify the suspension of the licence.

28) In this instance the Commission is not satisfied that the breaches are of sufficient gravity to warrant suspension of the liquor licence. Whilst not within the time frame requested by the Director, the Licensee admitted the breaches in the letter of response to the complaint and during the course of the Hearing. The Commission is satisfied the Mrs Kavouklis in now fully aware of her obligations as nominee as well as the requirements for compliance with the Act and licence conditions. So much was evident from Mrs Kavouklis' demeanour at the Hearing and the frankness of her evidence and admissions.

29) The Commission notes that the Licensee has admitted the breaches of Sections 104(1) and 110 of the Act. In this instance the Commission considers that the requirement for the Licensee to appear at Hearing constitutes a sufficient penalty. The Commission takes account of the acceptance of responsibility by Mrs Kavouklis, her apology for the inconvenience of convening a Hearing and the candid manner in which she conceded the breaches.

30) The Commission has determined to issue a warning to the Licensee that any future breach of the licence conditions or the Act may very well result in a suspension of the licence. The

Commission requests that the Director retain a copy of this decision on the file for the Licensee for possible future reference.

Philip Timney
Presiding Member

29 September 2010