

**QLDCLC 0003/15**

**IN THE MATTER**

of the Sale and Supply of Alcohol  
Act 2012

**AND**

**IN THE MATTER**

of an application by  
**QUEENSTOWN HOSPITALITY**  
**LIMITED** pursuant to s.137 of the  
Act for a Special Licence in  
respect of premises situated at  
Level 1, 54 Shotover Street and  
known as "Club Eighty Eight"

**BEFORE THE QUEENSTOWN LAKES DISTRICT LICENSING COMMITTEE**

Chairman                    Mr E W Unwin

Members                    Mr L Cocks

                                  Mr J M Mann

**HEARING** at QUEENSTOWN on 1<sup>st</sup> April 2015

**APPEARANCES**

Mr R Peterson – representing the Applicant

Ms J Mitchell – Queenstown Lakes District Licensing Inspector – to assist

Dr D Bell – Medical Officer of Health – in opposition

Sergeant L K Stevens – NZ Police – in opposition

**RESERVED DECISION OF THE COMMITTEE**

**Introduction**

- 1) This is an application by Queenstown Hospitality Limited (hereafter called the applicant or company) for a special licence to trade for four hours on one of the three and a half sacrosanct days in a year, namely Easter Sunday 5 April 2015. The company trades as a tavern with permitted hours of 8.00am to 4.00am the following day. The business, trades as “Club 88” and is marketed as a Gentleman’s Club. It opened in 2012 and provides adult entertainment. The premise is approved for one hundred patrons and contains a large dance/performance area which features a floor to ceiling pole. The business employs up to twelve female performers on promotional nights.
- 2) The applicant wishes to hold an event, in conjunction with the New Zealand Breast Cancer Foundation, called ‘Leather and Lace’ to celebrate “Club 88”’s third birthday. Following the clearing of patrons from the premises at 11.45pm on Saturday 4<sup>th</sup> April, guests holding one of the proposed two hundred and fifty tickets purchased prior to 8.00pm, and dressed in either leather or lace, would be allowed to enter the premises from 12.00 midnight on Easter Sunday 5<sup>th</sup> April 2015.
- 3) The proposed activities included fire breathing and poi demonstrations, pole dancing demonstrations and a “Slave Auction” allowing those present to bid for the opportunity to have dinner with the female employees. The company advised that the door charge of \$20.00 per person would be donated to the New Zealand Breast Cancer Foundation, that attendees would only be permitted if wearing leather or lace and that there would be several collection points for the further raising of funds for the Foundation.
- 4) The application was opposed by both the Police and the Medical Officer of Health. The Police were concerned about the nature of the event as well as the days and hours that had been proposed. They argued the proposed event was 'business as usual' and suggested the event was 'contrived' in that there was no link between the date and the applicant's third birthday. The Medical Officer of Health argued the application breached the Object of the Act in that the proposal to trade for four hours on Easter Sunday would not 'minimise the harm' caused by the excessive or inappropriate consumption of alcohol. He also submitted that what was being proposed was business as usual, and the application was a contrived attempt to evade the requirements of s.47 of the Act.

### **The Application**

- 5) Mr Richard Peterson is the General Manager of Operations for the applicant company. He advised that the company operates two other hospitality businesses in the Queenstown Lakes District. The company has two directors, Mr John Jones, and Mr Adam Nagy both of whom were overseas researching future hospitality ideas at the time of the hearing. Mr Peterson has been with the company since 2012 and is the nominated Duty Manager for the application.
- 6) In his evidence, Mr Peterson described himself as having over twenty years experience in the entertainment and hospitality industry. He confirmed "Club 88" is a strip and entertainment club. He stated that prior to the 2012 Sale and Supply of Alcohol Act; the business had traded on an entertainment style licence with no need for special licences over the three and a half sacrosanct days. He argued there would be no increased access to alcohol as they had previously traded through Easter without any issues arising. He also argued that in the past, the company had never had issues or problems with intoxication.
- 7) The company requested that its charity work be taken into account. In its application it had presented a letter from the New Zealand Breast Cancer Foundation dated 14 May 2013 in which the company had been thanked for choosing the Foundation as a beneficiary of an event to be held. A reference number was nominated and in one of the flyers it showed the company as a "Proud Community Supporter of the Foundation'. However, in cross-examination by Doctor Derek Bell (Medical Officer of Health) Mr Peterson was forced to concede that the company had not made any application to the Foundation to run the fundraiser over Easter and there had been no contact between the parties since July 2013.
- 8) The actual letter from the CEO of the New Zealand Breast Cancer Foundation was dated 30 March 2015 and read as follows:

*"Thank you for the advice concerning Club 88 in Queenstown, who have applied for a liquor licence for an event on the 4<sup>th</sup> April, Easter Sunday, for an event allegedly in conjunction with NZBCF.*

*We have no knowledge of this event, and have no registration of the fundraiser. We would require the organisation to register a fundraising event with us, and so far, we have not received such an application. They are in breach of using our logo and name without prior approval and as such, we will follow up with that organisation in due course.*

*The first and last time we had communication with that organisation was in 2013 when they ran a community fundraiser event in July of 2013, where the proceeds came to NZBCF.*

*We are very grateful that you have alerted us to the situation and I can reassure you that the NZBCF would not be in favour of such an event especially on Easter Sunday. We are also very disturbed that they have used our organisation's logo to support their application for a liquor licence."*

- 9) In summary, Mr Petersen found himself in an invidious position required to support an application that had little merit and contained an element of deception. It was clear the directors had discovered the commercial advantage their company had received under the former Sale of Liquor Act no longer existed under the new Act. They had therefore put together an event which they had called a third birthday party. It had been given an unauthorised aura of respectability by linking it to the New Zealand Breast Cancer Foundation. Neither they nor Mr Petersen seemed to be aware of the guidelines we had issued in May last year.

### **The Inspector**

- 10) The Inspector is required by s.141 of the Act to inquire into and file a report on the application. Ms J Mitchell provided a helpful précis of the application and noted the matters in opposition raised by the other reporting agencies which brought into question whether the applicant had met the criteria set out in s.142 of the Act.
- 11) In particular Ms Mitchell analysed one of our previous decisions in which we had indicated a number of matters that helped to determine whether an application was genuine or contrived. These were the price of entry; whether there was some generic factor with the customers or guests; whether the intrusion into Good Friday and/or Easter Sunday was significant or restrained; whether a reasonable person attending the event would immediately notice a difference between the ambience of the occasion or any other trading day; and the extent of the planning that had taken place, and the thought that had been given to the way the event was to be run. On all matters the company failed to establish its application was genuine.

### **The Medical Officer of Health**

- 12) The Medical Officer of Health, Dr Derek Bell drew the committee's attention to s.142 of the Act and in particular the nature of the particular event for which the licence is sought. Dr Bell pointed out that "Club 88" had opened on the 4<sup>th</sup> – 7<sup>th</sup> February 2012,

and the applicant had chosen a date on a sacrosanct day two months after the anniversary to hold the birthday event. Dr Bell reiterated that the letter from the Foundation (included with the application) was out of date and irrelevant and the one dated 30<sup>th</sup> March 2015 from the CEO clearly showed that reference to the foundation was unauthorised and the application was therefore misleading.

### **NZ Police**

- 13) In her closing submission, Sergeant L Stevens said the Police “believe that this event is contrived so as to allow the premises to trade as normal when trade would otherwise be restricted’. Further, Sergeant Stevens noted that the application and posters referred to a birthday celebration which was unsupported by any material or reference within the promotion. In other words, the application was for ‘business as usual’ designed to circumvent the Easter Trading Hours. She argued this on the basis of the criteria listed below and set out in the decision of **Grey Door Limited QLDLC0011/14** in which this committee stated:

*[20]...Whether an event is contrived can often be determined by a number of factors. The following list is not necessarily exhaustive;*

*(a)The price of entry the lower the price the more members of the general public the applicant appears to be encouraging to attend*

*(b) Whether there is some generic factor with the customers (such as guests at a wedding or people with a special interest in the event)*

*(c)Whether it is anticipated that members of the public will attend the event. A Licensing committee may impose a condition excluding members of the public from the premises.*

*(d)Whether the intrusion into Good Friday and/or Easter Sunday is significant or restrained. In other words whether the applicant seeks to trade for as many hours as possible*

*(e) Whether a reasonable person attending the event would immediately notice a difference between the ambience of the occasion and any other trading day*

*(f) And finally, the extent of the planning that has taken place, and the thought that has been given to the way the event is to be run. The less organised the applicant, the more likely that the event has been thought about after the decision has been made to apply for a special licence.*

### **The Committee's Decision and Reasons**

- 14) At the hearing we advised that the application was declined. We now give our reasons.
- 15) As stated above, when it passed the Sale and Supply of Alcohol Act 2012, Parliament determined there would only be one type of on-licence and all on licences would have the same generic conditions. Furthermore s. 47 which deals with the 3.5 sacrosanct days refers to all on-licences and not just taverns. As a consequence, entertainment centres and picture theatres and others where the sale of alcohol played a minor role in the business were also excluded from selling alcohol on the sacrosanct days. There are other anomalies arising from Parliament's decision not to legislate for different styles of on-licences. The issue is whether Parliament determined that these businesses could only operate with a special licence on Good Friday, Easter Sunday, Christmas Day and before 1.00pm on Anzac Day. Nobody seems to know. However until such time as the situation has been clarified the law is clear. A special licence is required.
- 16) Prior to Easter last year we issued a number of decisions on Easter trading and set out our expectations of what would be required to ensure the principles in the new Act were observed. The general rules are detailed in the following paragraph.
- 17) First there must be a genuine event and not something that has been contrived. Secondly the application must not be a means for an on-licence to obtain extended trading hours. Thirdly it is likely that any wholesale relaxation of standards will bring the Act into disrepute and could in the long term, reflect adversely on the Object of the Act. Fourthly while it is possible for there to be local rules for local conditions, it is not possible for a committee to exceed its jurisdiction and bend the law. To these rules must be added the examples set out in para [13] above.
- 18) S. 142 sets out the criteria to which the committee must have regard. These include the nature of the event, the suitability of the applicant and the days on which and the hours during which the applicant proposes to sell alcohol. The applicant/company must establish its entitlement to a licence to our satisfaction. This application was refused because the applicant all but acknowledged that the event was contrived because the applicant had previously been able to trade on Easter Sunday without problems. We were more than satisfied that this 'event' was business as usual. The door charges were the same. The activities to take place were virtually the same. This was an attempt to trade at a time that was prevented by law.

19) However there is an even greater obstacle for the company to climb. We were surprised to learn that apparently a well known Foundation had lent its weight to such an evening in order to receive funds. Thanks to research undertaken by the Medical Officer of Health, the reality was quite different. In our view the application was misleading and deceptive. It follows that the applicant lacks integrity. In summary, it has failed to establish its suitability to be granted a special licence for the event.

**DATED** at Queenstown this 17 day of April 2015



Mr E W Unwin

Chairperson