

IN THE MATTER of the Gambling Act 2003
AND on an application by the
Secretary for Internal
Affairs to suspend a casino
licence

BEFORE THE GAMBLING COMMISSION

Members: G L Reeves (Acting Chairperson)
K M Ford
M M Lythe
P J Stanley

Date of Application: 9 November 2005

Dates of Hearing: 31 July, 1 August, 11, 12 and 13 September 2006

Date of Decision: 17 October 2006

**DECISION ON AN APPLICATION BY THE SECRETARY FOR
INTERNAL AFFAIRS TO SUSPEND A CASINO LICENCE**

Application

1. The Secretary for the Department of Internal Affairs (the "**Applicant**") applied to the Gambling Commission (the "**Commission**") on 9 November 2005 under section 144 of the Gambling Act 2003 (the "**Act**"), requesting that the Commission exercise its discretion under section 146 of the Act to suspend the casino operator's licence held by Dunedin Casinos Management Limited ("**DCML**" or the "**Respondent**").
2. The Secretary made his application after investigating the Respondent's actions in relation to a Dunedin woman, Ms Christine Keenan, who was a patron of the casino. The Applicant alleged that, in relation to Ms Keenan, DCML had breached conditions 8.6 and 12 of its operator's licence, and section 308(4) of the Act. The Applicant submitted that, in light of these breaches, it was desirable that the Commission suspend DCML's licence.
3. On 12 April 2006, the Commission heard certain preliminary issues raised by DCML. In its decision GC07/06, the Commission held, inter alia, that:

- (a) In its preliminary view, section 144(a) of the Act could apply to breaches of licence conditions that took place prior to 1 July 2004.



- (b) The Applicant can only rely, as relevant breaches, on acts and omissions which occurred when DCML held the casino operator's licence for Dunedin casino after 1 April 2004. The Commission's preliminary view was that knowledge of senior employees of DCML gained prior to 1 April 2004 can be taken into account if relevant to such post-1 April 2004 acts or omissions.
 - (c) Licence condition 12 and the Responsible Gambling Programme ("RGP") made under it were not impliedly revoked, but remained in effect after 1 July 2004.
 - (d) Licence condition 12 can be breached notwithstanding that DCML had an RGP.
 - (e) Suspension can be used as a sanction for prior breaches.
4. In its decision, the Commission directed the Applicant to file an amended application. Further particulars of the amended application were subsequently sought by the Respondent, and were filed by the Applicant on 9 June 2006. The application was heard on 31 July and 1 August, and 11-13 September 2006.
 5. In his original application, the Applicant proposed that the Commission suspend DCML's licence for a period of between three and seven days. At the conclusion of the substantive hearing, the Applicant submitted that a seven day suspension period was warranted on the evidence.
 6. The Commission appointed Commissioner Graeme Reeves as Acting Chairperson for the hearing of the application. The Chief Gambling Commissioner stood aside, as the application is a matter of considerable local interest and profile in Dunedin, where the Chief Gambling Commissioner also serves as Mayor.

Legislation

Suspension

7. The suspension provisions are set out at sections 144-146 of the Act. The Act contemplates a two-stage enquiry. First, the Commission must be satisfied that one or more of the grounds set out in section 144 are met, in this case, those set out in section 144(a). Secondly, the Commission must consider whether it is desirable to grant an order of suspension, as provided in section 146(1) of the Act.
8. The relevant provisions provide as follows:

144. Suspension or cancellation of casino licence –

The Secretary may apply to the Gambling Commission for an order that a casino licence be suspended or cancelled if the Secretary is satisfied that –



- (a) the licence holder is breaching or has breached this Act or a condition of the licence or minimum operating standards; or

146. Notification of suspension and cancellation –

- (1) The Gambling Commission may grant an order sought under section 144 if it is satisfied that –
 - (a) 1 or more of the grounds in section 144 are met; and
 - (b) it considers it desirable to do so.
- (2) If the Gambling Commission decides to suspend a casino licence, the Gambling Commission must notify the licence holder of –
 - (a) the duration of the suspension (up to 6 months); and
 - (b) the reasons for the suspension; and
 - (c) the matters to be dealt with in order for the Gambling Commission to consider withdrawing the suspension before the end of the suspension period; and
 - (d) the consequences of not dealing with the matters identified; and
 - (e) the right to appeal the decision under section 148.
- (3) If the Gambling Commission decides to cancel a casino licence, the Gambling Commission must notify the licence holder of the date on which the cancellation takes effect, the reasons for the cancellation, and the right to appeal the decision under section 148
- (4) The Gambling Commission may revoke a suspension if it is satisfied that the reasons for the suspension have been resolved
- (5) A suspended casino licence must be cancelled if, at the end of the suspension period, the reasons for the suspension are not resolved to the satisfaction of the Gambling Commission.
- (6) A person is not entitled to a refund of fees, taxes or levies paid if the Gambling Commission suspends or cancels a casino licence

Licence conditions

- 9. The Applicant alleged breaches by the Respondent after 1 April 2004 of conditions 8.6 and 12.4 of DCML's operator's licence.

- 10. Condition 8.6 provides that:

The licence holder shall not permit any intoxicated person to gamble in the casino.

- 11. Condition 12 of DCML's licence provides:

12. Responsible gambling programme

- 12.1 If the Authority requires it, the licence holder shall submit for the approval of the Authority a responsible gambling programme. The Authority may require the licence holder to submit such a programme for approval on an annual basis. The Authority may at its discretion approve or not approve such a programme. The Authority's approval may be subject to such conditions as it thinks fit



- 12.2 The programme shall provide for:
- (a) Signage, brochures and publications to inform gamblers of counselling and other services;
 - (b) a self-exclusion programme for problem gamblers;
 - (c) a description of the standard of dress and behaviour required of patrons;
 - (d) guidelines for responsible marketing and advertising of the casino, including exterior casino signage;
 - (e) liaison with community service organisations dealing with problem gambling, patrons with gambling problems and immediate family members of patrons with gambling problems;
 - (f) responsible practices in the conduct of promotions and inducements to gamble at the casino;
 - (g) training in the responsible provision of gambling for casino staff and management who are in direct contact with patrons in the course of their duties in the casino;
 - (h) reporting to the Authority on the operation of the programme; and
 - (i) such other matters as the Authority may require.
- 12.3 The programme may from time to time be amended, subject to the Authority's approval, which may be subject to such conditions as the Authority thinks fit.
- 12.4 The operating procedures for the casino shall comply with the requirements of the programme, as approved by the Authority from time to time.
- 12.5 Where the Authority is unwilling to approve a programme it shall provide its reasons in writing and invite submissions from the operator before making a final decision on the suitability of the programme.

Sections 308-309 of the Act

12. The Applicant's application alleged a breach by the Respondent of section 308(4). In submissions and evidence, however, the Applicant's case expanded to include an alleged breach of section 309 of the Act. Both sections came into effect on 1 July 2004.
13. Section 308(1) obliges certain persons, including the holder of a casino operator's licence, to develop a programme or policy for identifying problem gamblers. A notice advising customers of the existence of this policy must be displayed and a copy of the policy made available on request. Section 308(4) provides as follows:
- (4) The persons required by subsection (1) to develop a policy for identifying problem gamblers must take all reasonable steps to use that policy to identify actual or potential problem gamblers
14. Sections 309(1) and (2) of the Act require that specified persons, including the holder of a casino operator's licence, must approach a person identified under section 308(4) who the licence holder has reasonable grounds to believe is a problem gambler. Section 309(1)-(3) provide as follows:



309 Exclusion order may be issued to problem gambler identified under section 308

- (1) The venue manager or the holder of a casino operator's licence, or a person acting on behalf of either of those persons, must, after identifying a person under section 308(4) who he or she has reasonable grounds to believe is a problem gambler, approach the person and offer information or advice to the person about problem gambling.
- (2) The information or advice offered under subsection (1) must include a description of—
 - (a) the self-exclusion procedure available under section 310; and
 - (b) any procedures prescribed by regulations made under section 316
- (3) A venue manager or the holder of a casino operator's licence may, after offering advice or information to a person under subsection (1), issue an exclusion order to the person that prohibits the person from entering the gambling area of the class 4 venue or casino venue (as the case may be) for a period of up to 2 years.

- 15. As required under section 308(1), the Respondent developed a Host Responsibility Exclusion Policy ("HREP") and Host Responsibility Exclusion Standard Operating Procedures ("HRESOP"), the latter detailing how the HREP is to be implemented in the casino. Both documents are dated 1 July 2004.
- 16. As will become clear below, the material parts of the RGP, which was required and approved under condition 12, cover the same matters as sections 308 – 310, namely identifying and dealing with potential problem gamblers.

Approach

- 17. The Applicant submitted that the suspension regime under the Act was analogous to the suspension regime under the Sale of Liquor Act 1989, a contention with which the Respondent did not disagree. Both regimes, it was submitted, provided for applications to be made in the event of breach of the (respective) Acts or licence conditions, both made similar provision for hearing of suspension applications, and both required the same test to be applied, namely whether it is desirable to make a suspension order.
- 18. Relying on the Court of Appeal decision, *Christchurch District Licensing Agency Inspector v Karara Holdings Limited* [2003] NZAR 752 and *McGrogan v Scenic Cellars Partnership Limited* [2006] NZAR 170, the Applicant submitted that the application was regulatory in nature, and that there was no need for the Commission to consider aspects of criminal procedure or substantive criminal law in determining the application. The former case related to an application to the Liquor Licensing Authority to suspend the licences of five licensees in Christchurch. In its decision, the Court of Appeal held that the power of suspension and cancellation exercised by the Liquor Licensing Authority may be applied

as a consequence of conduct that is in breach of the law, but that does not mean the powers are criminal in nature (para 40). *The Mill Liquor Save Limited v Verner* [2004] NZAR 263 was cited by the Applicant in support of the proposition that suspension can be made solely for reasons of general deterrence.

19. The Commission agreed with the submissions made by the Applicant, concluding that the application was regulatory in nature. Consistent with this approach, the Commission determined that there was no burden on the Applicant to prove that the alleged breaches had occurred. However, in order for the sought order to be made, the Commission had to be satisfied that the breaches had occurred. The standard of satisfaction is the civil standard. This is consistent with the approach taken by the Court of Appeal in *R v White* [1988] 1 NZLR 264, and *Robertson v Police* [1957] NZLR 1193, and *R v Leitch* [1998] 1 NZLR 420. Counsel for DCML did not make submissions to the contrary.
20. In his opening submissions, the Applicant submitted that the Commission was not limited to the particulars in the application, the amended application and the further particulars filed, and could, in addition, consider whether the Respondent breached sections 309 to 311 of the Act, although no reference to those sections had been made in those documents.
21. The Commission is critical of the Secretary's conduct in this regard in light of the procedural history. The Commission had expressed concern from an early stage at the lack of adequacy and clarity of the particulars of the application and, by the commencement of the hearing, the Secretary had made three attempts at setting out a clear statement of his case. The persistent omission of any reference to sections 309 and following was surprising in view of the allegations made in relation to the RGP, HREP and HRESOP, especially as the Secretary had two opportunities to correct the application. Notwithstanding the failure to refer to those sections, the particulars of alleged breaches provided included, not only a failure to identify Ms Keenan under section 308(4), but also DCML's failure to offer Ms Keenan self-exclusion or consider excluding her, these being matters covered by sections 309 and 310 of the Act.
22. In the light of the nature of the application, the Commission does not favour a technical approach in which its enquiry is strictly limited by the particulars set out in the application. It regards its jurisdiction as limited by the terms of section 146, not the particulars of the application. The Commission recognises however that considerations of natural justice and the need for a fair hearing create their own limitations as the particulars of an application are intended to provide fair notice to the Respondent of the case for the relief sought. The Commission has accordingly approached the issue by asking itself whether it would be unfair to DCML to have regard to sections 309 and 310.

23. In the current circumstances, the Commission considered that the Respondent had adequate notice that the application also concerned the matters covered in sections 309 and 310 of the Act by virtue of the particulars cited in the Applicant's application in relation to the RGP, HREP and HRESOP and the Applicant's opening. The Respondent in fact addressed the subject matter of sections 309 and 310 in its own evidence and submissions. The Commission decided that it would consider whether there had been breaches of sections 309 and 310, in addition to section 308.

Background facts

24. The original operator of the Dunedin Casino was Aspinall (NZ) Limited ("**Aspinall**"). Pursuant to condition 12 of its licence, Aspinall submitted an RGP to the Casino Control Authority ("**CCA**"), the CCA approving the RGP on 24 May 2002.
25. Ms Keenan first visited Dunedin Casino on 20 April 2001, obtaining a casino club card shortly thereafter, on 25 April 2001. The casino club card entitled Ms Keenan to special treatment and privileges. When used by Ms Keenan, the card enabled the management of the casino to track how much money she bet on gaming machines and tables (turnover) and her recorded losses. The DACOM system used to record wins and losses does not take into account any mystery jackpots won by patrons (although all wagering using the card is captured).
26. As she became a regular customer, Ms Keenan was recognised as a VIP player by the casino. This entitled her to various privileges and perks including free food and alcohol. There were some 20-30 people in the VIP category at the time Ms Keenan frequented the casino. The evidence was that the provision of free food and alcohol to VIPs was subject to standard internal budgetary limits, the exceeding of which required senior management approval. The precise limits were unclear on the evidence but are not material. It was not suggested that they had been communicated to Ms Keenan or that she had ever been refused food or alcohol for budgetary reasons.
27. Part of the duties of the Gaming Shift Manager at the casino was to complete a Daily Activity Report for the General Manager, then Mr Rod Woolley, outlining provisional daily win/loss/turnover figures of table games and machines. This Report detailed win/loss/turnover figures for individual patrons when these exceeded \$1,000.
28. Mr Woolley first became aware of the level of Ms Keenan's gambling activity in early 2003, from Daily Activity Reports and following a conversation with Mr Geoffrey Purdon, then the Senior Security and Surveillance Shift Manager, in which Mr Purdon mentioned how often Ms Keenan had been in the casino.



29. Mr Woolley first approached Ms Keenan in February or March 2003, in his words, "to ascertain her views towards her gambling and whether it was likely to become a problem in future". Mr Woolley was apparently concerned to ensure that Ms Keenan was gambling at a sustainable level and remained able to patronise the casino on a continuing basis.
30. In the course of the evidence, there was considerable discussion about the reason that it was Mr Woolley, and not a less senior member of staff, who approached Ms Keenan. The Commission does not find it surprising, from a business point of view, that the General Manager would be the person who dealt with a particularly valuable customer. It was suggested however that Mr Purdon would ordinarily be the person to approach someone like Ms Keenan but he chose not to do so because their children attended the same school. Whatever the reason (and the Commission does not think that the reason is important), it is clear that Mr Woolley was the person at the casino who approached Ms Keenan with the casino's concerns, and that the casino's management practices proceeded (understandably, in the Commission's view) on the basis that there would only be one liaison person for any problem customer. The Commission does not accept Mr Woolley's evidence that he had not assumed such a role and that other staff members were free to approach Ms Keenan with concerns about her gambling as they saw fit.
31. Mr Woolley said that, when he spoke to Ms Keenan in February or March 2003, she was insistent that she did not have a problem, and was very well aware that help was available if required. Mr Woolley also said that he made external enquiries in early 2003 regarding Ms Keenan, which satisfied him that she could support her level of gambling at that time. Mr Woolley could not remember the details of his enquiries or of whom he made them.
32. On 30 April 2003, a Gaming Shift Manager, Mr Marc Yeoman, sent an email to Mr Woolley, stating that Ms Keenan had caught his attention when he was preparing Daily Activity Reports, and that he had brought up her file and discovered a few things that "sent out a few warning bells". The email stated that Ms Keenan had lost \$249,000 over the previous two years, and expressed the view that she should be approached.
33. Mr Woolley advised Mr Yeoman that he had made some discreet enquiries which had satisfied him that she could support her level of play but that, notwithstanding, the casino should plan another approach to her.
34. In about July/August 2003, Mr Woolley made further enquiries into Ms Keenan's financial situation through a director of DCML, Mr Stuart McLauchlan. Ms Keenan worked part-time at accounting firm, T.D. Scott & Co. Mr McLauchlan was Trevor Scott's cousin and knew other members of the firm.

35. Mr McLauchlan's evidence was that he explained to Mr Scott that the casino had some concern over the level of Ms Keenan's spending and the amount of time she was spending at the casino. He suggested to Mr Scott that a check be made on whether Ms Keenan's accounts were in order or whether she had access to money. Mr McLauchlan told the Commission that he was advised by Mr Scott that Ms Keenan had received an inheritance from her parents and a marriage settlement. Mr Scott had said to leave the matter with him, and that he would get back to Mr McLauchlan.
36. Several weeks later Mr Scott did so, informing Mr McLauchlan he had made some checks and that "everything appeared fine". Mr Scott also advised Mr McLauchlan that Ms Keenan had recently sold her home and that he believed that she had a couple of rental properties supplementing her income. The substance of this evidence was neither challenged nor rebutted by the Secretary.
37. Mr McLauchlan reported back to Mr Woolley what Mr Scott had told him
38. Mr Purdon received separately, from an unnamed acquaintance, similar information about the sources of income available to Ms Keenan. He was also shown through Ms Keenan's house when it was on the market for sale, following Ms Keenan's marriage break up. When interviewed by Mr Dermot Harris (a Department of Internal Affairs Gambling Inspector) on 16 February 2005, Mr Purdon indicated that the house would have been worth about \$250,000.
39. It was suggested by Mr Woolley (and, to a lesser extent, by Mr Purdon) that these enquiries justified a view that Ms Keenan was gambling within her means. In the Commission's view, they did not, particularly when one has regard to the knowledge that casino staff had of the value of the former matrimonial home. It is plain from subsequent events that casino staff and management continued to have well-founded concerns about Ms Keenan's gambling.
40. Mr Woolley next approached Ms Keenan towards the end of 2003, possibly in November or December. Mr Woolley's account of that meeting was set out in a note by Mr Woolley to the Chairman of the Board of Dunedin Casinos Limited ("DCL") (dated 25 August 2004) and was the subject of oral evidence. Mr Woolley advised Ms Keenan to moderate her gambling, and obtained a commitment from her that she would try to do so.
41. Mr Woolley gave evidence that he spoke on other occasions to Ms Keenan about moderating her gambling but was unable to give detail of those occasions, most of which seemed to be chance encounters of a casual nature.

42 By the end of March 2004, while the casino was operated by Aspinall, the following position had emerged:

- (a) Ms Keenan's frequency of attendance and the level of her gambling losses were so substantial that the casino and its staff had ongoing concerns about her.
- (b) She had been approached fairly indirectly about the possibility of her having a problem.
- (c) Assurances on her part that she did not have a problem were not taken at face value (as, indeed, they ought not to have been) but prompted external enquiries as to her means and further approaches counselling moderation in the level of her gambling.
- (d) The information received regarding her means did not justify a lack of concern at the level of her losses and, in fact, the concern clearly remained.
- (e) While the approaches counselled moderation, it is clear on the evidence that she was not specifically offered a self-barring or "Time Out" option to deal with a gambling problem. A Time Out option is an approach specified under the RGP whereby patrons are encouraged voluntarily to withdraw patronage for a mutually agreed period of one month.

43. As at 30 March 2004, the casino's DACOM records indicated that during the period from April 2001 – March 2004, Ms Keenan's recorded turnover was \$6,313,370. Her recorded losses for the same period were \$554,313 (although the Commission bears in mind that the DACOM loss figures do not take into account any offsetting mystery jackpot wins). More particularly:

- (a) In the period April – December 2001, Ms Keenan's recorded turnover was \$477,482. She lost \$51,008, an average loss of \$5,668 per month;
- (b) For the calendar year 2002, her recorded turnover was \$1,860,064. Her loss was \$104,499, an average loss of \$8,708 per month;
- (c) For the calendar year 2003, her recorded turnover was \$3,344,899. Her loss was \$327,647, an average loss of \$27,304 per month;
- (d) For the period January 2004 – March 2004 (inclusive) her recorded turnover was \$630,925. Her loss was \$71,209, an average loss of \$23,736 per month.

44. The DACOM data shows escalating expenditure and losses from 2001 through 2003, with average monthly losses reduced slightly, compared to the preceding period, in the first



three months of 2004, but remaining nevertheless at a high level. Even though the DACOM data does not take into account wins from mystery jackpots, Ms Keenan's historical losses are well in excess of what an ordinary New Zealander could afford to lose, with the casino having no information to indicate she was anything other than an ordinary New Zealander of moderate means.

45. It is important to bear in mind that all of the matters recounted to this point were the responsibility of the previous holder of the operator's licence, Aspinall, and not of DCML. None of these events can provide a basis for an allegation of breach of licence condition or legislation by DCML.

Facts relating to 1 April 2004 – 20 August 2004

46. On 12 March 2004, the CCA approved an application by DCL, the holder of the casino premises licence, to change the operator of Dunedin Casino from Aspinall to DCML, a wholly owned subsidiary of DCL.
47. In granting approval, the CCA attached further conditions numbered 5 to 13 to DCML's licence. These conditions were almost identical to the conditions that had been attached to the licence held by Aspinall. Conditions 12 and 8.6, relevant to this application, were identical. DCML also confirmed orally to the CCA that the same policies would be carried forward and, on this basis, the RGP continued to apply.
48. DCML became the operator of Dunedin Casino with effect from 1 April 2004. Management and senior staff continued in their former positions but in DCML's employment. DCML took over Aspinall's records and management systems.
49. From 1 April 2004, DCML gained the knowledge of the former senior staff of Aspinall (who were then its senior staff) both to its advantage or detriment as the case may be. In this case, knowledge of DCML through its senior management included the level of Ms Keenan's prior gambling activity (which was also readily ascertainable from the DACOM records), the casino's past interest in and approaches made to Ms Keenan, and its conclusions about whether she was at risk. To the extent that it knew that the steps required by the RGP had already been taken, DCML was entitled to take that into account in respect of its own obligations.
50. In about May or June 2004, Ms Keenan stopped using her casino club card at least for a period. Ms Keenan later said (in an unsigned interview with Mr Harris) that she did so because she knew that her gambling activity was being tracked.
51. DACOM data (collected when she was using her card) show her turnover for April 2004 as \$128,164, with a recorded loss of \$17,293. The turnover for June 2004 is recorded as

\$1,400, with a loss of \$300. No recorded turnover or win/loss is recorded for July. The turnover for August 2004 (up until 20 August) is recorded as \$15,445, with a loss of \$2,226. Evidence of hand pays made to Ms Keenan and ATM use indicate that she was gambling at the casino 9 days in June 2006, 10 days in July (a month in which there is no DACOM record of gambling activity), and 6 days in August prior to her arrest.

52. Mr Woolley and Mr Purdon say that they had the impression that during the period April 2004 – August 2004 Ms Keenan patronised the casino less frequently than before and incurred reduced losses, but neither checked the casino records to confirm the position.
53. It is difficult to draw firm conclusions about the extent of Ms Keenan's gambling in the period from 1 April to 20 August 2004 because of the manifest lack of completeness of the DACOM data for much of this period. It is clear that Ms Keenan visited the casino and engaged in gambling to a greater extent than the DACOM system indicates. It is quite possible that her gambling activity did reduce in comparison to the prior period. However the Commission does not consider that the casino had any proper basis to conclude that she was no longer an actual or potential problem gambler.
54. On 1 July 2004, operative provisions of the Act came into force, imposing additional obligations to identify actual and potential problem gamblers pursuant to sections 308 and 309 of the Act. The casino management was well aware of the impending new responsibilities and evidence was given about preparation, including establishing systems, creating policies and procedures, and training staff. As noted above, the HREP and HRESOP were adopted by DCML on 1 July 2004, in accordance with section 308(1) of the Act.
55. On 1 July 2004, the casino opened a gambler of interest file (or person of interest file as it was subsequently renamed by DCML) for Ms Keenan. Mr Woolley and Mr Purdon claimed that the casino did not consider Ms Keenan to be a problem gambler, and said that the file was opened simply to monitor her and to ensure that she remained "on the radar screen". Having opened the file, the casino did not, in the seven weeks until her arrest, make any further external or internal enquiries to assess whether or not Ms Keenan was a problem gambler or at risk of becoming one. The DACOM data covering Ms Keenan was apparently not even reviewed nor placed on file and other enquiries of staff and reviews of surveillance records were not undertaken.
56. On 29 July 2004, Mr Woolley and Mr Purdon met with Ms Keenan in the casino coffee bar (Mr Purdon attending for only part of the meeting). Mr Purdon explained his attendance at this meeting in terms of his concern to satisfy himself that "everything was in order" having regard to the new legislative requirements in relation to problem gambling. Mr Purdon said that, at that meeting, Ms Keenan said she did not consider she had a

gambling problem, and was "acutely aware" of the various problem gambling support agencies.

57. Ms Keenan was not given a problem gambling pack either before or after 1 July 2004, although Mr Woolley gave evidence that on one occasion he told her that she could obtain a problem gambling pack from the pit stand in a plain envelope. Offers of Time Out, self-barring or exclusion were not considered because Mr Woolley said that he did not consider that she had a gambling problem. Ms Keenan did not seek to self-bar at any point prior to or after 1 July 2004. Apart from Mr Woolley (on one occasion together with Mr Purdon), no approaches to Ms Keenan were made by casino staff to discuss the level of her gambling activity and potential risk, although there was evidence that casino staff would wryly joke with her about the level of her losses relative to her means.
58. Evidence of Ms Keenan's demeanour was given by a number of witnesses. Ms Keenan was described as a pleasant, well-presented patron. Ms Keenan came to the attention of the casino because of the level of gambling activity. Other signs of a problem gambler such as agitation, lying and disengagement were not observed by casino employees in her behaviour.
59. Mr Patrick Stewart, a Security Officer, gave evidence that the casino had procedures in place to ensure patrons are not able to gamble while intoxicated. He testified that, even as a VIP player, she would have been refused alcohol, or "cut off", well before she would be in a public bar, the tolerance for drunkenness within the casino being far lower.
60. Mr Stewart described how, on the evening of 14 May 2004, Ms Keenan drove her car from the casino in what he and food and beverage staff considered to be an intoxicated condition. Mr Stewart attempted, unsuccessfully, to dissuade her from driving. The following day he wrote an email to the General Manager and Head of Security outlining his concerns about Ms Keenan's drinking and driving. He said that he did not see her gambling that night. Ms Keenan's turnover on 14 May 2004 was \$11,953 and her recorded loss was \$2,322, with an average bet of \$10.16.
61. On the evening of 14 August 2004, Mr Stewart initially stopped serving Ms Keenan alcohol, but told her she could stay in the casino but not on the gaming floor. He observed shortly afterwards that Ms Keenan had not moved from the gaming floor, although she was not gambling. This being the case, he asked her to leave. She intended to drive, but was persuaded to surrender her keys and was given a ride home by the casino's guest services. On that evening, she displayed a number of signs of intoxication (unsteadiness, inappropriately amorous behaviour). Ms Keenan was not using her club card, so her turnover and win/loss is not known. She is recorded as

receiving, earlier in the day, a hand pay (which could have been for a win or a credit) for \$692.40.

62. Ms Keenan was arrested on 20 August 2004 as she was leaving the casino. An exclusion order and trespass notice was couriered to her by the casino the same day, preventing her from entering the casino. Ms Keenan subsequently pleaded guilty to 11 dishonesty charges in the Dunedin District Court and was sentenced to 3 years imprisonment by Judge MacAskill on 9 December 2004.
63. In February 2005, Mr Harris conducted a preliminary investigation into the alleged breaches for the Applicant. He interviewed Ms Keenan and a number of casino staff. A mix of signed statements and unsigned interview notes from discussions with Ms Keenan and others were attached to Mr Harris' affidavit. Debra Despard (formerly Ferris), National Manager of the Casino Compliance Unit, reviewed the investigation and took the decision to apply for suspension under delegated authority from the Secretary.

Submissions

64. In relation to the alleged breaches of condition 12.4 of DCML's licence, and sections 308(4) and 309, the Applicant submitted that:
 - (a) Ms Keenan was identified by casino staff as a problem gambler prior to 1 April 2004 and DCML management continued to have the same view thereafter.
 - (b) In the alternative, DCML failed to take reasonable steps to identify Ms Keenan as a problem gambler in breach of the RGP, HREP and HRESOP and section 308(4) of the Act.
 - (c) If DCML identified Ms Keenan as a problem gambler, DCML breached the RGP by failing to:
 - (i) provide Ms Keenan with a problem gambling pack;
 - (ii) encourage Ms Keenan voluntarily to withdraw her patronage from the casino for a mutually agreed period of one month (as part of so called Time Out arrangements);
 - (iii) give her a self-barring notice or invite her to consider making an application to be self-barred; and
 - (iv) consider excluding Ms Keenan.



- (d) If DCML identified Ms Keenan as a problem gambler, DCML breached:
- (i) section 309(1) and (2) of the Act by failing to offer information or advice to Ms Keenan about problem gambling, including a description of the self-exclusion procedure available under section 310;
 - (ii) its HREP and HRESOP in the period after 1 July 2004 by failing to:
 - (aa) undertake corroboration, having opened a person of interest file;
 - (bb) advise Ms Keenan of the self-identified exclusion procedure available at the casino;
 - (cc) provide her with the option to accept self-imposed exclusion; and
 - (dd) consider excluding Ms Keenan.

65. The Respondent submitted in response that:

- (a) The Applicant had not properly addressed the issue of casino "signs" by which Ms Keenan should have been identified as a problem gambler under the RGP, HREP and HRESOP. These signs did not include the amounts wagered or lost or frequency of attendance.
- (b) The Applicant had focused on the entire period of Ms Keenan's gambling, without addressing the specific position of DCML from 1 April 2004 onwards.
- (c) Enquiries were made in 2003 about Ms Keenan's ability to sustain her gambling, of Ms Keenan herself and externally. Following those enquiries, the casino concluded that Ms Keenan was not a problem gambler or at risk of developing a gambling problem.
- (d) This conclusion was reached by Mr Woolley prior to 1 April 2004 and, accordingly, if his knowledge is to be attributed to DCML, that knowledge must include knowledge of the conclusion that he had reached.
- (e) In order to show that DCML was under an obligation to identify Ms Keenan as an actual or potential problem gambler after 1 April 2004, the Secretary would need to show new acts which would necessitate a fresh enquiry. The Respondent's evidence was that Ms Keenan's gambling was beginning to drop in volume and regularity during this period
- (f) The test under the RGP is subjective not objective. Obligations for the casino to consider Time Out, or to consider exclusion or trespassing options were not



triggered as, after a reasonable assessment, DCML did not believe Ms Keenan to have a gambling problem or to be at risk of developing a gambling problem.

- (g) By making Ms Keenan aware that a problem gambling pack was available, DCML discharged any obligation it may have had under the RGP to “afford” her this information.
- (h) DCML’s obligation under section 308(4) and the HREP and HRESOP was in force for only seven weeks (from 1 July 2004) prior to Ms Keenan’s arrest and exclusion.
- (i) The threshold for identification is higher under the HREP and HRESOP than the RGP. The casino complied with the HREP and HRESOP by opening a person of interest file for Ms Keenan. It would be unreasonable to expect the casino (in the limited time available prior to Ms Keenan’s arrest) to have undertaken further investigation to corroborate whether or not Ms Keenan was a problem gambler, the casino already having investigated and reached a conclusion in this regard.

66. In relation to the alleged breach of licence condition 8.6, the Applicant relied on evidence given by Mr Stewart that Ms Keenan was intoxicated at the casino on the evenings of 14 May and 14 August 2004, and submitted that a reasonable inference could be drawn that she was gambling while intoxicated on those occasions. The Respondent submitted that there was no direct evidence of Ms Keenan gambling while intoxicated, and that the evidence did not support this inference.

Analysis

Jurisdiction

67. As noted above, the Act contemplates a two-stage enquiry. First, the Commission was required to be satisfied that DCML breached the Act or a condition of the licence or minimum operating standards during the period 1 April 2004 to 20 August 2004. If satisfied, the Commission was then required to consider whether it was desirable to suspend DCML’s licence.

68. Determination of whether DCML was in breach involved, first, identifying DCML’s relevant legal obligations, and secondly, determining whether DCML breached these obligations. DCML’s legal obligations under licence conditions applied on an ongoing basis from 1 April 2004 (when DCML took over the casino operator’s licence from Aspinall). DCML’s obligations under licence conditions were supplemented from 1 July 2004 by statutory requirements imposed by sections 308-311 of the Act



Condition 8.6

69. The Commission first addressed the alleged breach of licence condition 8.6, providing that "The licence holder shall not permit any intoxicated person to gamble in the casino".
70. The apparent purpose of the condition 8.6 is to prevent people gambling in an intoxicated state in which their judgement is affected adversely. The licence condition places an obligation on the licence holder to "not permit" intoxicated people to gamble. For the purposes of this licence condition, whether a person is intoxicated must be ascertained from objective observation. How the person subjectively felt, or his or her blood or breath/alcohol level, is not determinative. It is the objective manifestations of intoxication which are relevant. The test is whether the person's physical or mental faculties have been apparently disturbed by the consumption of alcohol.
71. In order to establish breach of condition 8.6, the Commission would need to be satisfied, by direct evidence or by proper implication, that Ms Keenan exhibited signs of intoxication while she gambled in the casino and that DCML staff permitted her to continue gambling once the signs of intoxication were apparent.
72. The evidence was that Ms Keenan was intoxicated on the two occasions alleged by the Secretary, 14 May and 14 August 2004. The Commission is not satisfied however that Ms Keenan gambled while intoxicated on those occasions nor, still less, that DCML permitted her to do so. Accordingly, the Commission is not satisfied that DCML breached condition 8.6.

Licence condition 12.4

73. Licence condition 12.1 requires the licence holder to have a RGP, with condition 12.2 specifying the matters for which the Programme must provide. The Programme requirements include, inter alia, provision for signage, brochures and publications to inform gamblers of counselling services, a self-exclusion programme for problem gamblers, and staff and management training in the responsible provision of gambling.
74. Condition 12.4 requires that "The operating procedures for the casino shall comply with the requirements of the programme ...". As indicated in its decision GC07/06, the Commission considers that condition 12.4 requires the casino to operate in accordance with the requirements of the RGP. The "operating procedures", in this context, are what the casino does operationally. It is required not simply to have a RGP, but to comply with its requirements. Any other interpretation of condition 12.4 would fail to achieve its clear purpose and would be absurd.
75. The RGP approved by the CCA on 24 May 2004 requires authorised persons at the casino to receive instruction and training in relation to problem gambling management,

including defining problem gambling using the Diagnostic Criteria (DSM-IV) Authorised persons included the General Manager. The evidence gave rise to doubt about whether Mr Woolley had received the required training but the position is not sufficiently clear for the Commission to reach a firm conclusion.

76. The RGP requires that, when a patron believes he or she has a problem, or is identified by casino staff as being a person who may have a problem or is at risk, the licence holder must:

- (a) “discreetly and confidentially afford” that person a problem gambling pack;
- (b) act on any application for self-barring; and
- (c) consider exclusion when a patron refuses to self-bar

77. The RGP also provides that the licence holder may initiate a Time Out (limited self-exclusion) procedure, when it believes that a patron may have a gambling problem, or is identified as possibly being at risk of developing a gambling problem. The decision to invoke the Time Out procedure is discretionary on the part of the licence holder.

Identification as actual or potential problem gambler

78. In considering whether DCML breached its obligations under the RGP, the HREP, the HRESOP or section 308, there is a common issue, namely whether (and when) DCML identified Ms Keenan as someone to whom the policies or legislative obligations applied. The Applicant brought the application on alternate grounds depending upon whether Ms Keenan was identified as an actual or potential problem gambler or not.

79. There was no factual dispute that Ms Keenan was, in hindsight, a problem gambler. A “problem gambler” is broadly defined in section 4 of the Act to mean “a person whose gambling causes harm or may cause harm”. Harm, in turn, is broadly defined to mean:

- (a) ... harm or distress of any kind arising from, or caused or exacerbated by, a person’s gambling; and
- (b) includes personal, social, or economic harm suffered -
 - (i) by the person; or
 - (ii) the person’s spouse, partner, family, whanau, or wider community; or
 - (iii) in the workplace; or
 - (iv) by society at large.

80. It was plain to the Commission that Ms Keenan was a problem gambler. She stole \$470,000 from her employer, T D. Scott & Co, with harmful consequences for her employer, herself and her family. Counsel for Ms Keenan said at her sentencing that

desire to finance her gambling was a significant factor driving her offending. In her interview with Mr Harris, Ms Keenan outlined how her addiction to gambling had caused serious harm to herself and others.

81. As a starting point, the Commission considered what identification requirements applied under the RGP, section 308(4) of the Act and the HRESOP. The Commission concluded a common requirement applied to identify actual or potential gamblers, as follows:

- (a) The processes which the casino was required to adopt under the RGP are addressed to patrons whom the casino believes “may have a gambling problem, or are identified as possibly being at risk of developing a gambling problem”
- (b) Section 308(4) of the Act required DCML to develop a policy for identifying problem gamblers, and to “take all reasonable steps to use that policy to identify actual or potential problem gamblers”.
- (c) Consistent with section 308(4), section 1 of the HRESOP repeats the requirement to identify actual or potential problem gamblers, with immediate action being required under section D of the HRESOP by staff identifying a potential problem gambler through observance of listed or other signs.

82. Mr Woolley’s and Mr Purdon’s evidence was that, at no time prior to Ms Keenan’s arrest and exclusion, did Aspinall and subsequently DCML conclude that Ms Keenan was an actual or potential problem gambler. In support of this assertion, they said Ms Keenan did not demonstrate any of the signs of an actual or potential problem gambler identified in the RGP and the HRESOP and that external enquiries suggested that Ms Keenan could afford to gamble at the levels that she did.

83. In fact, the RGP does not prescribe the signs by which actual and potential problem gamblers are to be identified. The RGP provides that staff are to be trained in “defining problem gambling using the Diagnostic Criteria (DSM-IV) which is used worldwide as a list of symptomatic criteria for identifying problem and/or pathological gamblers”. The RGP also included, as Appendix 9 to the document, a problem gambling brochure for patrons. This included a list of signs for use by patrons or their families to self-diagnose whether their gambling was becoming a problem. It was plainly not intended for staff members’ use, and necessarily, a number of the “warning signs” listed would not be obvious to casino staff.

84. Dr Philip Townshend, a psychologist expert in problem gambling, gave evidence that the DSM-IV signs were developed to assist a clinical assessment of whether a person was a pathological gambler (a person with a very serious gambling problem) and were not appropriate indicators for casino staff of whether or not a patron has a potential gambling

problem Dr Townshend expressed the view that, depending on the circumstances, volume of expenditure and regularity of play may be strong indicators of potential risk.

85. Many of the indicators of pathological gambling may not have been evident to casino staff; indeed the existence of some signs listed as part of DSM-IV criteria could only have been ascertained by direct expert enquiry of Ms Keenan. DSM-IV indicators included, for example, evidence of repeated unsuccessful attempts to cut back on gambling; restlessness and irritability when seeking to do so; escapism; chasing losses; lying; forgery; fraud; theft etc, many of which would not necessarily be obvious from staff observation of Ms Keenan.
86. The DCML witnesses, however, indicated that the extent of Ms Keenan's losses and the regularity of her play were so significant as to be a matter of concern and comment. Volume of expenditure and regularity of play may not have been listed in any policy document but, as a matter of common sense, DCML staff correctly recognised their importance in the circumstances and expressed concern.
87. It was plain to the Commission, from the casino's identification of Ms Keenan in 2003 as a subject for concern and enquiry, and the consequential steps taken, that Ms Keenan was identified by Aspinall as an actual or potential problem gambler prior to 1 April 2004. Mr Woolley's repeated approaches to Ms Keenan, and the nature of his discussions with her; the concerns raised on occasion by Mr Purdon, Mr Yeoman and Mr Lawrence Peeters (Operations Manager at the time); Mr McLauchlan's discussions with Mr Scott in 2003; all demonstrated that the casino had well-founded concerns about the level of Ms Keenan's spending and that she was a patron of potential risk to herself and others, including her employer. The Commission made a careful and considered assessment of the evidence given to the contrary by Mr Woolley and Mr Purdon but, having seen them give evidence and having considered the surrounding facts, it has little hesitation in rejecting it. It also rejects Mr Woolley's contention in evidence that Ms Keenan had not even been identified as a potential problem gambler at the time of her final exclusion from the casino following her arrest.
88. After 1 April 2004, notwithstanding the asserted belief of DCML witnesses that Ms Keenan's gambling was diminishing, DCML continued to identify Ms Keenan as an actual or potential problem gambler. This was demonstrated by DCML opening a person of interest file on 1 July 2004. The HRESOP provides that a person of interest file is to be opened only where a patron is identified as a potential problem gambler by a staff member, and this view is corroborated internally. Specifically, the following steps precede the opening of a file:

- (a) staff identification of a potential problem gambler;



- (b) verification of the identification by a Shift Manager; and
- (c) reporting by the Shift Manager to the Gaming Shift Manager or Security Manager, with "Host Responsibility" then required to open a file and to obtain corroboration and evidence.

89. The fact that DCML continued to regard Ms Keenan as an actual or potential problem gambler is further demonstrated by Mr Woolley's and Mr Purdon's interview with her on 29 July 2004, and their, and Mr Yeoman's, evidence that they continued to monitor Ms Keenan from 1 April 2004 until her arrest.
90. The Commission therefore proceeds on the basis that there is no breach arising from a failure to identify Ms Keenan as a potential problem gambler (as, in fact, she was so identified) and it is concerned from this point whether there was a breach of any consequent obligations.

Breach of RGP

91. Having concluded that Aspinall had identified Ms Keenan as a potential problem gambler, and that that knowledge was passed to DCML through its senior management, the Commission then considered whether DCML failed to discharge its consequent obligations under the RGP.
92. The Commission finds that DCML was in breach of the RGP (and consequently licence condition 12.4) by failing to afford Ms Keenan a problem gambling pack. The Commission does not accept the Respondent's argument that this obligation was discharged by making Ms Keenan aware of where she could obtain such a pack. In the Commission's view, "afford" means (in this context) "provide" or "furnish". The RGP required positive action by the casino to provide relevant information to patrons once identified as being at risk. Mr Woolley's action, in pointing out where Ms Keenan could obtain a pack, did not discharge this obligation.
93. The Commission does not find DCML otherwise in breach of the RGP. The Applicant alleged that DCML was in breach by failing to encourage Ms Keenan to withdraw her patronage by way of Time Out agreement, to invite her to self-bar, or to exclude her. DCML is, however, required to propose Time Out only in circumstances "if it is felt appropriate", a subjective assessment, Mr Woolley's evidence being that he did not believe it was appropriate. Self-barring under the RGP requires an application by the patron, there being no specific obligation to encourage or invite a patron to self-bar, beyond affording the problem gambling pack which contains material on self-barring. Finally, the requirement for the operator to give consideration to excluding Ms Keenan

was not triggered in this instance, as this obligation arises only in circumstances where a patron elects not to self-bar

Breach of sections 308(4), 309 and 310

94. Sections 308 to 312 are located in part 4, subpart 2 of the Act, entitled "Admission to venues". The purpose of the sections in subpart 2 is to provide for the identification of problem gamblers, their self-exclusion and forced exclusion from casino and class 4 venues.
95. Section 308(1) requires casino licence holders to develop a policy for identifying actual or potential problem gamblers, which DCML did, in the form of its HREP and HRESOP, adopted by DCML on 1 July 2004. Section 308(4) focuses on implementation of the policy to identify problem gamblers. It does not impose any obligations beyond using the policy to identify problem gamblers.
96. The HREP and HRESOP specify that, when a person is identified under the HREP and HRESOP, the casino is required to corroborate third party identification, unless (as stated in the HRESOP) the situation is urgent and the person in question is on site. Identification corroboration is carried out by obtaining and reviewing external or internal information – the latter including review of loyalty card play and surveillance tapes, and conducting interviews with gaming or security staff. If corroboration leads to identification, the casino:
 - (a) must approach the individual, offer advice or information on problem gambling and self-exclusion; and
 - (b) if the person does not wish to pursue self-identified exclusion, consider exclusion.
97. Following identification of a problem gambler, the holder of the casino operator's licence must, pursuant to section 309, "approach the person and offer information or advice about problem gambling", including a description of the self-exclusion procedure. The required approach not only confronts the person with the suggestion that he or she is a problem gambler but also includes the provision of information, specifically including self-exclusion, about dealing with the problem. In response, the person identified as a problem gambler may decide to request to be excluded from the premises. If such a request is made, the venue manager or the holder of a casino operator's licence must promptly issue an exclusion order (section 310). A knowing failure to do so is a criminal offence (section 312(2)).



98. If the person identified as a problem gambler does not request to be excluded from the premises, then the venue manager or holder of the casino operator's licence can nevertheless exclude the person. Section 309(3) provides:

A venue manager or the holder of a casino operator's licence may, after offering advice or information to a person under subsection (1), issue an exclusion order to the person that prohibits the person from entering the gambling area of the class 4 venue or casino venue (as the case may be) for a period of up to 2 years

99. In addition, the Act provides for procedures for prohibiting identified problem gamblers to be specified in regulations (section 316), although no regulations have been promulgated at the present time.
100. In contrast to the legal obligation to issue a self-exclusion order once elected, the holder of the operator's licence is not obliged under section 309 (or elsewhere) to issue an exclusion order if self-exclusion is declined, and there is no criminal sanction for failing to do so. Section 309(3) confers a discretion on the venue manager or holder of the casino operator's licence as to whether or not to exclude the person.
101. The Commission does not consider that section 309 can be construed as imposing a legal obligation to exclude customers if they have been offered but elected to decline self-exclusion. First, there is a clear contrast in the language of sections 310 and 312 and section 309(3), the latter creating an obligation, the former a discretionary power. Secondly, the circumstances creating the obligation in sections 310 and 312 are clear, express and unambiguous, being a request for a self-exclusion order. In contrast, section 309(3) does not expressly nor by necessary implication create an obligation to exclude. In addition, the circumstances when such an obligation would arise are quite unclear and would need to be specified.
102. Looked at as a whole, the apparent underlying policy requires the operator to approach suspected problem gamblers, to provide them with information and to offer a self-help remedy (self-exclusion) but not to impose further **legal** obligations on operators.
103. Taking into account the above analysis of sections 308-310, the Commission finds as follows:
- (a) There was no breach by DCML of section 308(4) of the Act, as DCML identified Ms Keenan as an actual or potential problem, as discussed previously.
 - (b) DCML breached section 309(1) by failing, when approaching Ms Keenan, to offer the prescribed information or advice about problem gambling. As specified in section 309(2) the information provided must include a description of the self-exclusion procedure available under section 310 of the Act. Mr Woolley and Mr Purdon did not provide this information to Ms Keenan when they met with her on



29 July 2004; nor did any other staff member on any other occasion after 1 July 2004 and prior to Ms Keenan's arrest.

(c) DCML did not breach section 309(3) by failing to exclude Ms Keenan, this being discretionary on the part of DCML.

(d) DCML did not breach section 310, as Ms Keenan did not ask to be self-barred.

104. DCML submitted that, by the time of Ms Keenan's arrest on 20 August 2004, it had commenced, but not concluded obtaining the corroboration necessary in order to identify Ms Keenan as a potential problem gambler. For the reasons set out earlier, the Commission's primary finding is that this was not the case and the identification process was complete. The lack of subsequent activity after the file was opened is consistent with that view. If the Commission had reached a different conclusion regarding completion of identification, it would have found DCML to have been in breach of section 308(4) by failing to take reasonable steps to corroborate the facts which had resulted in the person of interest file being opened on 1 July 2004, namely the extent of Ms Keenan's historical gambling activity.

Exercise of Discretion

105. As the Commission was satisfied that DCML breached licence condition 12.4 and section 309 of the Act, the Commission proceeded to consider whether to exercise its discretion to grant an order for suspension pursuant to section 146(1), the Act requiring that it must be "satisfied that ... it considers it desirable to do so".

106. In this context, the Applicant submitted that the dicta of Gendall J in *The Mill Liquor Save Limited v Verner* case was apposite, namely that the use of the word "desirable" simply means worthwhile or worth having.

107. The Commission's discretion is conferred without an express indication of its purpose or further indication (beyond section 144 itself) of the circumstances in which suspension may be desirable. Clearly, a key purpose of section 146 (and the equivalent provision in the Casino Control Act 1990, now repealed) is to provide a mechanism by which to secure compliance with the legislation and licence conditions. To determine the circumstances in which it might be appropriate to exercise its suspension powers, the Commission considered the purpose of the Act, and what the Act seeks to achieve. It considered that any suspension must support fulfilment of the Act's purpose.

108. The Act is a marked departure from the Casino Control Act 1990. Whereas the 1990 Act provided for the establishment of casinos, and was directed towards ensuring they delivered economic and tourism benefits, the Act's purpose now includes:

- (a) controlling the growth of gambling;
 - (b) preventing and minimising the harm caused by gambling, including problem gambling; and
 - (c) facilitating responsible gambling.
109. The Act contains statutory prohibitions on the granting of new casino licences, placing the existing six casinos in a favoured position. These casinos must now operate in the context of a new Act which places much sharper emphasis on host responsibility and harm minimisation.
110. In determining whether or not it is desirable to suspend a casino licence, the Commission is required to have regard to the seriousness of established breaches, in light of the purpose of the Act and the public interest it embodies and reflects. While the new Act is quite clear about where the responsibilities of casinos and class 4 venue operators now lie, the Commission considers that it would be inappropriate for it to use the Act's new benchmark to measure the seriousness of breaches occurring prior to 1 July 2004, when different legislation applied, and it has not done so. Emphasis was placed by the Commission on breaches occurring after 1 July 2004 in reaching the decision that it was desirable to exercise its discretion to suspend.
111. The Applicant submitted that a seven day suspension period was warranted, taking into account the following factors:
- (a) The maximum penalty is six months suspension which is to be reserved for the worst possible case. A seven day suspension is approximately 5% of the maximum penalty.
 - (b) The lack of any acknowledgement of wrongdoing.
 - (c) The lack of training of key personnel including the General Manager, Mr Woolley
 - (d) The length of time over which Ms Keenan was allowed to gamble, although it is acknowledged that it is the Respondent's inaction only since 1 April 2004 which forms the basis for the application.
 - (e) The importance of efforts to control problem gambling.
 - (f) The need for deterrence.
112. The Respondent submitted that the Commission should, in considering whether to exercise its discretion and to impose any penalty, take into account the following factors:

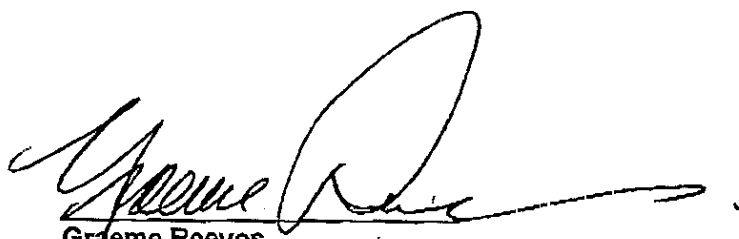
- (a) That the application is the first under the Act, and has been regarded by the Applicant as a test case.
- (b) Only seven weeks of the Act were in issue.
- (c) DCML did not ignore Ms Keenan, but continued to monitor her behaviour.
- (d) Identification of Ms Keenan under the HREP would have made no difference to the ultimate outcome.
- (e) The Commission, having seen the high calibre of DCML's continuing staff, can be confident that compliance issues are and will be dealt with responsibly.
- (f) The penalty sought by the Applicant, quantified in money terms, is huge, and in excess of fines generally imposed upon organisations in New Zealand.
- (g) The Respondent has incurred very significant legal fees in defending the application, and the Commission can properly form the view that the bringing of the application has itself been an appropriate penalty for DCML.
- (h) The casino was not the only place where Ms Keenan gambled, and the casino has been identified by the Applicant as "an easy target".

113. The Commission first considered whether to impose any suspension at all. It considered that the breach of section 309 of the Act and of licence condition 12.4 in the period after 1 April 2004 were material failures to comply with important obligations, and that the exercise of its discretion to suspend DCML's licence is desirable for this reason. It is not appropriate that non-performance of host responsibility obligations which are clear, and of added moment after 1 July 2004, should have no consequence. To do so would send incorrect and inappropriate signals regarding the importance of complying with obligations of this sort.

114. The Commission found that Aspinall had identified Ms Keenan as a problem gambler in early 2003, and possibly earlier. The failure of Aspinall to take the required action to assist Ms Keenan, by offering her the option to self-exclude, is deplorable, but outside the scope of the current application.

115. After 1 April 2004, DCML in turn, took no action beyond opening a gambler of interest file and conducting a further interview with Ms Keenan about the benefits of moderation. Although most of the damage was no doubt done prior to DCML taking over the operation of the casino, DCML still failed meaningfully to assist Ms Keenan by explaining properly to her self-barring or otherwise encouraging her to recognise that her gambling activity presented a risk to herself and possibly others.

116. In reaching its decision on whether to suspend DCML's licence (and for how long), the Commission has not given much weight to the serious consequences of Ms Keenan's gambling. To do so would have the effect of punishing DCML for the consequences of Aspinall's failures, as the damage seems to have been done largely during the period of Aspinall's operation. The change of operator on 1 April 2004 has been something of a fortuity for the casino in terms of the outcome. Nevertheless, DCML failed to meet its own obligations and the failure should not be without consequence.
117. Having considered the parties' submissions, the Commission considers it desirable that there should be a consequence in the form of suspension of DCML's licence but it should be a modest one. The Commission suspends the licence for two consecutive days, to be nominated by DCML, to be taken within a calendar month of the date of this decision. A notice to this effect, issued pursuant to section 146(2) of the Act, is attached.
118. The Commission expects that its decision will make plain to casino operators the importance of compliance with host responsibility obligations in licence conditions, and now enshrined in the Act. The hearing has also demonstrated the need for DCML to review and update its RGP and to align it with its HREP and HRESOP, and to ensure first, that staff are trained in more useful and relevant ways to identify actual or potential problem gamblers, and secondly, that when patrons are identified as being at risk, prompt and meaningful action is taken by the casino to assist them.



Graeme Reeves
Acting Chief Gambling Commissioner

for and on behalf of the
Gambling Commission

17th October 2006



**NOTICE OF SUSPENSION OF CASINO OPERATOR'S LICENCE PURSUANT TO
SECTION 146(2) OF THE GAMBLING ACT 2003**

Licence

Casino operator's licence granted by the Casino Control Authority on 17 September 1993.

Holder of licence

Dunedin Casinos Management Limited ("DCML").

Length of suspension

Two sequential days, to be taken within a calendar month of the date of this decision.

Reasons for the suspension

The Commission was satisfied under section 144(a) of the Act that DCML had breached licence condition 12.4 and section 309 of the Gambling Act 2003.

The licence holder breached licence condition 12.4 by failing to afford Ms Keenan a problem gambling pack, as required under DCML's Responsible Gambling Programme adopted pursuant to licence condition 12.1.

The licence holder breached section 309 of the Act by failing after 1 July 2004 to approach Ms Keenan and offer information or advice about problem gambling, including a description of the self-exclusion procedure.

Matters to be dealt with in order for the Commission to consider withdrawing the suspension before the end of the suspension period

There are no matters to be dealt with pursuant to section 146(2)(c).

Consequences

As there are no matters to be dealt with, there are no relevant consequences under section 146(2)(d).

Appeal

The Respondent has the right to appeal to the High Court pursuant to section 148 of the Act within 10 working days after the date on which the suspension takes effect.

