

# Northern Territory Licensing Commission

## Reason for Decision

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<b>Applicant:</b>	Mr Adrian Franklin
<b>Firm Licence Number:</b>	160
<b>Proceedings:</b>	Complaint Pursuant to Section 53A of the <i>Private Security Act</i>
<b>Heard Before:</b>	Mr Richard O'Sullivan (Chairman) Ms Cindy Bravos Mrs Jane Large
<b>Appearances:</b>	Mr Adrian Franklin
<b>Date of Hearing:</b>	24 and 28 August 2012

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### Background

- 1) A complaint was lodged with the Director of Licensing pursuant to Section 53A(1) of the **Private Security Act** ("the Act") on 1 June 2012 against Mr Adrian Franklin, sole Director of Proactive Security Pty Ltd. The complaint alleges that Proactive Security Pty Ltd ("Proactive Security") employed Mr Vincent Lawson to provide security services whilst unlicensed.
- 2) On being advised of the complaint in a letter of 18 July 2012 Mr Franklin admitted to employing Mr Lawson whose licence had expired. In this correspondence Mr Franklin states:

*"I accept entirely that Mr Lawson was employed by me after his licence had expired. I was completely unaware that Mr Vincent had not renewed his licence.*

*It is now, as a result of this matter, my normal practice to keep logs of my employee's licence expiry dates. It is my normal practice to also personally check guards, particularly crowd controllers as I move between the sites, however this particular contact was for only two hours per shift at Bagot Road and accordingly it was not my practice to attend the venue regularly.*

*I had though been advised by Mr Lawson that he had lodged his paperwork for renewal. I now accept that this appears not to have been the case. I note that it is the normal practice of Licensing to advise employers of any suspension of their employee's licence but that obviously does not occur in instances of expiry.*

*I had previously been relying on an honesty system due to the continual turnover of staff. Clearly I can no longer rely on that. Accordingly I have made changes to my work practices. I have commenced gathering copies of the licences of all of my employees and am compiling a register of the renewal dates of licences for my employees."*

- 3) The Northern Territory Licensing Commission ("the Commission") initially determined to consider the complaint on the papers before it as the matter was uncontested.

- 4) The Commission convened on 24 August 2012 and determined it wished to hear from Mr Franklin on the circumstances under which he was unaware that Mr Lawson's licence had expired and to also hear from Mr Franklin on what remedial procedures he had adopted to prevent a recurrence of employing unlicensed security.

## Hearing

- 5) The Commission then on 28 August 2012 met with Mr Franklin.
- 6) The Commission advised on the material before it Mr Lawson had been employed by Proactive Security to work at the Chemist Warehouse located at 187 Bagot Road, Ludmilla from 23 November 2011 continuing through to 3 February 2012.
- 7) The licensing data base held by the Department of Justice indicates that Mr Lawson's dual Security Officer and Crowd Controller licence expired on 2 December 2011. Mr Franklin was informed that this therefore indicated that from the period of 5 December 2011 until 3 February 2012 Mr Lawson had provided security services for Proactive Security at the Chemist Warehouse for a period of thirty-five days whilst unlicensed. Mr Franklin admitted that these were the facts relating to the complaint before the Commission.
- 8) The Commission also noted advice from the Director of Licensing that Mr Lawson was being prosecuted in the Magistrate's Court for conducting the services of security while unlicensed and that this matter was due to be considered on 30 August 2012.
- 9) Mr Franklin advised the Commission that whilst he was in Canada over the Christmas/New Year period of 2011/2012 he was advised that Mr Lawson was lodging the appropriate paper work to maintain his licence. Evidence from the Department of Justice indicates that Mr Lawson had attended the office on 18 January 2012 and enquired about procedures to renew his licence which had already expired on 2 December 2011.
- 10) Mr Franklin gave evidence that his employment of people for Security or Crowd Controller purposes was based on an honour system whereby Security or Crowd Controllers would advise him of their licence status and that he accepted their advice on such matters.
- 11) Mr Franklin informed the Commission that in relation to his business he had approximately forty people working for his firm on weekends and that he had around eighty or ninety licensed personnel on his books who would be contacted to undertake security services when required.
- 12) The Commission put to Mr Franklin that he needed a better system or procedure for identifying the status of security personnel he employed, to which he agreed. The Commission also put to Mr Franklin that, as the Act provided a penalty of up to 100 penalty units for a natural person or 500 penalty units in the case of a Body Corporate where Section 13(2) of the Act had been contravened, that a fine was an appropriate penalty for the breach.
- 13) Mr Franklin agreed that a fine could be an appropriate penalty in this circumstance.

## Consideration of the Issues

- 14) The Commission notes that Mr Franklin admitted to the breaches in his response to the complaint. The Commission also notes that Proactive Security has no prior breach of engaging unlicensed personnel.
- 15) In this case a person had provided security services on behalf of Proactive Security for a pharmacy for two hours, from the time of 6.00pm until 8.00pm, on thirty-five separate occasions whilst that person was unlicensed.
- 16) The requirement to be licensed when conducting such security services is essential to ensure the conduct of such people is appropriate and based on the training and qualifications obtained to gain such a licence. It is noted that Mr Lawson had previously held a dual Crowd Controller and Private Security Officer licence, but for work at the Chemist Warehouse he was only providing security services.
- 17) It is arguable that the provision of Private Security services is less onerous or exposed to risk to that of a Crowd Controller where there is a strong likelihood of dealing with large numbers of people, many of whom are likely to have some level of intoxication.
- 18) The Commission is concerned over the inadequacy of the systems employed by Proactive Security in establishing the bona fides of the licence status of the people it employs.
- 19) Initially the Commission was of a mind to await the Court decision on the prosecution of Mr Lawson and the outcome before determining a penalty for Mr Franklin. The Commission has since been advised that the matter of Lawson was not listed before the Courts until 18 October 2012, with a possibility of further adjournment, and has therefore determined to proceed independently with the complaint against Mr Franklin.

## Decision

- 20) Mr Franklin as a sole Director of Proactive Security has admitted to engaging the services of Mr Vincent Lawson on thirty-five separate occasions to provide security at the Chemist Warehouse. The Commission is also aware of the pay scale applicable to the employment of Mr Lawson and the amount of remuneration Proactive Security receives from the Chemist Warehouse for such services.
- 21) It is the Commission's view that Proactive Security should not gain unjust enrichment from breaching the Act through employing an unlicensed person. The Commission therefore determines a penalty of \$500.00 against Proactive Security, which is to be reduced to \$350.00 based on the mitigating factors, including early admission, the likelihood of the belief that Mr Lawson was licensed and that the breach was due to human error rather than wilful intent.
- 22) Additionally, the Commission is aware that Proactive Security needs to ensure that the engagement of unlicensed personnel does not occur in the future. To achieve this end the Commission requires Proactive Security to develop a schedule of all potential Security or Crowd Controller employees which contains information on the status of the employee licence holder, including commencement and expiry date of the required licence. This schedule is to be provided to the Director of Licensing within thirty days of this decision and maintained to the satisfaction of the Director.

23) Mr Franklin 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

September 2012