

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Annie's Place
Licensee:	Annie's Place (NT) Pty Ltd
Licence Number:	80105018
Proceeding:	Complaint Pursuant to Section 48(2) of the <i>Liquor Act</i> Breaches of Section 102-Liquor not to be Sold to Intoxicated Persons and Section 121-Failure to Exclude or Remove Persons
Heard Before:	Mr Richard O'Sullivan (Chairman) Ms Helen Kilgariff Mr Paul Fitzsimons
Date of Hearing:	24 March 2010
Appearances:	Mr Matt Mulga for the Licensee Deputy Director Chris McIntyre for the Director of Licensing

Background

- 1) A complaint pursuant to Section 48(2) of the *Liquor Act* ("the Act") was lodged against the Licensee of Annie's Place alleging a breach of the Act under both Section 102 – Liquor not to be sold to intoxicated persons and Section 121 - Failure to exclude or remove persons.
- 2) On Monday 8 June 2009 Licensing Inspectors Susan Whyte and Paul Drake visited Annie's Place at approximately 22:00 hours. They observed there were approximately fifty (50) patrons at the licensed premises with around twenty-five (25) inside and a further twenty-five (25) in the beer garden area.
- 3) They observed a male whom they estimated to be around thirty-five (35) years of age who appeared to be unsteady on his feet and at one stage was seen to stumble into a table near to the Inspectors. The premises and this patron were monitored for around thirty (30) minutes when he was then seen to approach the bar area and order a drink.
- 4) On the patron being served the drink (a glass of beer) and departing the bar area the Inspectors approached the bar attendant (female) who had just served the patron and sought the bar attendant's view on the sobriety of the patron in question.
- 5) The bar attendant expressed the view that the patron was not intoxicated but when the bar attendant together with the Inspectors observed the patron moving out to the beer garden, his movements indicated he was unsteady on his feet.
- 6) The bar attendant indicated that she would now put the patron on water which he was then served and on drinking the glass of water, immediately departed the licensed premises making a rude gesture to the bar attendant as he did so.
- 7) Inspector Drake subsequently lodged a complaint relating to the incident with the Deputy Director South on the basis of the alleged breach of both Sections 102 and 121 of the Act.

8) Section 102 states:

102 Liquor not to be sold to intoxicated person

A licensee or a person employed by a licensee shall not sell or supply liquor to a person unless the person to whom it is sold or supplied is not intoxicated at the time (the onus of proof of which lies with the defendant).

9) Section 121 states:

121 Power to exclude or remove persons

(1) A licensee or employee of the licensee shall, or an inspector may, exclude or remove a person, not being a bona fide resident of the licensee's licensed premises, from the licensed premises if the person is intoxicated, violent, quarrelsome, disorderly or incapable of controlling his behaviour.

10) The complaint was then referred to the Licensing Commission who determined to conduct a Hearing pursuant to Section 49(2) of the Act.

11) Section 49(2) states:

49 Decision on consideration of complaint

(2) The Commission must consider a complaint, the report or reports of the Director and any comments forwarded to the Commission under section 48(6) and must:

(a) if the Commission is of the opinion that the complaint is of a frivolous, irrelevant or malicious nature – dismiss the complaint and direct the Director to inform the person who made the complaint that the complaint has been dismissed;

(b) direct the Director to inform the person who made the complaint that the complaint has been investigated but no further action is warranted; or

(c) conduct a hearing in relation to the complaint.

Hearing

12) Deputy Director McIntyre briefly outlined the nature of the complaint before the Commission and called upon former Inspector Paul Drake to give evidence.

13) Mr Drake stated that on the evening of Monday 8 June 2009 he and Inspector Susan Whyte had observed the patron greeting and hugging people in a manner which appeared to annoy other patrons. He stated he observed the patron stumble at a table near to where he and Inspector Whyte were seated. They had been watching the patron for around thirty (30) minutes when he went to the bar and ordered a beer. At this time they approached the bar attendant to seek her views as to whether she considered the patron was intoxicated.

14) Upon observing the departure of the patron from the bar area, where he was seen to be somewhat unsteady in stepping out to the beer garden, she advised that she would put him on water. Former Inspector Drake gave evidence that the patron appeared animated and annoyed when told he was to be put on water resulting in his gesturing rudely to the bar attendant behind her back, after he had drunk the water and was departing the licensed area.

15) Former Inspector Drake advised that neither Inspector approached the patron over his evident level of intoxication and they did not seek his removal from the licensed premises.

16) The evidence submitted was that there was one (1) bar attendant serving around fifty (50) patrons in the area with the other staff member occupied in the kitchen.

- 17) The Nominee, Mr Matt Mulga, advised the Commission that he was not present in the bar area at the time of the alleged breaches of the Act but he had the opportunity the day following the alleged breach to review the CCTV footage.
- 18) Mr Mulga's evidence was at the time the patron had been served his last alcoholic drink and when he left the bar area he could observe that the patron was probably intoxicated due to his slightly unsteady movements. He stated: "*it would appear that a breach perhaps occurred*" on the basis of his viewing of the footage. He therefore did not contest that breaches of Sections 102 and 121 of the Act had occurred.
- 19) Mr Mulga advised the Commission that the bar attendant on duty at the time had worked for him for about six (6) months prior to the incident and that she had other experience as a bar attendant. The bar attendant is no longer in his employ. He advised that the bar attendant had RSA Certification and that she would have appeared at Hearing if she had not been otherwise engaged in employment elsewhere in a travel agency at the time.
- 20) The Commission noted in the Hearing Brief that the bar attendant had contested that the patron was intoxicated when she had served him during and earlier in the night stating that he appeared to be sober and was well able to hold a conversation with her. This statement infers that it is her contention that it was only his behaviour after being served the last alcoholic drink (a beer) that he showed signs of intoxication.

Consideration of the Issues

- 21) The Commission accepts that breaches have occurred and that the patron in question was intoxicated at the time Inspectors observed him purchasing a glass of beer. The Commission also notes that the Inspectors were on the premises for a considerable time and that if the patron had been showing alarming signs of intoxication or aggression they would likely have intervened. That they did not do so indicates to the Commission's satisfaction that the patron was at the lower end of intoxication without posing a danger to other patrons or staff or likely to cause harm.
- 22) The Commission also noted that the Nominee had not contested the alleged breaches and gives credit to this admission and co-operative approach.
- 23) In relation to penalty Deputy Director McIntyre advised of two (2) previous breaches in the eleven (11) years during which Mr Matt Mulga has been the Nominee of Annie's Place. The two (2) former breaches were in 2001 and in 2008 and both related to service of alcohol to a patron after 9.00pm to a patron who had not purchased a meal.
- 24) He submitted that these infringements were to a degree based on the unique and somewhat unusual licence conditions operating at the premises. In the last instance of a breach (2008) the Commission determined the appropriate penalty was a formal letter of reprimand. The Commission also referred in that penalty decision for the need to amend the anomalous conditions of the licence. To this end the Commission notes that the Nominee had himself made application and agreed to vary his licence conditions to a more standard type.
- 25) Deputy Director McIntyre referred to management of the premises and noted that the CCTV coverage was not a condition of the licence although a form of CCTV surveillance was in place at Annie's Place. He also referred to the need for Annie's Place to consider the provision of security at busy times.

Decision

- 26) The Commission warns the Licensee of obligations imposed on licence holders and the need to properly and effectively manage patron behaviour at all times during operating hours. It notes advice from the Nominee that security is in place on Thursday and Friday nights, typical busy periods for the premises.

- 27) The Commission urges the Licensee to ensure adequate security is in place at all busy times.
- 28) The Commission requires the Licensee to install CCTV camera coverage of all the licensed area to the satisfaction of the Deputy Director South and for the Camera Surveillance Requirements and Guidelines approved by the Commission and the relevant condition be inserted in the licence. The Licensee is to meet the CCTV requirements by 1 June 2010.
- 29) The Commission further suspends the liquor licence of Annie's Place on a Monday evening as determined by the Deputy Director from 9.00pm until closing.
- 30) The Commission notes the Licensee, in meeting the CCTV requirements, will incur some considerable expense and it also notes that the suspension imposed is not drastically punitive in itself but places on the record a suspension which would be built on if any future breaches occur at the premises.

Richard O'Sullivan
Chairman

26 March 2010