

NORTHERN TERRITORY LIQUOR COMMISSION

DECISION NOTICE

MATTER: DISCIPLINARY ACTION PURUSANT TO LIQUOR ACT AND TRANSFER OF LIQUOR LICENCE APPLICATION

REFERENCES: LC2020/058 and LC2020/052

LICENCE NUMBER: 80802460

LICENSEE: Mr Antony Zaki Habib

APPLICANT: Mr Robert Habib Bitar

PREMISES: Bojangles Restaurant & Saloon
80 Todd Street
ALICE SPRINGS NT 0870

LEGISLATION: Part 7, Division 3 of the *Liquor Act 2019*
Part 3, Division 8 of the *Liquor Act 2019*

HEARD BEFORE: Mr Russell Goldflam (Acting Deputy Chairperson)
Ms Pauline Reynolds (Health Member)
Mr Blair McFarland (Community Member)

DATE OF HEARING: 11 January 2021

DATE OF DECISION: 11 January 2021

DECISION

1. On 11 January 2021, the Northern Territory Liquor Commission ("the Commission") heard and upheld a complaint against Antony Zaki Habib ("Mr Habib") on the ground that the licensee is not a fit and proper person to hold the liquor licence ("the licence") over Bojangles Restaurant and Saloon ("the premises").
2. The Commission determined to take the following disciplinary action:
 - a. The licensee is disqualified from holding a licence for a period of ten years from 11 January 2021.
 - b. The licence is cancelled.
3. Also before the Commission was an application by Mr Robert Habib Bitar ("Mr Bitar") to authorise the transfer of the licence to him. On 11 January 2021 the Commission refused the application.

STATEMENT OF REASONS

BACKGROUND

4. Bojangles Restaurant and Saloon, which was first granted a liquor licence in August 1990, is the oldest of four popular licensed venues located in the immediate vicinity of the grounds of the Alice Springs Town Council in the Alice Springs CBD. With its wild-west-in-the-outback themed decor, Bojangles is a distinctive feature of the town. In recent years Bojangles has had a chequered history, with a succession of licensees and extended periods of closure. The proprietors of the premises are Ms Lori Ventura-del Giacco and her husband Mr Bartolomeo del Giacco.
5. Mr Habib has lived in Alice Springs since 1982. He has worked in various jobs, including as a taxi driver, and run various businesses, but before becoming the Bojangles licensee, he had no experience in the liquor industry.
6. In 2016, the premises had been closed for some two to three years. Mrs del Giacco suggested to Mr Habib that he apply for the licence. He agreed to “give it a try”¹ and applied to have the licence transferred into his name. On 14 December 2016 his application was granted, and Mr Habib became the licensee. He also continued to drive a taxi.

THE LICENSEE

7. On 13 December 2017 an employee of Mr Habib was detected unlawfully and covertly selling takeaway liquor to a Bojangles patron at the rear of the premises. There was no evidence that Mr Habib was aware of this, and accordingly on 26 November 2018 the ensuing complaint against him was dismissed by the Commission. However, these proceedings should have alerted Mr Habib both to the importance of effectively supervising and managing his staff, and the seriousness of sly grogging.²
8. On 17 May 2018, Licensing NT was alerted to an incident in which Mr Habib had failed to remove a person who was drunk from the premises that day. The ensuing complaint was heard and upheld by the Commission on 19 February 2019.
9. In 18 July 2018 the Commissioner of Police issued a warning letter to Mr Habib threatening to suspend the licence pursuant to section 48B of the *Liquor Act 1978* due to the levels of drunkenness observed by police at the premises, and the associated threat to public safety.
10. On 26 November 2018, Mr Habib again failed to remove a drunk patron from the premises, an offence that was detected by police. On 13 August 2019 the Local Court convicted Mr Habib of this offence and imposed a fine of \$4,500.
11. Four days after committing this offence, on 30 November 2018, a delegate of the Commissioner of Police suspended the licence for a period of 48 hours on the basis that the concerns about which Mr Habib had been warned had not been addressed, following

¹ Oral evidence of Mr Habib.

² Northern Territory Liquor Commission decision LC2018/142, 26 November 2018.

the detection of “a number of alleged breaches of the Liquor Act in the past week, as well as ongoing issues of antisocial behaviour in and around the licensed premises.”³

12. On 19 February 2019 the Liquor Commission upheld the complaint against Mr Habib arising from the incident of 17 May 2018. The Commission imposed a monetary penalty in the amount of \$3,850. On that occasion, the Commission, which was constituted by the same three members as presided over the current proceedings, characterised Mr Habib’s submissions that the patron in question was suffering from a medical condition and was not drunk, as “fanciful, and did Mr Habib no credit”. The Commission also made the following remarks in its decision notice published to Mr Habib on 22 March 2019:

The Commission remains concerned about Mr Habib’s remarkably cavalier response to this complaint. When first confronted by [a Licensing NT officer], who arrived at the premises a few minutes after the ambulance had taken SM [the drunk patron] away, Mr Habib denied having seen SM inside the premises. This initial denial was demonstrably false. The CCTV shows that Mr Habib had personally served SM with a drink at 12:47 pm, and that at 2:08 pm he had walked out of the premises, where he remained for several minutes talking to other staff while SM was lying on the footpath a few feet away from him.

13. On 10 March 2019, less than a month after the Commission’s decision, police observed ongoing brawls involving a large number of drunk persons who had exited the premises, causing one person to be knocked unconscious. Arising from these events, on 15 March 2019 a delegate of the Commissioner of Police sent a further warning letter to Mr Habib, threatening a further suspension of the licence. In that letter, Commander Currie stated:

Police have concerns about your ability to effectively manage the safety and security of people on and in the vicinity of your premises.

14. One week later, on 22 March 2019, and a month after being the subject of disciplinary action by the Commission for failing to remove a drunk person from the premises, Mr Habib’s employees again failed to remove a drunk person the premises, and in addition sold liquor to that person while he was drunk. These breaches of the Act came to light when, as the Commission observed in the decision notice it issued for the complaint arising from these events, “the patron vomited copiously onto a public footpath in the entertainment precinct of Alice Springs on a Friday night, at a time when there was significant pedestrian traffic. This was, in a word, disgusting.”⁴

15. On 15 January 2020 the Liquor Commission upheld the complaint arising from this incident. The Commission suspended the licence for a period of 48 hours. In its decision notice issued on 20 January 2020, the Commission referred to Mr Habib’s “dismal record of compliance with the Act” and stated:

The contravention of the licence is serious. The Supreme Court of the Northern Territory has held that the proper conduct of licensed premises is of such public importance that licensees who are granted the privilege of selling liquor can

³ NT Police Fire & Emergency Services, Media Release, 30 November 2018.

⁴ Northern Territory Liquor Commission, LC2019/129, 19 January 2020.

reasonably be expected to assume responsibility for the acts of their employees when selling liquor on their behalf.⁵

...

Throughout the hearing, the licensee complained that these and previous proceedings against him were “unfair”. The articulated basis of this complaint was that he was being blamed for the poor conduct of his employees. The Commission is concerned at what appears to be a serious lack of insight by the licensee of the nature of his responsibilities as both the licensee and the licensee’s nominated manager. Indeed, the Commission has a nagging doubt about the licensee’s fitness to discharge those responsibilities in accordance with the Act.

16. On 24 March 2020, the premises, along with all licensed premises in the Northern Territory, were forced to close because of COVID-19 restrictions.
17. On 2 April 2020 Mr Habib committed the first of a series of 149 similar offences against section 45 (headed “Unauthorised sale of liquor”) of the Act. The offending continued almost every day until 21 May 2020, and ended only because police detected the offending and arrested Mr Habib on 21 May 2020. The frequency of the offending escalated from one or two offences a day to sixteen on the day before the arrest.
18. The mode of offending was similar throughout this seven week period. Mr Habib would remove quantities of spirits and beer from the storeroom at the premises, secrete it in his clothing, and hide it in the boot of his taxi. He would then sell it to taxi passengers, most if not all of whom were Indigenous people, at inflated prices. Often, he would sell a 700 ml bottle of spirits for \$150. According to the submissions made in mitigation of his plea of guilty to these offences in the Local Court, the proceeds of these sales was \$17,500, an average of about \$116 per transaction. The offences with which he was charged were captured on the taxi’s CCTV, as well as in some instances on Alice Springs Town Council CCTV and police drone footage.
19. On 5 November 2020 Mr Habib pleaded guilty to these offences in the Local Court at Alice Springs. He was convicted and sentenced to a term of imprisonment of 9 months, suspended after 1 month, with an operational period of two years from the date of release.
20. In sentencing Mr Habib, Judge Bamber described the offending as “really significant and appalling offending, which occurred over an extended period”. The judge accepted that Mr Habib was genuinely remorseful, that the offending occurred out of financial pressure, that this pressure had affected Mr Habib’s mental health, that he had previously been of good character over a long period of time, and that the offending was out of character.
21. In light of the above recital of Mr Habib’s frequent breaches in 2018 and 2019 of the Act and his licence conditions, and the Commission’s previous dealings with Mr Habib, the Commission does not share the assessment of the judge that prior to this offending Mr Habib had been a person of good character, at least with respect to Mr Habib’s discharge of his responsibilities as the holder of a liquor licence.

⁵ *Northern Territory Liquor Commission and Others v Rhonwood Pty Ltd* (1997) 6 NTLR 209; 117 NTR 1.

THE COMPLAINT

22. Four days after Mr Habib's conviction, on 9 November 2020, Licensing NT Principal Compliance Officer Wade laid a complaint against Mr Habib, on the single ground that he is not a fit and proper person to hold the licence. The complaint was accepted the following day by a delegate of the Director, and the day after that, 11 November 2020, Mr Habib was served with notice of the complaint at the Alice Springs Correctional Centre, where he was serving his sentence.
23. Quite properly, the Director provided Mr Habib with a period of fourteen days after his release from prison to respond to the complaint, before referring it to the Commission, which the Director did on 23 December 2020.

THE DELAY

24. It is arguable that the complaint now before the Commission could and should have been laid when Mr Habib's offending came to light in May 2020, instead of more than five months later. However, section 308 of the Act provides:

If the Commission takes disciplinary action against a licensee for a contravention of the Act... a proceeding for an offence against this Act constituted by that contravention cannot commence or continue in a court of competent jurisdiction.

25. The Commission accepts that the prudent course for the Director was to wait for the finalisation of the associated court proceedings before commencing the process leading to disciplinary action. To do otherwise might have had the undesirable effect of derailing the prosecution.
26. When he was charged in May 2021, Mr Habib was also placed on the Banned Drinkers Register, meaning that he was prohibited from possessing liquor or being on licensed premises. As a result, although Mr Habib was on bail between 21 May 2020 and 5 November 2020, he was precluded from re-opening the premises and resuming the supply of liquor under the licence. Accordingly, the Director's decision not to commence complaint proceedings under the Act until after Mr Habib had been sentenced did not give rise to a risk that Mr Habib might in the meantime resume trading, which, in the view of the Commission and, as will be seen below, the Director, would not have been in the public interest.
27. Mr Habib was removed from the Banned Drinkers Register on 5 November 2020, the day he was convicted and sentenced. On his release from prison a month later, he took concerted and active steps to re-open the premises and re-commence selling liquor as soon as possible. He arranged for an inspection to be undertaken in the week before 29 December 2020 with a view to having the Food Registration Certificate for the premises renewed.
28. This conduct apparently flew in the face of the frank and realistic submission made by Mr McBride on his client's behalf to the Local Court on 5 November 2020: "He is never going to be able to hold a liquor licence again. He is not ever going to be able to drive a taxi again, most probably. I don't say that definitively. But I am confident with the liquor licence."

29. There is no suggestion that Mr Habib engaged in subterfuge or secrecy with his plans to re-open the premises. On the contrary, he consulted Licensing NT about them on several occasions.
30. On 31 December 2020, the Director used his emergency powers under section 257 of the Act to suspend Mr Habib's licence for seven days. In his notice to Mr Habib, the Director stated "I am satisfied the recommencement of trade at the premises by the licensee would not be in the public interest necessitating a sudden and urgent requirement to act." On 7 January 2021 the Director renewed this suspension.

THE TRANSFER APPLICATION

31. On 30 June 2020, Mr Bitar, a brother of Mr Habib, sought to lodge an application with Licensing NT for the transfer of the licence to him. For reasons that will be explained below, it is unnecessary to discuss this application in detail. It suffices to say that it was opposed by police, opposed by the Alice Springs Town Council, and not supported by the Director, who, rather than exercise his delegated authority to deal with the application, referred it to the Commission on 3 November 2020.
32. On 25 November 2020 Acting Deputy Chairperson Goldflam wrote to Mr Bitar indicating his tentative view that it would not be fair to Mr Bitar to hear the transfer application before the pending complaint against Mr Habib had been dealt with, and that accordingly, the two matters should be heard on the same day. Mr Goldflam acknowledged that Mr Bitar might have a different view, and provided him with an opportunity to make submissions about this issue. Mr Bitar did not respond to Mr Goldflam's letter.

THE HEARING

33. Both matters proceeded by way of public hearing in Alice Springs on 11 January 2021. Mr Wood appeared on behalf of the Director. Mr McBride appeared on behalf of both Mr Habib and Mr Bitar. Acting Superintendent Brennan appeared for the NT Police. The Commission thanks them all for their attendance and assistance.
34. The proceedings commenced with the hearing of the complaint. Mr Habib, as was his right, did not admit the ground of complaint. There was, however, no substantial dispute about any of the facts alleged in support of the complaint.
35. In relation to the disciplinary action matter, the Commission received into evidence the following documents:
 - The brief of evidence referred to the Commission by the Director, including:
 - Statutory declarations by Licensing NT officers
 - Liquor licence 80802460
 - Letters from police to Mr Habib, 18 July 2018, 30 November 2018, 15 March 2019
 - Decision notices of the Commission, 22 February 2019, 20 January 2020
 - Notice of suspended sentence, 5 November 2020

- Complaint by Senior Compliance Officer Wade, 9 November 2020
 - Response on behalf of Mr Habib to complaint, 15 December 2020
 - Transcript of Local Court proceedings 2201678, 5 November 2020
 - Statement of Alleged Facts, Local Court proceedings 2201678, 5 November 2020
 - Director’s Notices of Intention to Exercise of Emergency Powers, 31 December 2020, 7 January 2021
 - Police letter of objection to transfer application, 23 October 2020
 - Alice Springs Town Council letter of objection to transfer application, 22 September 2020
 - Dr Danny Sullivan, psychiatric report re Mr Habib, 18 October 2020
 - Deloitte letter re Mr Habib’s financial circumstances, 31 August 2020
36. Oral evidence was given by Sgt Jarrod Thompson, Acting Superintendent Alexander Brennan, Licensing NT Senior Compliance Officer Christopher Wade, Licensing NT Manager Licensing Mark Wood and Mr Habib.

CONSIDERATION

37. When considering whether to issue a liquor licence, the Commission is required by section 59(3)(i) of the Act to consider “whether the applicant, including the nominee designated by an applicant, is a fit and proper person to hold a licence.” Section 160(1)(h) of the Act provides that a person may make a complaint against a licensee on the ground that the licensee is not a fit and proper person to hold the licence. The term “fit and proper” is not defined by the Act.
38. In *Australian Broadcasting Tribunal v Bond* [1990] HCA 33; (1990) 170 CLR 321, the High Court considered the meaning of the expression “fit and proper” in relation to licensees under the *Broadcasting Act 1942* (Cth).
39. Mason CJ stated, at 349:
- [A] licensee has a responsibility to exercise the power conferred by the licence with a due regard to proper standards of conduct and a responsibility not to abuse the privilege which it enjoys... A licensee which lacks a proper appreciation of those responsibilities or does not discharge them is not, or may be adjudged not to be, a fit and proper person.

40. Gaudron and Toohey JJ stated, at 380:

The expression “fit and proper”, standing alone, carries no precise meaning. It takes its meaning from its context, from the activities in which the person is or will be engaged and the ends to be served by those activities... in certain contexts, character (because it provides indication of likely future conduct) or reputation (because it provides indication of public perception as to likely future conduct) may be sufficient to ground a finding that a person is not fit and proper to undertake the activities in question.

41. In *Qadir v Department of Transport* [2015] NTSC 86, Kelly J stated, at [52]:

A decision about whether an applicant is a “fit and proper person” for a particular role or purpose requires a consideration of the qualities necessary to fulfil the role or purpose. It would also generally require some consideration of the person’s moral integrity and rectitude of character as well as the applicant’s knowledge, ability and honesty as it relates to the role in question.⁶

42. Before the Commission, Mr Habib did not go so far as to concede that he is not a fit and proper person to hold the licence, but in his evidence he deposed that he had committed the offences described above when, in the face of serious financial and other pressures he had lost control of himself. He said that he wasn’t himself at the time and that had not been thinking properly. In the view of the Commission, this evidence is strongly supportive of a finding that Mr Habib was not a fit and proper person to hold the licence when he committed the offences. His circumstances now are hardly any better. Mr Habib led evidence that he remains overwhelmed by debt.

43. Mr Habib’s conduct after being released from prison to try to immediately recommence trading as a licensee is significant. Mr Habib explained to the Commission that he does not want to go back into the business himself, but that he wanted to re-open Bojangles with a temporary substitute nominee while the licence was being transferred to Mr Bitar. In the view of the Commission, this half-baked and completely unrealistic aspiration further supports a conclusion that Mr Habib is still not a fit and proper person to hold the licence.

44. The Commission has considered the evidence adduced in this matter and summarised above to assess Mr Habib’s character, his reputation, his honesty, his appreciation of the responsibilities of a person who holds a licence under the Act, and his ability to carry out the responsibilities of a licensee. The question whether a person is a fit and proper person to hold a liquor licence is one of value judgment.⁷ In the evaluation of the Commission, Mr Habib is not a fit and proper person to hold the Bojangles licence, or indeed any liquor licence held under the Act.

45. Accordingly, the Commission is satisfied that the ground identified in the complaint exists, and upholds the complaint.

DISCIPLINARY ACTION

46. Section 165 of the Act provides:

Disciplinary action

- (1) The Commission may take disciplinary action against the licensee only if the Commission is satisfied:

⁶ See also *Hughes & Vale Pty Ltd v NSW (No 2)* (1955) 93 CLR 127, 156.

⁷ *Australian Broadcasting Tribunal v Bond* [1990] HCA 33; (1990) 170 CLR 321, 388 per Toohey and Gaudron JJ.

- (a) a ground for the disciplinary action exists; and
 - (b) the disciplinary action is appropriate in relation to that ground.
- (2) The Commission may take any of the following disciplinary actions against a licensee:
 - (a) vary the conditions of a licensee's licence or impose additional conditions on the licence;
 - (b) suspend a licence;
 - (c) cancel a licence;
 - (d) impose a monetary penalty on a licensee in accordance with section 167;
 - (e) direct a licensee to take, or refrain from taking, a specific action;
 - (f) disqualify a person from holding a licence for a specified period.
- (3) Subject to section 168, the Commission may take disciplinary action against a licensee for a contravention of this Act even if:
 - (a) the licensee is issued an infringement notice in relation to that contravention; or
 - (b) the licensee is being prosecuted for an offence in relation to that contravention.

47. In exercising its disciplinary jurisdiction, as required by Section 3(4) of the Act, the Commission must have regard to the primary and secondary purposes of the Act.

48. The purposes of the Act are set out in section 3, as follows:

- (1) The primary purpose of this Act is to minimise the harm associated with the consumption of liquor in a way that recognises the public's interest in the sale, supply, service, promotion and consumption of liquor.
- (2) The secondary purposes of this Act are:
 - (a) to protect and enhance community amenity, social harmony and community wellbeing through the responsible sale, supply, service, promotion and consumption of liquor; and
 - (b) to regulate the sale, supply, service, promotion and consumption of liquor in a way that contributes to the responsible development of the liquor industry and associated businesses in the Territory; and
 - (c) to facilitate the diversity of licensed premises and associated services for the benefit of communities in the Territory; and
 - (d) to regulate the sale, supply, service, promotion and consumption of liquor in a way that stimulates the tourism and hospitality industries.

49. It is readily apparent that prominent amongst these purposes is the promotion of the interests of the public and the community. Bearing this in mind, the Commission considers that the principal underlying purpose of its disciplinary jurisdiction is not to punish the licensee, but to protect the public by maintaining the standards of conduct prescribed by the Act.⁸
50. On behalf of the Director it was suggested that disqualification may be a form of disciplinary action that can only be imposed on licence nominees. The Commission disagrees. Section 165(2)(f) of the Act provides that the Commission may “disqualify a person from *holding* a licence for a specified period” (emphasis added). The Act defines a licensee to be “a person who holds a licence”. In its terms, section 165(2)(f) clearly applies to licensees. In this instance, Mr Habib holds the licence in his own name, and no nominee has been designated or appointed to manage the licence. It would be absurd if the Commission were precluded from disqualifying him from holding a licence only because he is a licensee, but not a licence nominee.
51. Mr Habib did not seriously resist the Director’s submission that he be disqualified from holding a licence. To do so would have been embarrassingly inconsistent with the submissions made on his behalf to the Local Court set out at paragraph 28 above.
52. The Director was unable to advert to any previous occasions on which the holder of a liquor licence has been disqualified in the Northern Territory. However, the Director referred the Commission to a recent decision of the New South Wales Independent Liquor & Gaming Authority (“the NSW Authority”) in which it found Mr Joel Murdoch, a licensee, to be not a fit and proper person to hold a liquor licence.⁹ In that case, a licensee with a history of drink driving convictions had been sentenced to serve three months of imprisonment for high range drink driving following a drinking session at his licensed premises with staff and patrons after closing time. The NSW Authority disqualified Mr Murdoch from holding a liquor licence for five years.
53. In the view of the Commission, the misconduct of Mr Habib is substantially more serious than that of Mr Murdoch. His grossly irresponsible management of Bojangles has caused significant harm to the Alice Springs community since at least mid 2018. His offending in April and May 2020 was, as the sentencing judge remarked, appalling. The Commission has determined to disqualify Mr Habib from holding a liquor licence for a period of ten years.
54. The only real issue of contention between the Director and Mr Habib that emerged during the hearing was whether disciplinary action should also be imposed by way of cancellation of the licence, or the less severe action of licence suspension.
55. The Commission construes the words “the Commission may take any of the following disciplinary actions” in section 165(2) of the Act as conferring on it power to impose more than one type of disciplinary action arising from a single ground of complaint. Counsel at the hearing did not contend otherwise.

⁸ *Seagulls Rugby League Football Club Ltd v Superintendent of Licences* (1992) 29 NSWLR 357, 373 per Kirby P.

⁹ Findings on Complaint to the Independent Liquor and Gaming Authority in relation to Mr Joel Murdoch under Part 9 of the *Liquor Act 2007* (NSW), DF18/006884, 3 September 2020.

56. Mr Habib submitted that suspension of the licence would provide an opportunity for it to be transferred to Mr Bitar, who would pay the substantial sum of back rent owing to the landlords of the premises, which would be to their benefit. The Commission rejects this submission. The Commission considers that whether or not a third party in a commercial relationship with the licensee may benefit from a decision to impose disciplinary action is an irrelevant consideration for the purpose of determining which type of disciplinary action to take.
57. Mr Habib further submitted that suspension of the licence and its transfer to Mr Bitar would be of benefit to Mr Habib, as it would enable Mr Bitar to help to clear some of Mr Habib's debts. Conversely, it was submitted, licence cancellation would have a punitive effect on Mr Habib. In the view of the Commission, however, that in itself is not a sufficient reason to refrain from cancelling the licence. Although the underlying purpose of disciplinary action is protective, it may nevertheless have a punitive effect on a licensee.¹⁰
58. The Director referred the Commission to a 2006 decision of the Northern Territory Licensing Commission¹¹ ("the Borooloola Hotel matter") made in somewhat similar circumstances. In that matter, seven complaints alleging breaches of the *Liquor Act 1978* arising from incidents on three occasions within a six month period were upheld, as was a complaint that the licensee and nominee were not fit and proper persons to hold a licence. As in the matters now before the Commission, in the Borooloola Hotel matter the Licensing Commission also had before it an application to transfer the licence. The Licensing Commission stated:
- When considering our options regarding penalty for the proven breaches, we have made the assumption that the owner will be found a fit and proper person and that a licence transfer is a valid option available to us. We also accept the submission of the Director of Licensing, however, that such a deplorable course of conduct as we have witnessed from the Licensee and Nominee should not be tolerated by the Commission and that it deserves the harshest penalty.
59. The Licensing Commission cancelled the Borooloola Hotel licence. Section 72(5)(c) the *Liquor Act 1978* as then in force provided that if the Licensing Commission was satisfied that a licensee was not a fit and proper person to hold a licence, "the Commission, after conducting a hearing, may, by order, cancel a licence". However, unlike the current Act, the 1978 Act as then in force did not include a power for the Commission to disqualify a person from holding a licence.
60. Because the statutory scheme for the taking of disciplinary action has been substantially changed since 2006, the Commission considers that the reasoning of the Licensing Commission in the Borooloola Hotel matter, though sound, is not directly applicable in the current case.
61. Clearly, cancellation of a licence is a more serious type of disciplinary action than suspension for a limited period. The Commission considers that it should only cancel a

¹⁰ *Director General, Department of Ageing, Disability and Home Care v Lambert* (2009) 74 NSWLR 523.

¹¹ Northern Territory Licensing Commission, *Complaints laid by the Director of Licensing and Others against the Licensee and Nominee pursuant to Section 48 of the Liquor Act* (Licence Number 80103282), 14 December 2006.

licence when the misconduct of a licensee has been so serious that licence cancellation is required in order to adequately protect the public interest.

62. The Commission has previously imposed a monetary penalty and licence suspension, but these disciplinary actions failed to deter the licensee from engaging in even more serious misconduct. A message must be sent to the licensee, the licensing industry and the public that to protect the community from such flagrantly illegal behaviour, the privilege of holding a liquor licence must be forfeited.
63. Not only must Mr Habib be disqualified from holding a licence for a lengthy period, but Bojangles itself must be deprived of the licence under which it has operated. The Commission has therefore determined to cancel the licence. The Commission is satisfied that this disciplinary action is appropriate in relation to the ground of complaint that it has upheld.
64. Bojangles may in due course re-open with a new licence operated by a new licensee, following a determination by the Commission that it is satisfied, in accordance with section 49(1) of the Act that the new licensee is a fit and proper person, that issuing the licence is in the public interest, and that issuing the licence will not have a significant adverse impact on the community.

THE APPLICATION TO TRANSFER THE LICENCE

65. At the conclusion of the hearing, the Commission pronounced its decision to cancel the licence, whereupon Mr McBride, on behalf of Mr Bitar, withdrew the application to transfer the licence. The Commission considers that this was a sensible course, as, following the licence cancellation, there was no longer a licence in existence capable of being transferred.
66. Section 71 of the Act requires that after receiving an application to transfer a liquor licence, the Commission must consider it and decide whether to authorise or refuse to authorise the transfer of the licence. The Commission refuses to authorise the transfer of the (former) licence.

NOTICE OF RIGHTS

67. Section 31(1) read with section 166(7) of the Act provide that the decisions set out in this decision notice are reviewable by the Northern Territory Civil and Administrative Tribunal (**NTCAT**). Section 94(3) of the *NTCAT Act* provides that an application for review of a reviewable decision must be lodged within 28 days of the date of the decision. In accordance with section 31(2) of the Act, the persons who may apply to NTCAT for a review of the decision are the Director, Mr Habib and Mr Bitar.



RUSSELL GOLDFLAM
ACTING DEPUTY CHAIRPERSON
NORTHERN TERRITORY LIQUOR COMMISSION

28 January 2021

On behalf of Commissioners Goldflam, Reynolds and McFarland