

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Discovery
Licensee:	Rediscover Pty Ltd
Licence Number:	80316240
Complaints:	Complaints Pursuant to Section 48(2) of the <i>Liquor Act</i> lodged by the Director of Licensing
Heard Before:	Ms Brenda Monaghan (Presiding Member) Mrs Jane Large Mrs Veronica McClintic
Decision of:	Mrs Jane Large
Date of Hearing:	26 April 2007
Appearances:	Mr Graham Tribe for Director of Licensing and Northern Territory Police Mr Russel Temple for Licensee

- 1) This complaint hearing was listed and heard by a Commission of three. As the Licensee from the outset admitted the breaches, the issue for the hearing panel was limited to penalty. Before a decision was made and published, one Commissioner was unable to proceed and withdrew from the hearing panel. Section 51(2A) of the *Liquor Act* requires the Commission to be constituted by either three members or one member. For this reason, Commissioner Jane Large became the person charged with the responsibility of making the decision on penalty in this matter. Her decision is subject to the rights of review outlined in s51(10A) to (10D) of the *Liquor Act*.¹
- 2) This history of this matter is that complaints were lodged by the Director of Licensing in mid 2006 alleging a failure by the Licensee to comply with the camera surveillance condition of its liquor licence on two (2) occasions. In essence, the first breach related to the inability of the Licensee to provide to Racing, Gaming & Licensing full camera surveillance footage upon request. It was fully accepted by the Director of Licensing at hearing that the breach was a technical one caused by a malfunction of camera equipment. The Director accepted the evidence of Mr Temple that the Licensee was unaware of the malfunction and that it appeared to them that all twenty-four (24) cameras were working when in fact two (2) were not. The second admitted breach related to the failure by the Licensee to properly maintain the Camera Surveillance Register in accordance with the current Camera Surveillance guidelines.

¹ Section 51

51(10A) Where the Commission is constituted by one member, a party who is not satisfied with the decision of the Commission may apply, within 14 days after the decision, in writing to the Chairperson for a new hearing.

(10B) Where a party applies, under subsection (10A), for a new hearing the Chairperson may, if he thinks fit, cause a new hearing to be held.

(10C) Where a new hearing is held, under subsection (10B), the Commission –

(a) shall be constituted by not less than 3 members; and

(b) may make any decision that it could have made if a hearing had not previously been held.

(10D) A decision by the Commission under subsection (10C) shall be in substitution for the decision made at the hearing by a single member in respect of which the new hearing is being held.

- 3) The Licensee admitted the first two (2) complaints and the decision on penalty was deferred until a report was prepared by the Director of Licensing detailing the Licensee's intentions to;
 - a) Implement and maintain good book keeping procedures to ensure compliance; and
 - b) Implement and maintain a reasonable system to ensure that all cameras are recording onto the hard drive.
- 4) The Director of Licensing in his report expressed two significant concerns with the Licensee's In-House Code as follows;
 - a) A concern about restrictions placed on access to camera surveillance recordings by NT Police or Licensing Inspectors; and
 - b) A concern about access to camera surveillance equipment and recordings by the Licensee's security personnel.
- 5) In response to these concerns, the Licensee has agreed to amend the sections of the In-House Code relating to access by Northern Territory Police and Licensing Inspectors to recordings. After some discussion at the hearing, the Licensee has also accepted the view of the Director and the Commission that there can no longer be access to camera surveillance equipment and recordings by the Licensee's security personnel - even if those personnel are also duty managers or persons in similar dual roles. The Commission remains firm in the view that allowing crowd controllers access to recordings is a direct conflict of interest and should not be permitted or approved under any circumstances. It is in the interest of both crowd controllers and Licensees that there can be no allegation that security providers have access to the recordings. This is especially the case in nightclubs and similar venues where crowd controllers must play a significant role in maintaining security on the premises.

Decision

- 6) Pursuant to Section 65 of the *Liquor Act*, we require the Licensee within fourteen (14) days of this decision to amend the In House Code for Discovery in the manner outlined below and to provide a copy of the amended document to the Director of Licensing:
 - a) Clause 5.3 to be amended to read "Crowd Controllers and other security personnel are prohibited from access to camera surveillance equipment and recordings". The words "...except when they are acting as Duty Managers or Executive Consultants" are to be deleted.
 - b) Clause 7.3 to be amended to read "Access to vision and copies of recordings may be obtained etc..."
 - c) Clause 9.1 to be amended to remove the term "Nominee's delegates" from the list of persons allowed access to recordings, as the term is too general.
- 7) The Commission must also consider the question of the appropriate penalty to be imposed on the Licensee as a result of the aforementioned breaches of the camera surveillance guidelines. I have taken into account all submissions made and in particular the following matters:
 - a) That this is the first time that the Licensee has come before us for breaches of the Camera Surveillance Guidelines. The earlier suspended twelve (12) month suspension imposed on the Licensee in an unrelated Decision published on 17 July 2006 specifically advised that that suspension only related to new breaches occurring after that date. It therefore doesn't apply to any decision I make in this matter.
 - b) There is no inference of any tampering with tapes by the Licensee or their staff leading to the first breach.

- c) The Licensee has taken steps to prepare and implement an In House Code for camera surveillance and has indicated a willingness to make the changes to the licence referred to in paragraph 6 above.
- 8) After considering all the issues a penalty on the Licensee of one (1) day suspension of licence is imposed. This suspension to be suspended immediately. It will remain as a suspended suspension for a further twelve (12) months from the date of this decision. If within the next twelve months (12) months, there is a further proven breach of either the *Liquor Act* or the licence conditions that is of similar or greater seriousness to this matter, then the one (1) day suspension will come into force, together with any other penalty that may be imposed for the subsequent breach.

Jane Large
Presiding Member

31 May 2007