

Northern Territory Licensing Commission

Reasons for Decision

Premises:	Monsoons 46 Mitchell Street Darwin NT 0800
Licensee:	Tropics Holdings Pty Ltd
Licence Number:	80315790
Nominee:	Glen Michael Parsons
Proceedings:	Hearing to consider complaints alleging that the Licensee breached Section 102 and 121 of the <i>Liquor Act</i> , namely: (1) Selling and supplying liquor to an intoxicated person; and (2) Failing to remove an intoxicated person from the licensed premises
Heard Before:	Mr Richard O'Sullivan (Chairman) Mr Philip Timney (Legal Member) Ms Cynthia-Lee Bravos
Appearances:	Mr Ray Murphy, Counsel for the Licensee Inspector Mark Wood for the Director of Licensing
Date of Hearing:	2 June 2011

Background

- 1) A complaint has been lodged by Licensing Inspector Peter Cookson alleging breaches of the *Liquor Act* ("the Act") with the following outline of matters.
- 2) In the early hours of Saturday 01 January 2011, Licensing Inspectors attended the premises of Monsoons to conduct an inspection.
- 3) At approximately 2.22 am, Licensing Inspectors located a person in the premises, namely Mr Samuel Kane, who appeared to be intoxicated. Mr Kane appeared unsteady on his feet and was swaying from side to side with what appeared to be an alcoholic drink in each hand.
- 4) Licensing Inspectors then instructed a Crowd Controller employed by the Licensee to remove Mr Kane from the premises.
- 5) Mr Kane was then escorted to the front of the premises where he was spoken to by Licensing Inspectors. Mr Kane advised that he had arrived at the premises sometime after midnight after having consumed liquor earlier in the evening at a private residence and thereafter at another licensed venue. Mr Kane advised the Licensing Inspectors that he was "*pissed*". Mr Kane then left the premises and a short time later, left the area.
- 6) By way of correspondence dated 4 January 2011, a Licensing Inspector requested that the Nominee provide closed circuit television (CCTV) footage pertaining to the early hours of 1 January 2011.

- 7) On 8 February 2011, a Licensing Inspector viewed the supplied CCTV footage. The CCTV footage showed Mr Kane entering the premises at approximately 1.23am on 1 January 2011 and about 2.07am, being served two glasses of what appears to be mixed spirits.
- 8) On 9 February 2011, the Director of Licensing sent details of the complaints alleging breaches of Sections 102 and 121 of the Act, to the Licensee and the Nominee. On 23 February 2011, the Nominee advised that a response to the complaints would be forthcoming on 24 February 2011, however, the Director of Licensing advises the Northern Territory Licensing Commission ("the Commission") that no response has been forthcoming.
- 9) By report dated 8 March 2011, the Director of Licensing recommended that the Commission conduct a Hearing in respect of the alleged breaches.
- 10) By way of correspondence dated 25 March 2011, the Commission advised the Licensee and the Nominee of its intent to conduct a Hearing into the matter.

The Hearing

- 11) On 2 June 2011, the Commission conducted a Hearing into this matter at the Commission's Hearing Room in Darwin.
- 12) The Director of Licensing submitted an agreed set of facts, the substance of which is detailed in the background information above.
- 13) The Licensee admitted to the breaches of Sections 102 and 121 of the Act.

Submissions on Penalty

- 14) Mr Wood submitted that the harm caused by the offending was at the lower end of the scale. The majority of liquor consumed by Mr Kane had occurred prior to his entry into Monsoons, he had not been involved in any other incidents and he was in the company of a friend. However, Mr Wood also advised the Commission that it was well established that a small incident on Mitchell Street can often escalate.
- 15) Mr Wood advised the Commission that, as the Licensee had assisted with the investigation, the parties had agreed on a set of facts prior to the Hearing and the Licensee had admitted to the breaches, the mitigating factors should be taken into account when determining a penalty.
- 16) Mr Wood advised the Commission that the Licensee Company had an unblemished record since taking over Monsoons in June 2007 and as it was a first offence, a one day suspension would be an appropriate penalty. Whether or not it was to be served was for further consideration and determination by the Commission.
- 17) Mr Murphy tendered written submissions on penalty, the substance of which is that the Licensee had taken proactive steps to prepare for the New Year's Eve festivities, which included the employment of extra employees on the evening (a total of 47 employees were on duty that night) involving extra crowd controllers and bar staff. Mr Murphy also submitted that CCTV footage relating to this matter also shows that shortly before Licensing Inspectors located Mr Kane, a number of police officers and crowd controllers had conducted patrols in the vicinity of Mr Kane and had not identified Mr Kane as an intoxicated person. Mr Murphy submitted that the conclusion to be drawn from this was that Mr Kane was not displaying overt signs of intoxication at that time.
- 18) Mr Murphy called the Nominee who gave evidence supporting the written submissions. The Nominee also advised the Commission that the Licensee was implementing a number of initiatives to minimise the possibility of a further breach, one of which includes the introduction of Staff 'Fun Police' whereby persons displaying signs that indicate that they are on their way to becoming intoxicated are identified with stickers placed on the identified

patron in the design of a Police badge, with the words “*you have been noticed by our Fun Police – removal by Fun Police only*” and prohibited from consuming further alcohol on the premises. Any patron who detaches the sticker is automatically removed from the premises.

- 19) At the suggestion of Mr Murphy, and with agreement from Mr Wood, the Commission then viewed the CCTV footage relevant to this complaint. The Commission is of the view that the footage viewed correlates with the agreed set of facts and submissions made by both parties.
- 20) Mr Murphy submitted that as the offending was at the very lowest level of the scale and that as the Licensee had cooperated by conceding to the breaches, the Commission is justified in finding the breaches proven but that no further action should be taken.

Consideration of the Issues

- 21) The apparent or visual signs of intoxication displayed by Mr Kane while on the licensed premises were evidently at the lower end of the scale of seriousness. This is evidenced by the number of Police Officers and Inspectors who, at times, were in the vicinity of Mr Kane and yet did not suspect or detect his state of intoxication.
- 22) The Commission’s viewing of CCTV footage of the night confirms in its mind that signs of intoxication exhibited by Mr Kane were not overt or easily recognisable. On entry into the premises Mr Kane is in clear CCTV view for a minute or more and in this period appears upright and in full control of his movements. Street CCTV coverage of Mr Kane after departing the licensed premises does clearly show Mr Kane to be unsteady on his feet and having difficulty maintaining his balance.
- 23) Inspector Cookson became alerted to Mr Kane’s intoxicated state when he regurgitated some fluid while on the dance floor. This act, rather than other manifest physical signs or demeanour, was responsible for Inspector Cookson checking Mr Kane’s state of intoxication and taking action to have him removed.
- 24) Mr Kane’s time on the premises, with entry at approximately 1.23am and removal at around 2.30am, was just over one hour and he, for all outward appearances, has contained signs of his intoxication. The one exception is the regurgitation of fluid seen by Inspector Cookson.
- 25) While non-detection of the intoxication of a patron by the Licensee (through its staff and agents) is a clear breach of the Act, the fact that the intoxicated behaviour was not also detected by Police and other Licensing Inspectors affords grounds for the Commission to view the breach at the lower end of seriousness. Taking this factor into account, combined with early admission and cooperation of the Licensee, the Commission is therefore inclined to exercise leniency in terms of penalty.

Decision

- 26) The Commission finds that Licensee breached Sections 102 and 121 of the Act; namely by:
 - a) Selling and supplying liquor to an intoxicated person; and
 - b) Failing to remove an intoxicated person from the licensed premises.
- 27) The Commission determines, on the basis of the Licensee’s unblemished record prior to this incident, its early admission of the breach and the co-operation in the investigation of the complaint and the other mitigating factors set out above, that the appropriate penalty in the circumstances of this complaint is a formal reprimand. The Commission directs the Director of Licensing to issue a formal written reprimand to the Licensee, to be maintained on the Licensee file and taken into account should, in future, the Licensee commit a further breach or breaches.

Richard O'Sullivan
Chairman

29 June 2011