

O'Neill Hotel Management Services P/L v NT Liquor Commission [1999] NTSC 124

PARTIES: O'NEILL HOTEL MANAGEMENT
SERVICES PTY LTD

v

THE NORTHERN TERRITORY LIQUOR
COMMISSION

TITLE OF COURT: SUPREME COURT OF THE NORTHERN
TERRITORY

JURISDICTION: SUPREME COURT OF THE NORTHERN
TERRITORY exercising Territory jurisdiction

FILE NO: 54 of 1999 (9909320)

DELIVERED: 15 November 1999

HEARING DATE: 17 September 1999

JUDGMENT OF: THOMAS J

REPRESENTATION:

Counsel:

Plaintiff: J. Reeves QC
Defendant: C. McDonald QC & R. Webb

Solicitors:

Plaintiff: De Silva Hebron
Defendant: Morgan Buckley

Judgment category classification: C
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IN SUPREME COURT
OF THE NORTHERN TERRITORY
OF AUSTRALIA
AT DARWIN

O'Neill Hotel Management Services P/L v NT Liquor Commission [1999]
NTSC 124 No. 54 of 1998

BETWEEN:

**O'NEILL HOTEL MANAGEMENT
SERVICES PTY LTD**
Plaintiff

AND:

**THE NORTHERN TERRITORY
LIQUOR COMMISSION**
Defendant

CORAM: THOMAS J

REASONS FOR JUDGMENT

(Delivered 15 November 1999)

[1] The plaintiff in this matter seeks the following orders:

- “1. A declaration that the Liquor Commission does not have the power to make, or an order in the nature of prohibition prohibiting the Liquor Commission from making, a finding that the plaintiff has contravened, or failed to comply with, any condition of its licence, or any section of the Liquor Act (‘the Act’) or any regulations thereunder, following its hearing of the complaints made by Mr. Dooley and Mr. McGarry (‘the complaints’) pursuant to section 48 of the Act.
2. Further, or in the alternative, a declaration that the Liquor Commission does not have the power to suspend, or an order in the nature of prohibition prohibiting the Liquor Commission from suspending, the plaintiff’s liquor licence pursuant to section 66 of the Act following its hearing of the complaints pursuant to section 48 of the Act.
3. In the alternative, an order staying the Liquor Commission from further hearing or dealing with the complaints.

4. In the further alternative, a declaration that the Liquor Commission is required to, or an order in the nature of mandamus directing the Liquor Commission to, deal with the complaints in accordance with the procedures set out in the Justices Act.”

[2] The grounds stated for this application in the originating motion are as follows:

“It is beyond the power of the Defendant to make a finding that the Plaintiff is guilty of an offence under the Liquor Act and proceed to punish the Plaintiff on the basis of that finding. Only a Court of competent jurisdiction has the power to find the Plaintiff guilty of an offence under the Liquor Act and to punish the Plaintiff based on that finding.”

[3] The plaintiff is the holder of liquor licence No. 80100963 issued by the Northern Territory Liquor Commission for the Crossways Motor Hotel in Katherine in the Northern Territory of Australia.

[4] On 6 June 1998, Mr Glen Dooley made a complaint against the plaintiff under s 48 of the *Liquor Act*.

[5] The letter of complaint is annexure B to the affidavit of Susan Jane Porter sworn 27 April 1999.

[6] The complaint relates to observations made by Mr Dooley in the “Last Chance Saloon” of the Crossways Hotel Katherine on the evening of 5 June 1998. Mr Dooley essentially alleged that intoxicated persons were being served alcohol and that s 102 of the *Liquor Act* was being breached and that s 105 of the *Liquor Act* was being, or was about to be, breached.

[7] Section 102 of the *Liquor Act* provides as follows:

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

Section 105 of the *Liquor Act* provides as follows:

“A licensee shall not permit indecent, violent, quarrelsome or riotous conduct to occur on or at his licensed premises.”

[8] In a statement declared on 16 June 1998, Mr John McGarry also laid a complaint under s 48 of the *Liquor Act* in respect of the Crossways Hotel. This statutory declaration is Annexure D to the affidavit of Susan Jane Porter sworn 27 April 1999. The essence of this complaint alleges a breach of s 102 of the *Liquor Act* by the staff of the Crossways Hotel on 11 June 1998.

[9] The nominee named on the liquor licence for the Crossways Motor Hotel Katherine, is Mr Jason Alexander O’Neill. On 21 August 1998, Mr O’Neill received two letters from the Northern Territory Liquor Commission, Office of the Registrar, copies of these letters are Annexure E and F to the affidavit of Susan Jane Porter sworn 27 April 1999, which omitting formal parts states as follows:

“Re: Complaint Pursuant to Section 48 of the Liquor Act – 11 June 1998

At its meeting on 11 August 1998, the NT Liquor Commission considered a complaint lodged pursuant to section 48 of the Liquor

Act, concerning an incident that occurred at the Crossways Motor Hotel on 11 June 1998.

The Commission's decision is as follows:

*Decision: Commission to conduct a hearing into the complaint.
Date to be set.*

I will advise you of the hearing date in due course.

If you have any queries, please contact Inspector Tanya Jacobs on 89991824.”

“Re: Complaint Pursuant to Section 48 of the Liquor Act – 5 June 1998.

At its meeting on 11 August 1998, the NT Liquor Commission considered the complaint lodged pursuant to section 48 of the Liquor Act, concerning an incident that occurred at the Crossways Motor Hotel on 5 June 1998.

The Commission's decision is as follows:

Decision: Commission to conduct a hearing into the complaint. Date to be set.

I will advise you of the hearing date in due course.

If you have any queries, please contact me on 89991824”

[10] Following adjournments of the hearing for various reasons, the complaints were fixed for hearing before the defendant, the Northern Territory Liquor Commission on 21 April 1999.

[11] On 14 April 1999 De Silva Hebron, solicitors for the plaintiff, forwarded a letter to the defendant seeking particulars of the alleged offences. Copy of this letter is Annexure G to the affidavit of Susan Jane Porter sworn 27 April 1999.

[12] Following a conversation with Mr Gerard Maley, solicitors for the plaintiff forwarded a further letter to the defendant dated 14 April 1999, copy of which is Annexure H to the affidavit of Susan Jane Porter sworn 27 April 1999 which letter, omitting formal parts, states as follows:

“Re: Crossways Hotel – Katherine – Complaint by Mr McGarry

We refer to the hearing brief provided by the Northern Territory Liquor Commission to us in relation to complaints made against our client, O’Neill Hotel Management Services Pty Ltd in relation to the Crossways Hotel in Katherine by Mr John McGarry.

Despite page 10 of the hearing brief noting that the complaint is ‘intoxicated on premises’, Mr Gerard Maley of your office, indicated, in response to our letter dated 14 April 1999, that the facts of the complaint suggested that it was a Section 102 matter.

As the complaint has been lodged pursuant to Section 48 of the Liquor Act we note the Commission’s power in Section 49(4) and in Sections 65 and 66 to take certain action which includes suspension of our client’s liquor license.

This procedure is to be distinguished from a prosecution under the Justices Act provided for by Section 124(3) and the provisions of Section 124AAA, Section 124A, Section 124AA and Section 124B in our view only appear to apply to the Justices Act prosecution. Likewise the reversal of the onus of proof as set out in Section 102 applies only to a prosecution under the Justices Act.”

[13] The defendant replied by letter dated 19 April 1999, copy of which is Annexure I to the affidavit of Susan Jane Porter sworn 27 April 1999. This letter states inter alia:

“The evidence adduced at the hearing may be such as to lead the Commission to a finding that the licensee has breached a provision of the Liquor Act. As you point out, Section 65 and 66 set out the Commission’s powers in the event of such a finding by the Commission. Section 49(4) sets out powers of the Commission

following a hearing even though no breaches of the Act may have been found to have occurred.

As to whether it is a ‘Section 102’ matter or ‘intoxicated on premises’, that of course will depend entirely on the evidence. It can be properly remarked, however, that the facts as alleged by the Complainant suggest the strong possibility of a breach by the licensee of Section 102, and also the possibility of a breach of Section 121(1).

Depending on the evidence, the Commission anticipates considering the application of both of those sections of the Act to the facts alleged by the Complainant.”

[14] On 21 April 1999, Mr Reeves QC, on behalf of the plaintiff, made submissions to the Liquor Commission which submissions have been summarised in the decision of the Liquor Commission delivered on 21 April 1999, as follows (p 2):

“Mr. Reeves submits that the Liquor Commission has no jurisdiction to conduct the current proceeding, in that the complaint is tantamount to a prosecution for breaches of the *Liquor Act* and therefore can be properly dealt with only by a Court of Law. If the complaint is of a breach of the Act by a licensee, he says, then such a complaint must go to a Court as a prosecution. Mr. Reeves says that the reference in section 66(1)(b) to the Commission’s power to suspend the licence where the licensee has contravened or failed to comply with this Act, can only mean that such a suspension by the Commission can follow a finding by a **Court** of a contravention or failure to comply with the Act.”

[15] The Liquor Commission rejected this submission and published reasons for their decision, copy of which is Annexure A to the affidavit of Susan Jane Porter sworn 25 August 1999.

[16] Essentially, the Liquor Commission relied on the reasons for decision of the Court of Appeal of the Supreme Court of the Northern Territory in the

matter of *Northern Territory Liquor Commission and Others v Rhonwood Pty Ltd* (1997) 117 NTR 1.

[17] In its decision delivered on 21 April 1999 at p 3, the Liquor Commission referred to the following passage from its own decision in the proceedings which involved the Walkabout Arnhem Land Resort Hotel in Nhulunbuy in early 1997:

“... these proceedings are not prosecutions ... Section 121(1) requires either the licensee or an employee to have removed the intoxicated persons. This requirement was not complied with, and this episode of non-compliance was complained of, pursuant to section 48(2) of the Act, as a matter arising out of the conduct of the business at the licensed premises ...”

[18] The Court of Appeal subsequently confirmed the decision of the Liquor Commission in the matter of *Northern Territory Liquor Commission and Others v Rhonwood Pty Ltd* (supra) at p 5:

“No error was made by the Liquor Commission in its application of section 121(1) of the Act to the facts of the present case. Its decision ought not to have been quashed.”

[19] The Liquor Commission rejected the submissions made by Mr Reeves QC and indicated they proposed to proceed with the hearing of the complaints.

[20] On the application of Mr Reeves QC the Liquor Commission agreed to an adjournment of the complaints to enable this ruling to be tested in the Supreme Court.

- [21] A breach of s 102 and s 121 of the *Liquor Act* is a regulatory offence (see s 124AA(1) of the *Liquor Act*).
- [22] Only a court has the power to make a finding that a person has committed a criminal offence (*Waterside Workers Federation of Australia v J.W. Alexander Ltd* (1918) 25 CLR 434, *R v Quinn; Ex Parte Consolidated Foods Corporation* (1977) 138 CLR 1 at 11, *Chu Kheng Lim v Minister for Immigration, Local Government and Ethnic Affairs* (1992) 176 CLR 1 at 27).
- [23] There is a significant difference between the conferral of power on a statutory authority and the grant of jurisdiction to a state (*Byrnes v The Queen* (1999) 164 ALR 520 at par 58:
- “... Conferral of powers on a statutory authority is conceptually discrete from the grant of jurisdiction to a court. The distinction is not a matter of dry legal terminology. It reflects fundamental concerns in the structure of government under the rule of law. To confer jurisdiction is to expand judicial authority; to confer powers on a statutory entity is to expand administrative authority. ...”
- [24] The Liquor Commission owes its existence to the Act and is confined to the powers given it by the *Liquor Act* (see *Balog v ICAC* (1990) 169 CLR 625).
- [25] Section 124(3) of the *Liquor Act* provides as follows:
- “An offence against this Act may be prosecuted summarily.”
- See also s 9 of the *Justices Act*.

- [26] The *Liquor Act* grants certain powers to the Court of Summary Jurisdiction where an offence under the Act is prosecuted summarily. These powers are to convict or make a finding of guilty and impose a monetary penalty or a sentence of imprisonment.
- [27] The Liquor Commission does not have such powers but does have the power, following a hearing conducted in accordance with the relevant provisions of the *Liquor Act*, to, amongst other powers, suspend, cancel or vary a licence.
- [28] Mr Reeves QC on behalf of the plaintiff submits that following the hearing of a complaint under s 48 of the *Liquor Act* the Liquor Commission does not have the power to suspend the licensee's licence under s 66(1)(b) of the *Liquor Act* on the basis of the finding that the plaintiff is guilty of an offence under s 102 or s 121 of the *Liquor Act*.
- [29] I will refer to the relevant provisions of the *Liquor Act* that are involved in the hearing of an objection or complaint under s 48(2) of the *Liquor Act*. Section 48(2) of the *Liquor Act* provides as follows:
- “A person may make a complaint regarding any matter arising out of the conduct of the business at licensed premises or the conduct of a licensee in relation to the business of a licensee, or that a licensee is not a fit and proper person to hold a licence.”
- [30] Section 48 makes further provisions for the processing of this complaint.

[31] Section 49(2) requires the Liquor Commission to consider the complaint and other matters and then must follow one of three options, the third option being:

“(c) conduct a hearing in relation to the objection or complaint.”

[32] Section 49(4) then provides:

“(4) Where the Commission conducts a hearing in relation to a complaint pursuant to subsection (2)(c), the Commission may, in addition to any other action the Commission may or is required to take under the provisions of this Act, after that hearing –

(a) amend the conditions of a licence or vary the type of licence;

(b) in accordance with section 65, by notice in writing, direct the licensee to take, or to refrain from taking, within such time as the Commission shall in that notice specify, a specified action; or

(c) defer further consideration of the complaint for such period and subject to such conditions, including that an application for the transfer of the licence be lodged, as the Commission thinks fit.”

[33] Sections 50 – 56 inclusive make provisions for the conduct and procedure at the hearing.

[34] Part VII of the *Liquor Act* is headed “Control of Conduct of Licensees”.

Section 65 covers the Commission’s power to give directions. Section 66 is headed “Commission’s Power to Suspend Licence” and provides as follows:

“(1) The Commission may, by notice in writing, suspend the licence of a licensee where –

(b) the licensee has contravened or failed to comply with his licence, this Act or the Regulations and the Commission is satisfied

that the contravention or failure is of sufficient gravity to justify the suspension of the licence; ...”

[35] Mr Reeves QC argues that s 66(1)(b) is a facilitative provision following on the exercise of other powers under the Act, not a separate head of power in itself.

[36] Further, the submission on behalf of the plaintiff is that in the absence of an express power such a power should not be implied from the provisions of s 66(1)(b), or any other provisions of the Act, without clear and unambiguous words.

[37] The *Liquor Amendment Act* 1993 No. 24 of 1993 inserted s 124AAA which was further amended by the *Sentencing (Consequential Amendments) Act* 17 of 1996. The relevant provisions of s 124AAA provides as follows:

(1) Notwithstanding anything in this Act, the Commission may, in relation to the finding of guilt of a licensee for an offence against section 102, 105, 106B, 106C or 121, by notice in writing served on the licensee and for a period specified in the notice, not exceeding that prescribed by subsection (2) –

(a) suspend the licensee’s licence; or

(b) vary the licence so that the licence applies to and in relation to part only of the premises to which it previously applied,

or, where the offence is a third or subsequent offence, instead of suspending or varying the licence, cancel the licence.”

[38] It is the submission of Mr Reeves QC that s 66(1)(b) is not the expression of a separate and additional power but the original and continuing facilitative

provision allowing the Liquor Commission to apply an additional penalty following on from a finding of guilt by a Court of Summary Jurisdiction.

[39] I do not accept Mr Reeves submissions. I agree with the argument advanced by Mr McDonald QC that the provisions of s 66(1)(b) and s 124AAA provide clear textual evidence that the Legislature intended the exercise of separate jurisdictions by the Liquor Commission and by the Court of Summary Jurisdiction under the Act.

[40] When the Commission conducts a hearing, certain of its powers consequent upon the hearing are set out in s 49(4). The powers specified in s 49(4) are expressed to be “in addition to any other action the Commission may or is required to take under the provisions of this Act. ...”

[41] On the argument advanced by counsel for the plaintiff s 66(1)(b) would confer on the Commission a power which it cannot exercise except in the same circumstances which have been provided for in s 124AAA(1)(a). I do not accept this is a correct analysis of the provisions of the *Liquor Act*. The opening words of s 124AAA(1) are “Notwithstanding anything in this Act ...”. These words in the Act must be given some meaning (*Beckwith v R* (1976) 12 ALR 333, 337, *Chu Kheng Lim v Minister for Immigration* (1992) 176 CLR 1, 12 – 13).

[42] Section 66(1)(b) must be read in the context provided by the statute as a whole (*Cooper Brookes (Wollongong) Pty Ltd v Federal Commissioner of*

Taxation (1980 – 81) 147 CLR 297, 304, 320, *Darling Casino Ltd v NSW Casino Control Authority* (1997) 71 ALJR 540, 548).

[43] The *Liquor Act* 1980 s 12 inserted s 66(1)(a) and (b) in its present form.

Section 124AAA was inserted as a new section in the *Liquor Act* in s 5 of the *Liquor Amendment Act* 1993.

[44] During the course of the Second Reading Speech in respect of this latter amendment, the then Chief Minister, Marshall Peron, stated on 20 May 1993

Hansard p 8311:

“... It is the government’s view that breaches of the act should be judged individually and that the Liquor Commission is best positioned to make those judgments. The suspension penalties continue to be available to the commission if it believes that a licensee has flagrantly defied the rules, has irresponsibly allowed under-age drinkers onto the premises, has continued to serve drinks to the intoxicated or has failed to prevent riotous conduct and violence on the premises. However, if the commission decides that a licensee has tried to act in a responsible manner and that someone has slipped under this guard, then it would have the discretion to impose a more suitable penalty.”

[45] See Section 62B of the *Interpretation Act* “Use of Extrinsic Material In Interpreting Act”.

[46] Further, support for the position as argued on behalf of the defendant is to be found in the Court of Appeal decision in *NT Liquor Commission and Others v Rhonwood Pty Ltd* (supra) at 5:

“Proceedings under s 66 which might give rise to the suspension of a licence are not in the nature of a prosecution for an offence and s 123A is of no application to them.”

[47] The argument presented on behalf of the plaintiff is based on an interpretation of s 66(1)(b) that when the Commission conducts a hearing under the Act in relation to a complaint that there must be a prior finding of guilt by a court of summary jurisdiction before the Commission can consider a suspension of licence. However, I have come to the conclusion that the power conferred on the Commission does not necessitate a finding of criminal guilt. The Commission does not make a finding of criminal guilt. However, the Commission can find a section of the Act has been breached in order to consider regulatory action under the Act or in relation to condition one of the plaintiff's licence, being Annexure A to the affidavit of Susan Jane Porter sworn 27 April 1999, which states:

“The licence will be subject to a condition that a breach of the Liquor Act by any person employed by or on behalf of the Licensee, shall constitute and be deemed to be a breach of the licence conditions by the Licensee.”

[48] Section 62A of the *Interpretation Act* provides:

“In interpreting a provision of an Act, a construction that promotes the purpose or object underlying the Act (whether the purpose or object is expressly stated in the Act or not) is to be preferred to a construction that does not promote the purpose or object.”

[49] Mr Reeves QC submits that any implied power in s 66(1)(b) would hinder the underlying provisions of the Act. This is because on the plaintiff's argument there is already a perfectly satisfactory structure established under the Act which defines offences, describes how they are to be prosecuted and

sets penalties for them, thereby promoting the underlying purposes of the Act to regulate the sale of liquor in the Northern Territory. The argument proceeds that there is no need to give a construction to s 66(1)(b) that creates a separate structure involving the Liquor Commission making findings that the Act has been contravened. The submission made by Mr Reeves QC is that construing s 66(1)(b) in such a way as to create a separate structure and power in the Liquor Commission would be counter productive to the underlying purpose of the Act to regulate the sale of liquor. This is so because of the many provisions of the Act that facilitate the prosecution of offences under the Act before the Court of Summary Jurisdiction. It is Mr Reeves' assertion that these provisions do not apply to the Liquor Commission and arguably, for example, the reversal of onus in s 102 would only apply in prosecutions before a Court of Summary Jurisdiction.

[50] I do not agree with these arguments.

[51] The *Liquor Act* is an Act to provide for the regulation of the sale of liquor. Section 6 of the *Liquor Act* establishes the Liquor Commission as a statutory authority.

[52] The Commission has a number of powers under the Act which include power to issue licences for the sale of liquor, or the sale and consumption of liquor (s 24 and also s 57). Power to vary conditions of a licence from time to time (s 33 and also s 48A(1)). Power to authorise or refuse transfer of a licence

(s 40 and s 43). Power to conduct hearing (s 50). Power to suspend a licence (s 48A(1), 66, 124AAA(1)) and power to cancel a licence (s 72).

[53] The general role of the Commission is to regulate the sale and consumption of liquor on and away from licensed premises. Its powers derive directly from a public statute passed for the carrying on of important public duties in respect of what may be called a “public activity” (*Pullicino v Osborne* (1990) VR 881 at 883:

“... The rules, therefore, which empower the defendant stewards to do what they did, derive directly from a public statute passed for the carrying on of important public duties in respect of what might be called a public activity.”

[54] Part of the regulatory function of the Commission is to receive complaints under s 48 of the Act.

[55] Any person may lodge a complaint under (s 48(2)) “arising out of the conduct of the business at licensed premises or the conduct of a licensee in relation to the business of a licensee”.

[56] A licensee and other persons have obligations with respect to the sale and supply of liquor, including the conduct of persons on licensed premises.

[57] Part IX of the Act is headed “Obligations and Offences”. Section 55(1) of the *Interpretation Act* provides that the heading is part of the Act.

[58] Part IX sets out obligations which can be regulated by the Commission and offences which can be the subject of prosecution.

- [59] The Act makes provision for two distinct roles in enforcing the statutory regime with respect to the sale and consumption of liquor, including in respect of breaches of the Act.
- [60] The role of the Commission in exercising its powers with respect to breaches of the Act is essentially one of protection of the public, whereas the role of the court is punitive when a finding of guilt is established. The Commission's powers relate only to what it can do in relation to licensees. The courts are not so constrained and can deal with persons who are not necessarily licensees. The Commission has no power to impose a monetary penalty or a term of imprisonment. The Commission has no powers under the *Sentencing Act*.
- [61] Section 66(1)(b) provides that the Commission may by notice in writing suspend the licence where "the licensee has contravened or failed to comply with his licence, this Act or the Regulations and the Commission is satisfied that the contravention or failure is of sufficient gravity to justify the suspension of the licence." The legislation uses the words "sufficient gravity". Section 66(1)(b) does not make any reference to any anterior finding of guilt by a Court of Summary Jurisdiction. This should be contrasted with the wording in s 72 and s 124AAA(1) which specifically provides for an anterior finding of guilt by a court before the Commission can exercise a power to cancel or suspend.

- [62] The Commission has an independent power to suspend a licence without the need for a prior prosecution and finding of criminal guilt (*Northern Territory Liquor Commission and Others v Rhonwood Pty Ltd* (supra)).
- [63] The Commission is not required to follow the procedures of the *Justices Act* for summary prosecution of an offence.
- [64] The specific procedures to be followed by the Commission are set out in the *Liquor Act*.
- [65] In the alternative Mr Reeves QC submits that this Court should stay the hearing of the complaints, in all the circumstances, to prevent an injustice.
- [66] I accept the Supreme Court has the power to order a stay of the complaint proceedings to prevent an injustice (*Jago v District Court NSW* (1989) 168 CLR 23 at 29).
- [67] The Commission is bound by the principles of procedural fairness. The Commission has no power to proceed to a conviction or a finding of guilt of a criminal offence and no power to impose a monetary penalty or a term of imprisonment. The Commission must accord to the licensee natural justice (*R v Liquor Commission of the Northern Territory; Ex Parte Hinton* (1981) 8 NTR 3). In this case Forster CJ heard that the Commission had power to conduct a hearing before a licence is suspended under s 66 of the Act and at page 5 “was right to conduct the hearing.”

- [68] The Commission proposes to determine the complaint proceedings on the balance of probabilities. See letter dated 19 April 1999 from the Liquor Commission to De Silva Hebron, Annexure I to the affidavit of Susan Jane Porter sworn 27 April 1999. The degree of probability on which the Commission must reach a conclusion as to whether or not a licensee has failed to comply with the provisions of the Act will depend on the nature and gravity of the issue to be determined (*Briginshaw v Briginshaw* (1938) 60 CLR 336 Dixon J at 361 – 362, *Helton v Allen* (1940) 63 CLR 691, 696, 700, 711, *Barten v Williams* (1978) 20 ACTR 10, 12, *Cuming Smith & Co Ltd v Westralian Farmers Co-operative Ltd* [1979] VR 129, 147, *Anderson v Blashki* [1993] 2 VR 89, 95 – 96).
- [69] Mr Reeves QC submits there is a further unfairness and refers to a number of the provisions of the *Liquor Act* including s 51(3)(d) which provides that the Liquor Commission is not bound by the rules of evidence and may inform itself in such manner as it thinks fit and s 56 which gives no right of appeal. However, these are all provisions that apply to every hearing before the Liquor Commission. It is not a ground to stay the proceedings on the grounds of unfairness when these provisions constitute the law applicable to the Liquor Commission and its conduct of hearings.
- [70] There is a further argument on behalf of the plaintiff that the Liquor Commission is not an independent and impartial body. This is based on the premise that the Registrar who prosecutes the complaint before the Liquor Commission is an officer of the Liquor Commission and subject to direction

by the Commission s 17(3) and s 49(1) of the *Liquor Act*. In Mr Reeves QC submission these amount to circumstances calling for the application of the rule that nobody may be a judge in his own cause (*Webb v The Queen* (1994) 181 CLR 41 at 74).

[71] I do not accept this submission. I agree with the argument advanced by Mr McDonald QC that the plaintiff misconstrues the role of the Registrar. The Registrar conducts an investigation and reports to the Commission (s 48(6)). The Registrar is not a member of the Commission which hears the complaint. The Commission is a body corporate (s 6). The composition of the Commission is provided for in s 7. The Minister appoints the Registrar under s 17 of the Act. The Act itself draws a distinction between the role of the Registrar as defined under the *Liquor Act* and the position of a prosecutor in a Court of Summary Jurisdiction.

[72] I am not persuaded that there are any grounds established to stay the hearing of the complaints.

[73] In the alternative, counsel for the plaintiff submits that if the Liquor Commission has the power to make a finding that the plaintiff has committed an offence under the *Liquor Act* and the Liquor Commission intends to pursue that course if the evidence is available, then the Liquor Commission is obliged to follow the procedures set out in s 9 of the *Justices Act* for the summary prosecution of an offence.

[74] It is counsel for the plaintiff's submission that this should include applying the criminal standard of proof, providing the plaintiff with details of the offences committed and particulars thereof and applying the rules of evidence.

[75] I do not agree with this submission. For the reasons I have already canvassed the regime suggested by Mr Reeves QC applies to prosecutions in the Court of Summary Jurisdiction. The Liquor Commission is not making findings of guilt for the purpose of imposing a criminal sanction as can occur in the Court of Summary Jurisdiction.

[76] The conduct and procedures for a hearing of a complaint before the Liquor Commission is set out in the *Liquor Act* which includes the provisions of s 50 and s 56.

[77] The hearing of the complaints before the Liquor Commission is yet to be dealt with. It is not for this Court to interfere with the processes that have been laid down under the *Liquor Act* and which the Liquor Commission will be required to apply at the hearing.

[78] For these reasons the applications made on behalf of the plaintiff for judicial review and prohibition or declaratory relief are refused and the applications dismissed.

[79] The Court will hear submissions on the question of costs.
