Northern Territory Licensing Commission

Reasons for Decision

Respondent:	**Mr Steven James Coates** PO Box 7894 Alice Springs
Licence Number:	Security Officer / Crowd Controller Number 5909
Employer:	O'Brien Security Services
Proceedings:	Complaint lodged under Part 6A of the *Private Security Act*
Heard Before:	Mr Richard O'Sullivan (Chairman) Ms Helen Kilgariff Mr Phil Timney
Date of Hearing:	30 September 2008
Appearances:	Mr Steven Coates Security Officer / Crowd Controller Mr Tony O'Brien, Licensee, O'Brien Security Services Ms Susan Whyte, Licensing Inspector for the Director of Licensing No appearance by Ms Briscoe

Background to the Complaint

1) On 7 March 2008 a complaint and accompanying statement were lodged with the office of Licensing & Regulation by Ms Eva Briscoe (refer to folios 1 – 5 of the Hearing Brief).

2) The substance of the complaint, in Ms Briscoe's words, was:

> **On Thursday 21 February 2008** at approximately 17.10 hours Ms Briscoe entered the Alice Springs Plaza Shopping Centre ("the Plaza") and approached a table where a female patron was already seated. Before Ms Briscoe sat down she was gestured to by a Security Officer to leave the area. Ms Briscoe asked why she was required to leave the area and was advised by the Security Officer because she had caused trouble on the previous Sunday. Ms Briscoe asked the security officer for his security number and received no response.
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> **On Monday 25 February 2008** at approximately 17.30 hours Ms Briscoe was asked by a Security Officer to leave the Plaza on the grounds she was "humbugging" patrons of the Centre. Ms Briscoe asked the Security Officer for his security number. The Security Officer did not advise Ms Briscoe of his security number.
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> The "Security Officer" in question was subsequently identified as Mr Steven James Coates, a casual employee of O'Brien Security Services and the holder of a dual crowd controller / security officer license number 5909.

3) By letter dated 7 April 2008, the Acting Deputy Director of Licensing (South) wrote to Mr Coates, informing him of the substance of the complaint and seeking his comments in response to the complaint (refer to folios 10 and 11 of the Hearing Brief). That letter identified the nature of the complaint as being an alleged breach of section 54 of the *Private Security Act* ("the Act"), failure to wear the identification prescribed by Regulation 4 of the *Private Security (Crowd Controllers) Regulations* for a crowd controller.

4) Mr Coates did not submit formal written comments in respect of the letter of complaint. However, on 10 April 2008 he phoned the office of Licensing & Regulation and advised that he was under the impression that his duties at the Plaza were in his capacity as a Security Officer and not a Crowd Controller (with the obvious inference that there was no requirement under the Act for him to wear the identification prescribed for a Crowd Controller).

Commencement of the Hearing

5) Mr Coates appeared in person at the hearing, together with his employer, Mr Tony O'Brien. Neither was legally represented. Ms Briscoe did not attend the hearing. The Commission noted that Ms Briscoe had been advised of the time and date of the hearing. Inspector Whyte advised the Commission that attempts had been made to contact Ms Briscoe however she had left her previous address without leaving a forwarding address and that attempts to locate her had failed. On the basis Ms Whyte was in attendance, and available to advise the Commission in respect of the complaints, together with the fact that Ms Briscoe had been advised of the hearing date, the Commission determined to continue with the hearing in the absence of Ms Briscoe.

6) At the commencement of the hearing the Chairman raised with the parties several inconsistencies in respect of the dates on which the alleged offences were said to have occurred. Ms Briscoe referred in her statement to incidents at the Plaza 21 and 25 February 2008. The letter to Mr Coates from the Acting Deputy Director (South), referred to in paragraph 3 above, identified the dates on which the offences were alleged to have occurred as 21 and 28 February 2008.

7) Following the reading of the complaints by Licensing Inspector Susan Whyte, Mr Coates conceded that he was not wearing any identification at either time that he approached Ms Briscoe in the Plaza as he was working in his capacity as a Security Officer at the time and that he was not required to wear identification when engaged in that capacity. Accepting Mr Coates' frank admission that, up until the time of the incident involving Ms Briscoe, he was under the impression he was not required to wear identification, the Commission determined that no material issues arose from the confusion in respect of the dates of the alleged offences.

Submissions and Evidence at the Hearing

8) Mr Coates entered the witness box and was sworn. He gave evidence that he knew Ms Briscoe and had had several dealings with her in the course of his employment. Mr Coates stated that the chronology of events set out in the statement of Ms Briscoe was seriously flawed and that he could only recall one (1) incident involving Ms Briscoe around the time of the alleged offences, that being on Sunday 24 February 2008. Mr Coates recalled two (2) separate conversations with Ms Briscoe on the same day. He recalled that day as being a Sunday as he recollects only Wendy's being open and they are the only eating establishment open on Sundays.

9) Mr Coates recalls seeing Ms Briscoe at the dining tables near Wendy's. He gave evidence she was observed humbugging another patron, acting in an aggressive manner and being "foul mouthed". Mr Coates stated that he asked Ms Briscoe to move on from the Plaza following which she tried to enter a lift near Wendy's, following a cleaner who had just entered the lift. Mr Coats stated that he then escorted Ms Briscoe from the premises and may have held her arm in doing so.

10) Mr Coates, in evidence, confirmed the advice provided to Licensing & Regulation in the telephone conversation of 10 April 2008 that, at the time, he was under the impression he was engaged as a Security Officer with the result he was not required to wear identification. Mr O'Brien confirmed to the Commission that he was also of that view at the time of the alleged offences involving Mr Coates. Mr O'Brien stated that, at the time, he did not require

his shopping centre security staff to wear identification nor did he provide them with the prescribed identification badges.

11) Mr Coates acknowledged candidly that his duties whilst engaged at the Plaza included screening persons who entered the Plaza, monitoring the behaviour of people at the shopping centre and removing troublesome, intoxicated and unruly persons from the premises. Mr Coates also admitted freely that, at times, he was required to employ reasonable force to remove people causing a disturbance at the premises. Mr Coates acknowledged that during his employment at the Plaza he had removed numerous people form the premises for their unruly behaviour and/or level of intoxication. He also gave evidence that he was often required to carry some patrons from the premises due to their state of intoxication.

12) Of significance in terms of the Commission's deliberations, Mr Coates gave evidence that he did not believe at the time of the incident involving Ms Briscoe that he was required to wear identification as he was engaged as a Security Officer and not in the capacity of a Crowd Controller.

13) Mr O'Brien informed the Commission that there was significant confusion within the security industry as to whether staff engaged to provide security services at non-licensed venues, such as shopping centres, banks and the courts, were engaged as Security Officers or Crowd Controllers. He informed the Commission that there was a view held in certain sectors of the security industry that Crowd Controllers were engaged to provide security for premises licensed for the sale of liquor and that Security Officers were engaged to provide those services to non-licensed premises, such as shopping centres, banks, the courts and the like.

14) Mr O'Brien advised that he had received telephone advice from a staff member of Licensing & Regulation to the effect that security personnel engaged at shopping centres and the like were probably best classified as Security Officers and, as such, were not required to wear identification. Mr O'Brien conceded that the advice was equivocal and that the staff member had advised it was a grey area and there was no certainty.

15) Mr O'Brien also informed the Commission that he had received advice previously from Mr Chris McIntyre of Licensing & Regulation that security personnel at shopping centres were classified as Security Officers and, as such, were not required to wear identification. Mr O'Brien also referred the Commission to a hearing brief prepared in November 2005 in respect of unrelated alleged breaches of the *Private Security Act* as further evidence of the uncertainty in respect of the requirement for security personnel in certain situations to be required to wear identification.

16) Mr O'Brien informed the Commission that since the laying of this complaint against Mr Coates in February 2008 he has instructed all security personnel employed by his company and engaged at shopping centres to wear the identification prescribed for Crowd Controllers. Mr O'Brien advised further that he was in fact in support of such a move as it made it easier for him to identify a staff member should he receive complaints from members of the public or enquiries from Licensing & Regulation.

17) Mr O'Brien confirmed that prior to the incident relating to Mr Coates he did not instruct his shopping centre security personnel to wear identification. However, he saw no difficulty in requiring them to do so should the Commission's decision require his staff at shopping centres to wear identification. Mr O'Brien advised that he had been attempting to resolve the issue for a number of years however he had received conflicting advice on a number of occasions from a number of sources and that he would welcome a ruling from the Commission that clarified the position once and for all.

18) The Commission also noted the comments of Senior Licensing Inspector South, Mr Wayne Sanderson, in an email to Mr Chris McIntyre. The email was admitted into evidence as Exhibit 2 and contained the following comments:

Mr Coates was not assigned a number by his employer. His employer has since contacted us for clarification of roles and now assigns numbers when required.

For this matter to succeed at hearing, all elements of the offence must be established. 'The number assigned to the crowd controller by his or her employer', is an element of the offence, and as stated above, he was not assigned a number.

Given the above, and the fact that the employer has acted on the advice he sought regarding roles etc, I cannot see any point in pursuing this matter further. The situation has been rectified and there is insufficient evidence for the matter to succeed.

19) The Commission noted that the email advice confirmed Mr O'Brien's advice to the Commission that he had been seeking clarification of the issue prior to the incident involving Mr Coates.

20) The Commission did not however agree with the comment that there was no point in pursuing the matter further and considered that the complaint against Mr Coates represented something in the nature of a test case and provided the Commission with the opportunity to deliver a formal ruling in respect of the requirement for security providers, operating in shopping centres and the like in circumstances similar to those of Mr Coates, to wear the prescribed identification.

Matters taken into consideration

21) In reaching its decision as to whether Mr Coates had committed a breach of the Act in not wearing identification at the time of the incidents involving Ms Briscoe, the Commission carefully considered the relevant provisions of the Act and, in particular, the statutory definitions of a Crowd Controller and Security Officer.

22) Section 5 of the Act provides the definition for "Crowd Controller" as follows:

> ***5. Crowd controllers***
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> *In this Act, a crowd controller is a person who, in respect of licensed premises within the meaning of the Liquor Act, a place of entertainment,* ***a place to which the public has access*** *or a public or private event or function, as part of his or her duties, performs the function of –*
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> *(a) controlling or monitoring the behaviour of persons;*
>
> *(b) screening persons seeking entry; or*
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> *(c) removing persons because of their behaviour,*
>
> *or any other prescribed function. (Emphasis added).*

Section 6 of the Act provides the following definition of "Security Officer":

> ***6. Security officers***
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> *In this Act, a security officer is a person who, for reward, patrols or guards another person's property.*

23) Clearly, the circumstances in which a person engaged in providing security services for which a Crowd Controller licence is required extend beyond the provision of those services on licensed premises. A person who performs any one of the three (3) functions set out in Section 5(a), (b) or (c) in a "place to which the public has access" is required to hold a Crowd Controller's licence.

24) The Commission is in no doubt that the Plaza is “a place to which the public has access”, subject to the normal powers of the occupier to deny entry to certain persons.

25) As such, the question as to whether a security provider performing functions as part of his security duties at the Plaza is to be determined by consideration of whether that person performs any of the functions specified in Sections 5(a), (b) or (c).

26) As set out in paragraph 11 above, Mr Coates admitted candidly and openly that he was required to perform each of the functions specified in Section 5 of the Act whilst engaged to provide security services at the Plaza. The Commission also noted that the duties performed by Mr Coates for his position at the Plaza involved far more than simply “patrolling or guarding another person’s property and in fact involved considerable and constant contact with members of the public attending at the Plaza. That personal interaction is not an activity that would normally be associated with the functions of the Security Officer.

27) As a result the Commission determined that Mr Coates was performing the functions of a Crowd Controller at the time of the incidents involving Ms Briscoe and, for that matter, at all times he was engaged to provide security services at the Plaza whilst the premises were open to the public. As such Mr Coates was required to comply with section 54 of the Act.

28) Section 54 of the Act provides:

> ***54. Identification to be worn by crowd controller***
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> *When acting as a crowd controller, a licensed crowd controller shall wear such identification, if any, as is prescribed, so that the identification is clearly visible.*
>
> *Penalty: 50 penalty units.*

29) Regulation 7 of the *Private Security (Crowd Controllers) Regulations* prescribes the type of identification to be worn by Crowd Controllers.

30) Mr Coates gave evidence that he was not wearing the prescribed identification at the time of the incidents involving Ms Briscoe. He also confirmed that he had not worn the identification at times leading up to that incident as he was under the impression that whilst engaged to provide security services at the Plaza he was acting in the capacity of a Security Officer and, in that capacity, there is no requirement for the wearing of identification.

31) Again in frank admissions to the Commission, Mr O’Brien confirmed that was the case and that he did not instruct any of his staff operating at shopping centres to wear identification on the basis they were engaged as Security Officers and not Crowd Controllers. As set out above, Mr O’Brien advised the Commission that since the incident involving Ms Briscoe he had instructed all his security staff to wear the prescribed identification when providing services at shopping centres.

Decision of the Commission

32) The Commission determined that the complaints, as laid by Ms Briscoe against Mr Coates, were valid. However, taking account of the confusion in respect of the requirement for security providers operating at shopping centres to wear identification, and in particular the advices provided to Mr O’Brien by officers of Licensing & Regulation, the appropriate determination was that no further action is warranted. Refer Section 53D(1)(b) of the Act.

33) The Commission requested that the Legal Member prepare an advice on the issue of the requirement for security providers at shopping centres and the like to wear the prescribed identification whilst on duty when the premises are open to members of the public. A copy of that advice is attached to this decision. The Commission also requested that the Director circulate the advice, once prepared, to all licensed security firms.

34) As an aside, during the course of the hearing the Commission was referred to log books for security providers engaged by Mr O'Brien at the Plaza (Refer to folios 7 to 9 of the Hearing Brief). The log books were deficient in a number of respects. Namely, that Mr Coates was not shown as being on duty on the day of the alleged incident involving Ms Briscoe, nor was there any notation in the log book of that incident or the fact that Ms Briscoe had been removed from the premises by Mr Coates.

35) Mr O'Brien conceded that the log books were deficient. He stated to the Commission that completing the paperwork was not always the highest priority for his security providers and that, in the course of a busy day, the log books may not always be kept up to date.

36) The Chairman expressed his concern to Mr O'Brien regarding this situation and stressed the need for accurate records to be kept of not only the personnel on duty on a particular but also the proper recording of all incidents involving the eviction or physical handling of patrons of the Plaza. The Chairman emphasised to Mr O'Brien that the lack of proper records, as was the case in this situation, has the potential to prejudice a hearing into complaints against security providers and directed that Mr O'Brien take the necessary steps to ensure that all his employees were made aware of the requirement to maintain the attendance and incident report logs in a timely and accurate manner.

37) Finally, I take the opportunity to relay to Mr Coates and Mr O'Brien the thanks of the Commission for the honest and forthright manner in which they presented their evidence at the hearing and for their assistance in resolving the issue of the categorisation of security providers at shopping centres.

Richard O'Sullivan
Chairman

October 2008