

Northern Territory Licensing Commission

Reasons for Decision

Respondent:	Mr Lachlan Storrier
Licence Number:	Security Officer Number 7510
Proceedings:	Complaint Pursuant to Section 53A <i>Private Security Act</i>
Heard Before:	Mr Philip Timney (Presiding Member) Mrs Jane Large Mr John Brears
Date of Hearing:	12 May 2011
Appearances:	Licensing Inspector Mark Wood for the Director of Licensing Mr George Brzostowski SC, counsel for Mr Storrier (appearance via telephone)

Background

- 1) On 29 October 2010 a complaint was lodged with the Director of Licensing pursuant to Section 53A(1) of the *Private Security Act* ("the Act") alleging that Mr Lachlan Storrier, in his capacity as a licensed Security Provider, had committed breaches of Section 19(2)(c) of the Act with reference to NT Private Security Code of Conduct for Crowd Controllers.
- 2) On 14 October 2010, Mr David Weston contacted Inspector Jodi Kirstenfeldt and complained that he had been mistreated by two Crowd Controllers who he alleged had used undue force in removing him from licensed premises known as Monsoons on the previous evening. The Crowd Controllers were subsequently identified as Mr Storrier and Mr Matthew Evans. Mr Weston alleged that he had been at Monsoons at around 3.30 am on 14 October 2010 when he witnessed a male patron assault a female patron. He left his table to assist the female and was involved in an altercation with another male. This altercation was witnessed by a Crowd Controller, Mr Evans, who removed Mr Weston from the premises with the assistance of Mr Storrier.
- 3) Mr Weston alleged that Mr Evans placed him in a headlock so that he could not breathe and removed him to the front of the premises and rammed his head into a pillar. He stated that he was then punched and thrown to the ground following which the Crowd Controllers applied a series of arm, leg and wrist locks, including bending his fingers and legs back to breaking point. It should be noted that this Hearing concerns the complaint against Mr Storrier only. The Hearing in respect of the complaint against Mr Evans will be convened independently at a date to be advised.

Hearing

- 4) At the commencement of the Hearing, Mr Wood informed the Commission that only one incident involving Mr Storrier was the subject of the complaint now before the Commission. That incident involved Mr Storrier's dealings with Mr David Weston on 14 October 2010 at Monsoons. Mr Wood advised that the Commission should disregard folios 10, 11, 30, 31, 34, 35 and 36 of the Hearing Brief as those documents do not relate to the complaint against Mr Storrier.
- 5) Inspector Wood advised that Mr Weston had been requested to attend the Hearing to give evidence. He had declined on the basis he was no longer interested in the issue as too

much time had passed since the incident at Monsoons last October. Inspector Wood confirmed that the Act provided no power for the Commission to summons witnesses.

- 6) Inspector Wood provided the Commission with a précis of the complaint, consistent with the matters set out in the background above. Inspector Kirstenfeldt then gave evidence in respect of her investigations of the complaint and an interview with Mr Weston. The Commission then viewed the CCTV footage of the incident with both parties being afforded the opportunity to comment on the footage.
- 7) The Commission noted that Mr Weston's version of events was accurate in respect of him going to the assistance of a female who appeared to have been assaulted by a male on the dance floor of the premises. It is also clear from the CCTV footage that Mr Evans and Mr Storrier did not witness the assault on the female and by the time Mr Evans arrived Mr Weston was already remonstrating with a male and was apparently mistaken as the instigator of the incident.
- 8) Inspector Wood stated that Mr Weston was clearly resisting his removal from the premises by the Crowd Controllers. He confirmed that, in the circumstances, Mr Weston's removal from the premises and the actions of Mr Storrier and Mr Evans in "ground stabilising him at the front of the premises were appropriate actions in the circumstances, particularly where the Crowd Controllers were unaware of the earlier assault on the female patron and Mr Weston's reasons for becoming involved.
- 9) He confirmed that the complaint against Mr Storrier related to three specific incidents namely:
 - kneeling Mr Weston in the lower back region whilst he was holding on to a railing near the entrance to the premises;
 - striking him with two downward blows to the arm or head, again whilst Mr Weston was holding onto the railing; and
 - pushing his face into the ground following the ground stabilisation.
- 10) Inspector Wood submitted that those actions constituted undue force in the context of the NT Private Security Code of Conduct for Crowd Controllers and therefore constituted a breach of Section 19(2)(c) of the Act with reference to clause 3(13) of the Code of Conduct for Crowd Controllers.
- 11) Mr Brzostowski submitted a time line he had prepared in respect of the CCTV footage that had been provided to him by the Inspectors. He noted that the CCTV footage showed that Mr Weston was in an agitated and aggressive state whilst being removed from the premises and that he was vigorously resisting the attempts by the Crowd Controllers remove him from the premises.
- 12) Mr Brzostowski submitted that Mr Storrier kneeling Mr Weston in the lower back or buttocks region was a legitimate action in a potentially dangerous situation and aimed at forcing Mr Weston to release his grip on the railing so that he could be ground stabilised. He conceded that the two downwards blows to Mr Weston were of concern to Mr Storrier but observed that the CCTV footage did not show clearly where the blows landed as Mr Weston was partially obscured by the Crowd Controllers. Mr Brzostowski submitted that the blows were directed towards Mr Weston's arms in a further attempt to force him to release his hold of the railing.
- 13) Mr Brzostowski denied that Mr Storrier had deliberately forced Mr Weston's face into the ground once he was ground stabilised and submitted that the CCTV footage did not assist in respect of this allegation. Similarly, he submitted that the CCTV footage did not show Mr Storrier bending back Mr Weston's fingers but rather indicated that he was simply trying to prevent Mr Weston, who appeared to be struggling to free himself, from getting back to his feet and potentially assaulting himself or Mr Evans.

- 14) Mr Storrier was then called to give evidence. He stated that he currently resided in Canberra and was employed as a personal trainer whilst studying part time. He added that he intends to apply to join the Northern Territory Police force in the next intake of recruits in November 2011.
- 15) In respect of him kneeing Mr Weston to the back/buttock region, Mr Storrier stated that that Mr Weston was struggling throughout the incident, was gripping the railing tightly and was very difficult to control whilst he was standing up. Mr Storrier added that he considered it in the interests of his own safety and that of patrons in the vicinity that Mr Weston be ground stabilised and that he kneed him to force him to release his hold on the rail.
- 16) In respect of the downwards blows delivered to Mr Weston, Mr Storrier said that he recalled incident and he struck Mr Weston on the left forearm as he was attempting to get a fresh grip on the railing. When his blow forced Mr Weston to release the railing he was immediately ground stabilised.
- 17) Mr Storrier stated that when Mr Weston was on the ground he was facing downwards and was wriggling and moving from side to side. He said the purpose of the ground stabilisation was to hold Mr Weston until Police arrived and he attempted to restrain Mr Weston's arms but did not apply any downward pressure to his head. He attempted several times to apply wrist locks to Mr Weston but this was difficult as both men were struggling and sweaty.
- 18) In response to questions from Mr Brzostowski, Mr Storrier stated he considered the force used in kneeing Mr Weston and striking his wrist / forearm as necessary to control the situation. He denied that any excess force, beyond what was necessary in the circumstances, was applied to Mr Weston during the course of their struggle. He stated that Mr Weston was not only resisting attempts to remove him from the premises but also abusing and threatening the Crowd Controllers. He added that the Police had not contacted him in respect of the incident nor had he been charged with any offence arising from his dealings with Mr Weston.
- 19) In response to a question from the Commission, Mr Storrier stated that he was unaware of the incident in which a male patron punched a female on the dance floor and, at the time he encountered Mr Weston he was not aware of why he was being removed from the premises.
- 20) Mr Storrier informed the Commission that he was currently twenty-three years of age and had commenced work as a crowd controller when he was eighteen years of age. He has four years experience as a Crowd Controller in Victoria, Queensland and the NT. He was travelling around Australia when he was employed at Monsoons and returned to the ACT when his money ran out. Mr Storrier stated this type of work fitted in well with his study commitments and an adverse finding would impact on his future employment in the industry under the mutual recognition arrangements.
- 21) In respect of whether the breach had been made out, Inspector Wood confirmed that the Director of Licensing took no issue with the removal of Mr Weston from the premises nor with him being ground stabilised at the front of the premises following his removal.
- 22) He submitted that the allegations in respect of the use of excessive force by Mr Storrier related to him kneeing Mr Weston in the back, striking him on the arms and bending back his fingers whilst he was on the ground. He noted that the CCTV footage spoke for itself in regard to whether those incidents occurred and also noted that Mr Storrier had admitted kneeing and hitting Mr Weston in his evidence before the Commission.
- 23) Inspector Wood noted that these actions were not recognised restrain techniques and not included in any training undertaken by Crowd Controllers. He added that the use of force in this manner was not warranted in the circumstances as Mr Weston was already under restraint by Crowd Controllers Evans and Storrier and that neither of those persons was under any imminent threat from Mr Weston.

- 24) Mr Brzostowski submitted that the degree of force used by Mr Storrier was justifiable in the circumstances. When Mr Storrier first noticed Mr Weston he was involved in an altercation with another Crowd Controller. Mr Storrier was not aware what had caused that altercation to occur and was not aware of the earlier assault on a female by a male patron that lead to Mr Weston's involvement.
- 25) In addition, Mr Brzostowski submitted that Mr Weston was out of control by the time Mr Storrier intervened and was strongly resisting the Crowd Controllers, both prior to his removal and when he was restrained near the front door. He noted from the CCTV footage that events happened quickly and the Crowd Controllers were required to bring a potentially dangerous situation under control as efficiently as possible. Mr Brzostowski stated that the injuries suffered by Mr Weston were relatively minor and no injuries had been alleged as a result of Mr Storrier kneeling him or striking him to the wrist / forearm area.
- 26) Mr Brzostowski submitted that Mr Storrier was a conscientious Crowd Controller who was aware of the obligations of his role and also aware of what is necessary to perform that role properly and lawfully. He stated that Mr Storrier had treated the complaint seriously and asked that the Commission note there had been no previous complaints or adverse reports in respect of Mr Storrier's performance as a Crowd Controller.
- 27) In conclusion, Mr Brzostowski submitted that had Mr Weston been dealing with Police he would most likely have been charged with resisting arrest and assaulting Police. He noted in that respect that Crowd Controllers do not have the equivalent arrest powers of Police however they are required to perform similar duties in respect of controlling the behaviour of patrons. Mr Brzostowski submitted that an adverse finding in respect of Mr Storrier by the Commission would have a significantly detrimental impact on his income earning capacity which was necessary to support his on-going study commitments and, at least potentially, his plans to enter the Northern Territory Police Force.

Consideration of the Issues

- 28) The Commission is tasked with determining, on the balance of probabilities, whether Mr Storrier in his dealings with Mr Weston on 14 October 2010 used undue force in carrying out his functions as a licensed Crowd Controller. 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 been 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

- 29) As has been the case on numerous occasions, the Commission was assisted by being able to view the CCTV footage of the incident. The complaint against Mr Storrier related only to incidents that occurred outside the premises once Mr Weston had been removed. The Commission accepts that Mr Storrier did nothing wrong prior to Mr Weston's removal from Monsoons and also, particularly relevant to this decision, that Mr Storrier was unaware of the incident involving a female being punched that lead to Mr Weston intervening.
- 30) Mr Storrier denied that he injured Mr Weston's fingers by bending them back whilst he was being restrained on the ground. He also denies that he pushed Mr Weston's face forcefully into the pavement. The Commission viewed the CCTV footage carefully on a number of occasions and the footage alone is not clear enough to demonstrate conclusively that those events occurred.
- 31) The Commission was however provided with a medical certificate obtained by Mr Weston from Dr Olga de Bruijn on the same day as the incident occurred. The certificate states that

Mr Weston had bruising to the right eye and a laceration to his front forehead, swollen left fifth proximal interphalangeal joint (the hinge joints between the finger bones) and some bruising, grazes and abrasions to the right trunkside.

- 32) Those injuries are consistent with the statement of Mr Weston and his recount of what happened during his altercation with the Crowd Controllers. The Commission also notes that, once he was ground stabilised, Mr Storrier was restraining Mr Weston towards the upper part of his body. The other Crowd Controller was concentrating on Mr Weston's lower body and legs and, from the CCTV footage, did not come into contact with Mr Weston's head or hands once he was on the ground. The Commission concludes, on the basis of the evidence before it, that the injuries were caused to Mr Weston when he was restrained on the ground by Mr Storrier.
- 33) The Commission notes, from other matters coming before it in recent months, that the action of Crowd Controllers in bending back fingers and ankles is becoming an all too frequent occurrence. Those techniques are not recommended in any of the training provided to Crowd Controllers and the Commission does not regard these restraint techniques as appropriate or necessary in normal circumstances.
- 34) In this instance however the Commission is unable to determine conclusively that Mr Storrier employed this technique on Mr Weston's hands. Mr Storrier denied he did so and the CCTV footage does not assist. Mr Weston was not prepared to attend the Hearing to give his account of the incident. In those circumstances the Commission must find that this element of the complaint is not made out.
- 35) Similarly, the Commission notes and accepts that Mr Weston suffered relatively minor injuries to his face and head however it is not able to determine from the CCTV footage that these injuries were inflicted by Mr Storrier. The Commission finds this element of the complaint is not made out.
- 36) Mr Storrier admitted to kneeling Mr Weston in the back / buttock area and to striking his arms so as to force him to release his grip on the railing and to allow for ground stabilisation. He stated in evidence that he thought those actions were necessary to protect himself, Mr Evans and patrons of the premises from the possibility of being injured by Mr Weston.
- 37) The Commission does not agree that it was appropriate for Mr Storrier to knee Mr Weston. He was already under restraint by two Crowd Controllers and, whilst Mr Weston was certainly struggling, the Commission finds on the evidence before it that this level of force was not necessary. In addition, the Commission notes that the training notes for Certificate II Security Operations provide that knees are not to be used in crowd controller activity. The reasons for this are obvious to the Commission as kneeling or kicking a person has a great potential to cause serious harm.
- 38) The Commission notes from the CCTV footage that Mr Weston was in an agitated state when confronted by the Crowd Controllers and resisted their attempts to remove him from the premises and to stabilise him until the Police arrived. The struggle between Mr Weston and the Mr Storrier and Mr Evans was obviously physical and aggressive with Mr Weston strenuously resisting the efforts of the Crowd controllers to subdue him. In the Commission's view Mr Weston's agitation was perfectly understandable, taking account of the earlier incident in which he attempted to protect the female who was punched.
- 39) The Commission takes this opportunity to express its concerns in respect of how this incident came about. Mr Weston has good cause to believe that he was harshly treated on the night in question. He had witnessed a male person, subsequently identified as an off-duty Crowd Controller, punch a female to the face causing her to fall to the dance floor. Mr Weston, in the Commission's view, did the right thing in the circumstances and intervened to try and prevent any further assault. In doing so he engaged in a brief encounter with another off duty Crowd Controller. When this was witnessed by a Crowd controller on duty

Mr Weston was immediately placed in a head lock, removed forcibly from the premises, arrested by Police and conveyed to the Police Station.

- 40) At no stage was Mr Weston given an opportunity to explain why he was remonstrating with the other person nor was there any attempt by the Crowd Controllers to find out who was the real culprit that caused the altercation. It appears to the Commission that the simple fact that Mr Weston was remonstrating with an off duty Crowd Controller was sufficient for him to be deemed the aggressor and to warrant his forceful removal from the premises. The Commission is aware that violent situations can escalate quickly in licensed premises and that on occasion swift and decision action is required on the part of Crowd Controllers.
- 41) However, that was not the case in this situation. If one of the on duty Crowd Controllers or someone in authority at the premises had made basic enquiries of Mr Weston before ejecting him this complaint may never have arisen and Mr Storrier may not have found himself before the Commission answering the complaint against him. Clause 3.16 of the Code of Conduct for Crowd Controllers requires that licensed Crowd Controllers use mediation, negotiation, communication and conciliation as the primary methods of dealing with clients. None of those techniques were employed in this instance with the result Mr Weston, who was acting as a Good Samaritan, ended up being the victim, including suffering physical injuries and being arrested. The fact he was later released without charge is testimony to the fact he was not the instigator of the incident, a fact that could have been readily ascertained if someone in authority had bothered to speak to Mr Weston.
- 42) None of the above observations reflect on Mr Storrier or his performance of his duties on the night in question. By the time Mr Storrier became involved with Mr Weston the situation had already escalated to a point where a degree of physical force was required to bring the situation under control.

Decision

- 43) For the reasons set out above, the Commission finds, on balance, that Mr Storrier used excessive force in his dealings with Mr Weston by kneeing him in the back. That degree of force was not commensurate with the circumstances with which he was faced. In determining the appropriate penalty the Commission takes into account that Mr Storrier was not the instigator of the original incident involving Mr Weston and when he became involved he faced an agitated and resistant patron.
- 44) In determining the appropriate penalty the Commission also takes account of the fact that Mr Storrier is currently not employed in the private security industry and is not resident in the Northern Territory. For those reasons the Commission is not minded to impose a short suspension of licence that would result in little, if any, personal deterrence to Mr Storrier in terms of his future behaviour as a licensed Security Provider.
- 45) Section 53D(1)(d) of the Act provides for the imposition of a fine where a Crowd Controller is found to have breached a condition of licence. Section 19 prescribes a maximum penalty of 100 penalty units for such a breach, being \$13,300. Taking account of the mitigating factors set out above the Commission determines to impose a fine of \$1,000 in this instance.
- 46) The Commission also directs that a copy of this decision be placed on Mr Storrier's private security file for future reference.

Philip Timney
Presiding Member

4 July 2011