

**IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY**

**I TE KŌTI MATUA O AOTEAROA
TE WHANGANUI-A-TARA ROHE**

**CIV-2019-485-018
[2019] NZHC 1846**

UNDER the Sale and Supply of Alcohol Act 2012

IN THE MATTER OF an appeal under s 162 of the Act against a
decision of the Alcohol Regulatory and
Licensing Authority

BETWEEN CAPITAL LIQUOR LIMITED
Appellant

AND THE NEW ZEALAND POLICE
First Respondent

THE MEDICAL OFFICER OF HEALTH
Second Respondent

THE LICENSING INSPECTOR,
WELLINGTON CITY COUNCIL
Third Respondent

Hearing: 21 March 2019

Appearances: N M Pender and A C Dartnall for Appellant
D R La Hood and S B McCusker for First Respondent
G H Allan and J R Sparrow for Second Respondent
No Appearance for Third Respondent

Judgment: 31 July 2019

**JUDGMENT OF CLARK J
(REASONS)**

Introduction

[1] Capital Liquor Ltd is an off-licence alcohol retailer located on Manners Street, Wellington, just opposite Te Aro park, which is inside a liquor-ban area. The area is part of Wellington's entertainment district and is known to be a high-risk location for

petty crime and other alcohol-related harm. In 2018, the Wellington District Licensing Committee (the Committee) renewed Capital Liquor's licence under the Sale and Supply of Alcohol Act 2012 (the Act) but imposed a condition that it could not trade beyond 6 pm.¹ That decision was upheld on appeal to the Alcohol Regulatory and Licensing Authority (the Authority).²

[2] Capital Liquor now appeals against the Authority's decision on the basis the Authority failed to evaluate afresh, and in light of the most current information, the issue of Capital Liquor's suitability to hold a licence. Capital Liquor also maintains challenges it raised before the Authority, including that the decision of the Committee was irrational, disproportionate and unfairly discriminatory towards Capital Liquor.

[3] On 14 March 2018, I rejected Capital Liquor's application under s 153 of the Act for an order staying the execution of the Committee's decision pending the outcome of this appeal.³

[4] In this judgment I provide my reasons for dismissing Capital Liquor's appeal.⁴

Background

[5] On 20 December 2016, Capital Liquor applied to renew and vary its licence to sell and supply alcohol under s 130 of the Act. Specifically, Capital Liquor sought to increase its trading hours from 9 am – 10.30 pm, seven days a week, to 9 am – 11 pm, seven days a week.

[6] Capital Liquor has operated as a bottle store on Manners Street since 2013. Mr Qiang Liu is the sole director of Capital Liquor. The two 50 per cent shareholders are QL Holdings Ltd, a company wholly owned by Mr Liu, and Ms Lilin Zhu, the wife of Mr Shuping Cao. Mr Cao was formerly a director of Capital Liquor but resigned on 22 December 2016, about the same time the application to renew Capital Liquor's licence was made. He transferred his shareholding to his wife at the same time. The

¹ *Re Capital Liquor* 49B/2018/NZDLCWN/253, 23 September 2018 [*Committee decision*].

² *Capital Liquor Ltd v New Zealand Police* [2018] NZARLA 335 [*Authority decision*].

³ *Capital Liquor Ltd v New Zealand Police* [2019] NZHC 451.

⁴ *Capital Liquor Ltd v The New Zealand Police* [2019] NZHC 1468.

evidence before the Committee was that Mr Cao continues to work at Capital Liquor as a duty manager.

[7] Capital Liquor has previously failed two controlled purchase operations (CPOs) — planned operations designed to test whether licenced operators will sell alcohol to minors. The first CPO, which occurred on 13 December 2013, involved Mr Liu personally selling alcohol to a minor. Mr Liu’s explanation was that he had hay fever, his eyes were affected and he did not realise he was selling to an underage person. The second, which occurred on 14 June 2015, involved an individual listed as a current duty manager on Capital Liquor’s renewal application.

[8] Mr Liu and Mr Cao had previously owned and operated two Wellington nightclubs under the names “Hell Fire” and “The Shot Shack” through a company called Night Ops Ltd. Night Ops had failed two CPOs during the time they owned the business, on 28 November 2014 and 11 October 2015, although Mr Liu was not a director of Night Ops in October 2015, he remained a shareholder. Mr Cao was a director throughout.

[9] The Committee also heard evidence from the police who were summoned to the premises by staff members to find Mr Cao lying on the floor behind the counter. Police say he was intoxicated. Mr Cao disputed he was either unconscious or intoxicated, explaining that while he had consumed some wine at a restaurant he had in fact just been sleeping on the floor because he had decided to have a nap. The police officer who spoke to Mr Cao for several minutes and assessed him as intoxicated noted his eyes were bloodshot and his speech slurred. He did not administer a breath test to Mr Cao, as it was not standard police practice to breathalyse for non-driving incidents.

Statutory framework

[10] The Act was implemented as a response to the Law Commission’s report *Alcohol in Our Lives: Curbing the Harm*, which recognised that excessive drinking and intoxication was contributing to New Zealand’s crime rate, injury rate, and road

crash statistics and was affecting the nation's overall level of health.⁵ The object of the Act reflects these concerns:

4 Object

- (1) The object of this Act is that—
 - (a) the sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and
 - (b) the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.
- (2) For the purposes of subsection (1), the harm caused by the excessive or inappropriate consumption of alcohol includes—
 - (a) any crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol; and
 - (b) any harm to society generally or the community, directly or indirectly caused, or directly or indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).

[11] It is a criminal offence to sell alcohol without a licence.⁶ Criteria for the grant of a licence are set out in s 105:

105 Criteria for issue of licences

- (1) In deciding whether to issue a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:
 - (a) the object of this Act;
 - (b) the suitability of the applicant;
 - (c) any relevant local alcohol policy;
 - (d) the days on which and the hours during which the applicant proposes to sell alcohol;
 - (e) the design and layout of any proposed premises;
 - (f) whether the applicant is engaged in, or proposes on the premises to engage in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods;
 - (g) whether the applicant is engaged in, or proposes on the premises

⁵ Law Commission *Alcohol in Our Lives: Curbing the Harm* (NZLC R114, 2010).

⁶ Sale and Supply of Alcohol Act 2012, s 233.

to engage in, the provision of services other than those directly related to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which services:

- (h) whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, to more than a minor extent, by the effects of the issue of the licence:
 - (i) whether (in its opinion) the amenity and good order of the locality are already so badly affected by the effects of the issue of existing licences that—
 - (i) they would be unlikely to be reduced further (or would be likely to be reduced further to only a minor extent) by the effects of the issue of the licence; but
 - (ii) it is nevertheless desirable not to issue any further licences:
 - (j) whether the applicant has appropriate systems, staff, and training to comply with the law:
 - (k) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made under section 103.
- (2) The authority or committee must not take into account any prejudicial effect that the issue of the licence may have on the business conducted pursuant to any other licence.

[12] Section 131 contains the criteria for renewal of a licence:

131 Criteria for renewal

- (1) In deciding whether to renew a licence, the licensing authority or the licensing committee concerned must have regard to the following matters:
 - (a) the matters set out in paragraphs (a) to (g), (j), and (k) of section 105(1):
 - (b) whether (in its opinion) the amenity and good order of the locality would be likely to be increased, by more than a minor extent, by the effects of a refusal to renew the licence:
 - (c) any matters dealt with in any report from the Police, an inspector, or a Medical Officer of Health made by virtue of section 129:
 - (d) the manner in which the applicant has sold (or, as the case may be, sold and supplied), displayed, advertised, or promoted alcohol.

- (2) The authority or committee must not take into account any prejudicial effect that the renewal of the licence may have on the business conducted pursuant to any other licence.

Committee's decision

[13] A hearing was conducted before the Committee over four days: 29 September 2017, 7 December 2017, 23 February 2018 and 31 May 2018. The Committee also undertook a site visit on Friday 23 March 2018 at 7.30 pm. Following the site visit the Committee recorded its observations in a Minute, which the Committee included as an appendix in its decision. In its decision issued on 23 September 2018, the Committee renewed Capital Liquor's licence but with reduced trading hours of 9 am – 6 pm, seven days a week.

Evidence before the Committee

[14] The Committee received evidence from police concerning alcohol-related incidents at Capital Liquor and in the surrounding area. Police received 23 callouts to Capital Liquor during the period of its previous licence. The majority were for theft of alcohol but the remaining incidents involved intoxicated persons, failed CPOs and the incident mentioned at [9] above where the informant described a person (Mr Cao as it turned out) as "unconscious" on the floor. Police also noted the area was well known for vandalism, littering and breaches of the liquor ban. Police received 895 alcohol-related calls for assistance within a 200 m radius of Capital Liquor's premises between 15 July 2016 and 15 July 2017, including for 33 serious assaults and 64 minor assaults.

[15] The Committee heard expert evidence from Dr Stephen Palmer, the Medical Officer of Health, concerning alcohol-related harm in the area. Dr Palmer noted the unique demographic make-up of the central Wellington area, which contains a high concentration of residents under the age of 25. Heat maps showing ambulance pick-up locations from emergency department statistics for assaults in central Wellington between January 2010 and June 2016 showed a heavy concentration in Courtenay Place and around Cuba Street. Dr Palmer's evidence was that the majority of those assaults would have involved alcohol, and a study conducted by the Health Promotion

Agency showed that 75 per cent of alcohol consumed in Wellington City is purchased from an off-licence store, such as Capital Liquor.⁷

[16] Dr Palmer's evidence was that alcohol purchased from off-licences on Friday and Saturday is likely to be consumed that evening and that, statistically speaking, purchasing alcohol from an off-licence more often leads to consumption of a greater number of drinks. In Dr Palmer's opinion, reducing the operating hours of off-licence outlets to 9 pm would result in a theoretical reduction in alcohol-related harm incidents by 36 per cent.

[17] Mr Lambert, a health protection and alcohol regulatory officer employed by Regional Public Health, reported that during a visit to the premises one of Capital Liquor's duty managers informed him that Mr Liu rarely visits the store and that Mr Cao was the main store manager. Mr Lambert had undertaken a survey of people purchasing alcohol from Capital Liquor one Friday in August 2017. He produced a series of graphs to the Committee showing the results of his survey from which he concluded most sales occurred between the hours of 6.25 pm and 8.30 pm predominantly to, he believed, persons under 30 years of age.

[18] Mr Ormond, the Licensing Inspector, reported 741 recorded breaches of the liquor ban in the Te Aro area, 342 of which occurred within a 200 m radius of Capital Liquor. He also recorded high levels of bodily egestion, anti-social behaviour and broken glass within the area.

[19] During its site visit on 23 March 2018, the Committee witnessed "a violent physical assault on a male in Te Aro Park". The Committee said it was obvious both individuals were heavily intoxicated. The Committee's Principal Advisor called the police.

Committee's Assessment

[20] Turning to the relevant legal considerations the Committee referred to the purpose and object of the Act and the criteria for renewal in ss 105 and 131 of the Act.

⁷ Capital Liquor was in fact one of the stores included in that study.

The Committee also referred to the relevant legal principles summarised in *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Ltd*.⁸

[21] Addressing Capital Liquor’s risk profile and the alcohol-related harm around the premises, the Committee concluded on the basis of the evidence before it that Capital Liquor had materially contributed to some of that alcohol-related harm. The Committee said:⁹ “... these premises present a significant risk for potential alcohol-related harm. ... In fact, we believe [Capital Liquor] is possibly the highest risk off-licence premises in central Wellington as it relates to alcohol-related harm”.

Suitability

[22] The Committee then considered the suitability of Capital Liquor to hold a licence.¹⁰ In doing so, it proceeded on the basis Capital Liquor is jointly managed by Mr Liu and Mr Cao, despite Mr Cao’s unconvincing attempts to disassociate himself from the operation. The Committee also accepted the police evidence that Mr Cao was intoxicated on the night he was found on the floor of the premises.

[23] The Committee proceeded on the basis suitability “requires a reflective analysis” recognising the best evidence of suitability will likely be how the applicant has sold or supplied alcohol in the past.¹¹ Suitability involves a broad assessment, including of the character and reputation of the applicant. The vulnerability of the area raises the threshold for suitability in terms of whether the grant of the licence will reduce or increase alcohol-related harm.¹² The Committee concluded Capital Liquor was not suitable to operate a high-risk premise during the evening, but it would be suitable to operate the premises during daylight hours. The Committee’s “finding was marginal given the gravity of [its] concerns regarding suitability”.¹³

[24] The Committee’s particular, significant concerns were that:

⁸ *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Ltd* [2018] NZHC 1123, [2018] NZAR 882.

⁹ *Committee decision*, above n 1, at [132].

¹⁰ Sale and Supply of Alcohol Act 2012, s 105(1)(b).

¹¹ *Auckland Medical Officer of Health v Birthcare Auckland Ltd* [2015] NZHC 2689, [2016] NZAR 287 at [49].

¹² See *Lower Hutt Liquormart Ltd v Shady Lady Lighting Ltd* [2018] NZHC 3100 at [65].

¹³ *Committee decision*, above n 1, at [154].

- (a) Capital Liquor had previously failed two CPOs.
- (b) Other businesses associated with Mr Liu and Mr Cao had previously failed CPOs and experienced issues handling intoxicated patrons.
- (c) Mr Liu and Mr Cao had “a poor appreciation” of the alcohol-related harm arising from sales by Capital Liquor. They took the “unrealistic” position that Capital Liquor did not contribute to alcohol-related harm in the area. This lack of appreciation of the premises’ true effect on alcohol-related harm was relevant to suitability.
- (d) Capital Liquor sought to extend its trading hours when a suitable operator would have demonstrated the steps it had taken to minimise alcohol-related harm in the area.
- (e) A bar previously operated by Mr Liu had twice been prosecuted under the Smoke-Free Environments Act 1990 reflecting a “casual regard for the rules”.
- (f) Mr Liu is responsible for training staff yet could not identify the criteria comprising the SCAB tool, or properly name this tool used for assessing intoxication.
- (g) Mr Cao was intoxicated while in charge of licensed premises yet Mr Liu believed Mr Cao had not even been drinking.
- (h) Capital Liquor had failed to record all incidents in the incident register, including some matters of such seriousness the police were involved. A suitable operator would record incidents fully in order to monitor trends and train staff.

[25] The Committee then considered whether the amenity and good order of the locality would likely be increased by refusing to renew Capital Liquor’s licence.¹⁴ The

¹⁴ Sale and Supply of Alcohol Act 2012, s 131(1)(b).

Committee noted it was not necessary to have direct and specific evidence linking particular harm with the applicant premises and that an inference of causation can be drawn from the nature and locality of the premises.¹⁵ The Committee was satisfied a reduction in trading hours would likely result in a more than minor increase in amenity and good order, particular taking into account “the overwhelming evidence of increased levels of alcohol related harm later in the evenings”.¹⁶

[26] By a slim margin, and for the following reasons, the Committee decided to renew Capital Liquor’s licence with a closing time of 6 pm, rather than refuse to renew its licence:

- (a) There was clear evidence of more alcohol-related harm in the hours following 6 pm and Capital Liquor had not demonstrated suitability to trade into the later, higher risk hours.
- (b) Prior to 6 pm is considered to be normal business hours. A greater level of oversight could be expected because of non-alcohol-related businesses operating during that time.
- (c) Capital Liquor’s evidence was that its primary clients were “business clients”, so daylight trading hours would allow it to “focus on that business trade”.¹⁷
- (d) A greater number of community services, including licencing inspectors and other Council staff, worked in the area prior to 6 pm.
- (e) Capital Liquor’s employment of door staff from 6 pm to avoid problems with theft and underage shoppers is an implicit acknowledgment there is more of an issue after 6 pm.

¹⁵ See *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Ltd*, above n 8, at [52].

¹⁶ *Committee decision*, above n 1, at [162].

¹⁷ In fact, as Capital Liquor explained before the Authority, most of its customers are office workers purchasing wine to attend BYO restaurants.

- (f) A 6 pm closing time would ensure Capital Liquor is closed before on-licence trade in the Courtenay Place precinct commences for the evening, thereby reducing the potential for pre-loading.

Authority's decision

[27] Capital Liquor lodged an appeal to the Authority on 5 October 2018. The Authority stayed the Committee's decision pending determination of the appeal. Prior to the hearing Capital Liquor applied under s 157(4) of the Act to adduce updating evidence. Capital Liquor proposed to give evidence of several matters, including that Mr Cao had not been involved in the management of Capital Liquor for several months, that a Mr Schuppan was now the store manager and had taken over Mr Liu's responsibilities for training staff and had updated the store policies. The evidence would also show that only one of the store's current duty managers had previously failed a CPO compared with three at the time Capital Liquor gave evidence before the Committee.

[28] The Authority refused leave relying in particular on a line of authority since *Clark v Licensing Control Commission* in which Wild CJ determined an appellant is not entitled "to attempt to convert the appeal into a second application to this Court in the light of developments that may have occurred since the decision" under appeal.¹⁸ Applying the requirement that fresh evidence must be cogent material, and unavailable at the time of the first hearing, the Authority concluded:

... evidence that Mr Cao is no longer involved in the operation of the premises does not change any of the evidence upon which the [Committee] relied in reaching the view that the premises were effectively managed jointly. Nor does it go to the [Committee's] concerns of Mr Liu's suitability as applicant. To allow this evidence would be contrary to the injunction in *Clark v Licensing Control Commission*.

[29] On 21 December 2018, the Authority dismissed the appeal and confirmed the decision of the Committee.

[30] Capital Liquor's appeal from the Committee's decision had been brought essentially on the grounds that:

¹⁸ *Clark v Licensing Control Commission* [1971] 1 NZLR 678 at 680.

- (a) The 6 pm closing time imposed by the Committee was unsupported by the evidence, was not necessary to achieve the purpose and object of the Act, and was disproportionate to the risk of prospective harm; and
- (b) To the extent the Committee's concerns about suitability were supported by the evidence, they did not justify a closing time of 6 pm, seven days a week.

[31] In relation to suitability, the Authority concluded:¹⁹

... the position and inferences the [Committee] has drawn from the facts, are ones which were logically available to it. Capital Liquor is not applying for a renewal with an unblemished record or operation and the [Committee] was right to recognise that the vulnerability of the area raised the bar on the appellant's suitability. The Authority does not consider that the appellant has established that the [Committee] erred in respect of its finding of suitability.

[32] The Authority also rejected Capital Liquor's submission that it was the locality and not Capital Liquor that creates the potential for crime and disorder:²⁰

From a licencing perspective, both are relevant. It is not sufficient for a licensee to be a good operator in a bad location. That misunderstands the nature of the licencing task.

[33] In relation to the 6 pm closing time, the Authority concluded that:²¹

... while the evidence is largely focused on Friday and Saturday evening, it is not exclusively so. Nor is the evidence simply that there is [alcohol-related harm] after 9.00 pm. The evidence of Dr Palmer, Mr Lambert and Sgt Bengel includes evidence of harms occurring during the week before and after 9.00 pm.

The Authority is satisfied that there is an evidential foundation enabling a link to be drawn between a real risk of [alcohol-related harm] and the grant of the renewal. That the evidence implicates the premises is sufficient to require the DLC to seek to minimise that [alcohol-related harm]. The evidence of [alcohol-related harm] later in the day and week is particularly compelling, but [alcohol-related harm] is not exclusive to those time periods. It is also reasonable to assume there will be a lag between the purchase of alcohol and [alcohol-related harm] such that restrictions may need to be put in place before the [alcohol-related harm] becomes apparent.

¹⁹ *Authority decision*, above n 2, at [127].

²⁰ At [123].

²¹ At [152]–[153].

[34] In response to Capital Liquor’s submission that the Committee erred by failing to take into account the prejudice to it of the 6 pm closing time condition, the Authority held:²²

... there is no obligation on the [Committee] to have regard to the economic position of the appellant. A licence is a privilege and not a right and there is no presumption that an application will be granted. What the [Committee] is required to do when evaluating an application for the renewal of a licence is to stand back and check whether the application is capable of meeting the object of the Act. This cannot be subordinated to concerns about the economic position of the appellant.

[35] Finally, the Authority held that natural justice did not, in the circumstances of this case, require the Committee to put its proposed licence conditions to Capital Liquor because the hours had been the subject of direct challenge during the hearing and Capital Liquor knew from the outset the nature of the challenge and had a fair opportunity to put its best foot forward.

Grounds of appeal

[36] In its amended notice of appeal, Capital Liquor particularised six substantive grounds of appeal. In her written and oral submissions counsel for Capital Liquor, Ms Pender, framed 15 questions of law arising from the grounds of appeal. Mr Pender helpfully grouped the questions of law under the following categories:

- (a) suitability;
- (b) irrationality; and
- (c) unreasonableness.

[37] Broadly, the arguments are threefold:

- (a) When considering Capital Liquor’s suitability to hold a licence, the Authority erred in law by misinterpreting its role, which is an inquisitorial appeal body.

²² At [154], citing *Christchurch Medical Officer of Health v J & G Vaudrey Ltd* [2015] NZHC 2749, [2016] 2 NZLR 382 at [55]–[56].

- (b) The Authority’s decision to uphold the 6 pm closing time was irrational because it failed to take into account the “abundance of choice for alcohol consumers” in the area after 6pm, meaning the condition would have no practical impact on alcohol-related harm.
- (c) The Authority’s decision to uphold the 6 pm closing time was unreasonable because that condition is disproportionate and inconsistent with the conditions imposed on comparable licensees.

Approach on appeal

[38] Capital Liquor appeals to this Court under s 162 of the Act, which provides a right to appeal on a question of law. The approach to such an appeal was explained by Gendall J in *Christchurch Medical Officer of Health v J & G Vaudrey Ltd*.²³

This Court will not interfere with a decision unless it can be shown that the decision maker erred in law, accounted for irrelevant matters, failed to account for relevant matters, or was plainly wrong. Factual challenges, whether raised squarely or obliquely, will not be entertained on appeals of this kind, save to the extent they are capable of establishing that the decision appealed is plainly wrong. This is necessarily a very high threshold.

First ground of appeal – suitability

Submissions for Capital Liquor

[39] Ms Pender argued that appeals to the Authority are inquisitorial in nature and not all rules applicable to appeal tribunals will apply to the Authority.²⁴ In particular, concerns about the freshness and cogency of further evidence, which are factors designed to balance the interests of competing parties, will be less relevant in an inquisitorial context. Ms Pender submitted a decision-maker with an inquisitorial function will act unreasonably if it fails to ascertain relevant facts it knew to be readily available.²⁵ Ms Pender submitted the updating evidence the Authority refused to consider was readily available and relevant, especially the evidence that Mr Cao was no longer involved in the management of the business.

²³ *Christchurch Medical Officer of Health v J & G Vaudrey Ltd*, above n 22, at [17].

²⁴ *Lower Hutt Liquormart Ltd v Shady Lady Lighting Ltd*, above n 12, at [37]–[39].

²⁵ *Ye v Minister of Immigration* [2008] NZCA 291, [2009] NZLR 596 at [152]–[153] per Glazebrook J.

[40] Ms Pender also advanced detailed submissions outlining Capital Liquor’s objections to various evidential findings by both the Committee and the Authority. For reasons that will become apparent, it is unnecessary to record these submissions here.

[41] Finally, Ms Pender submitted the Authority improperly took into account the incidents of theft and other crimes committed against Capital Liquor as evidence against its application. She argued that such an approach is contrary to public policy because it risks having a chilling effect on the reporting of crime.

Submissions for respondents

[42] Mr La Hood emphasised this appeal is limited to questions of law. Factual errors can only amount to an error of law in the rare case “ in which there is no evidence to support the determination”, or “the evidence is inconsistent with and contradictory of the determination” or “the true and only reasonable conclusion contradicts the determination”.²⁶ In other words, the factual error must be such as to establish the decision under appeal is plainly wrong. He submitted that none of the factual matters raised by Ms Pender reach that very high threshold.

[43] Moreover, Mr La Hood submitted, the approach adopted by the Authority was reasonably open to it, especially in light of the advantage the Committee had of hearing the witnesses give evidence in person. He also defended the Authority’s finding that Mr Cao’s prior affiliation with Capital Liquor was relevant to its suitability to operate off-licence premises.

[44] In response to Ms Pender’s submissions relating to the inquisitorial role of the Authority in appeals from licencing decisions of the Committee, Mr La Hood argued that, while the Authority might act as an inquisitorial body when considering first instance appeals against local alcohol policies under s 81 of the Act, its appellate jurisdiction with respect to licensing decisions is defined by s 157 of the Act. Section 157(1) stipulates that “[e]very appeal is by way of rehearing”. Mr La Hood observed that the appeal jurisdiction of this Court, which is covered by s 161, is worded in a

²⁶ *Bryson v Three Foot Six Ltd* [2005] NZSC 34, [2005] 3 NZLR 721 at [26], citing *Edwards v Bairstow* [1956] AC 14 (HL) at 36 per Lord Radcliffe.

materially identical way. In his submission, these factors indicate the Authority must conduct appeals on standard principles, including in relation to the admission of further evidence.

Analysis

[45] I accept at the outset that the principles governing the admissibility of further, or new, evidence on appeal apply to the Authority. And they apply irrespective of whether the Authority is, or is not, properly classified as an inquisitorial body. Section 157 provides:

157 Appeals by way of rehearing

- (1) Every appeal is by way of rehearing.
- (2) However, where any question of fact is involved in any appeal, the evidence taken before the licensing committee bearing on the question must, subject to any special order, be brought before the licensing authority as follows:
 - (a) as to any evidence given orally, by the production of a copy of the chairperson of the licensing committee's note or of a written statement read by the witness while under oath, or of such other materials as the licensing committee may consider expedient:
 - (b) as to any evidence taken by affidavit and as to any exhibits, by the production of the affidavits and such of the exhibits as may have been forwarded to the licensing authority by the licensing committee, and by the production by the parties to the appeal of such exhibits as are in their custody.
- (3) Despite subsection (2), the licensing authority may in its discretion rehear the whole or any part of the evidence, and must rehear the evidence of any witness if the licensing authority has reason to believe that any note of the evidence of that witness made by the chairperson of the licensing committee is or may be incomplete in any material particular.
- (4) The licensing authority has full discretionary power to hear and receive further evidence on questions of fact, either by oral evidence or by affidavit.

...

[46] In *Paper Reclaim Ltd v Aotearoa International Ltd (No 2)*, the Supreme Court stated that an appeal by way of rehearing:²⁷

... does not contemplate a right to a new hearing of the evidence. The appellate Court is required to determine issues which had to be determined in the proceeding of the Court appealed from on the basis of the evidence appearing in the lower Court's record. This may be supplemented by adducing fresh evidence, but only within established guidelines. It would ordinarily be outside the scope of the statutory direction to proceed by way of rehearing for this Court to allow a new case to be put up by a party to the appeal on which fresh evidence had to be called.

[47] While s 157(4) does provide the Authority "full discretionary power" to admit fresh evidence, it does not specify how that discretion is to be exercised. It is clear, however, from s 157(1), and the established principles governing the conduct of appeals by way of rehearing, that the discretion is to be exercised in accordance with the requirements for freshness, relevance (or materiality) and cogency.²⁸ I am reinforced in my conclusion by the remarks of Holland J in *Hayford v Christchurch District Licensing Authority*, which concerned the power to admit further evidence on appeal under s 138(8) of the Sale of Liquor Act 1989, the predecessor to the Act:²⁹

Counsel appearing for the appellant in his submissions to the Judge on this issue placed great importance on the fact that the power to receive evidence does not contain the restriction that arises in the Court of Appeal Rules where there is a provision that further evidence shall be admitted only with special leave of the Court and on special grounds unless it is evidence as to matters subsequent to the decision aforesaid.

In almost all statutory provisions for appeals a power is given to the appellate Court to receive further evidence. That power should not diminish the other general provision, that the appellate Court shall consider the matter on the evidence before the tribunal whose judgment is subject to appeal. I do not consider that the restriction in the Court of Appeal Rules does any more than state the ordinary statement of principle applicable to all appeals.

[48] Having said that, it is not obvious that application of the ordinary principles precluded the admission of the updating evidence before the Authority. Wild CJ's remarks in *Clark v Licensing Control Commission*, upon which the Authority relied,

²⁷ *Paper Reclaim Ltd v Aotearoa International Ltd (No 2)* [2007] NZSC 1, [2007] 2 NZLR 124 at [16] (footnotes omitted).

²⁸ *Airwork (NZ) Ltd v Vertical Flight Management Ltd* [1999] 1 NZLR 641 (CA) at 649–650.

²⁹ *Hayford v Christchurch District Licensing Authority* HC Christchurch AP201/92, 3 December 1993; affirmed in *Cats Niteclub (1991) Ltd v Police* [1997] NZAR 83 (HC) at 88.

were the subject of criticism in the later decision of *New Zealand Co-Operative Dairy Co Ltd v Commerce Commission*, where Wylie J said:³⁰

It does not seem appropriate to regard the fact that in normal circumstances, ie where no new evidence is introduced, the appellate Court will decide an appeal on the basis of the circumstances as at the time of hearing the decision appealed against as a reason for not introducing new evidence, as Wild CJ appears to have done. The real principle to be extracted from his decisions in those cases is, I think, the injunction against allowing the introduction of new evidence which will turn an appeal into the presentation of a new case, rather than that an appellate Court is to decide an appeal on the circumstances as they existed at the time of the lower tribunal's hearing.

[49] Wylie J explained the rationale for this position as follows:³¹

In most cases in ordinary Courts and before most tribunals the subject matter consists of past events or then existing circumstances and the rights to be determined are those which have already accrued as a result of those events or circumstances. Thus it is seldom that events occurring after the hearing have any bearing on the issues to be determined. In cases of that kind if a party is seeking to adduce further evidence on appeal then unless he could not have discovered that evidence by the exercise of reasonable diligence before the hearing the reluctance of the Court to grant such applications is easily understood. But there is not the same need for such reluctance where there is material relevant evidence to be brought of circumstances which have occurred since the date of the original hearing and which ex hypothesi could not have been known to the party seeking to adduce it.

[50] In the circumstances of the case before him, which concerned the Commerce Commission refusing consent to a merger, Wylie J concluded:³²

The subject matter of some applications before the commission may not be a static or historic situation. It will very often be what has come to be called a "dynamic" subject — changing from time to time and even from day to day. ... If the circumstances continue to change thereafter it is difficult to see why those changing circumstances should not be taken into account on an appeal, especially when that appeal is by way of rehearing and, on the authorities I have earlier mentioned, is to be determined on the basis of the circumstances at the date of rehearing.

[51] I regard these remarks as equally apt to the context of an appeal to the Authority against a licensing decision of the Committee.

³⁰ *New Zealand Co-Operative Dairy Co Ltd v Commerce Commission* (1991) 3 PRNZ 262 (HC) at 266–267.

³¹ At 266.

³² At 267.

[52] Applying what it described as well-settled principles guiding the admission of new evidence, the Authority considered the interests of justice was the dominant consideration. Therefore, the Committee considered it was required to balance the likely influence of the new evidence on the result with the public interest in there being an end to litigation. Ultimately, the Authority concluded:

- (a) The evidence relating to Mr Liu renewing his manager's certificate was not fresh. The certificate was granted on 27 July 2017 well before the hearing commenced on 29 September 2017.
- (b) The evidence demonstrating Mr Liu's knowledge of and training in managing conflict situations in a security context did not bear on the relevant question, which was his ability to train staff in assessing intoxication. The proposed evidence was not therefore cogent.
- (c) The updating evidence concerning the nature of Mr Cao's on-going involvement with the premises would not be material to the outcome of the appeal because it did not change the Committee's underlying rationale for treating Capital Liquor as jointly managed by Mr Liu and Mr Cao.

[53] The conclusion at (c) is open to challenge. The Committee decided to assess the application on that basis in part because the evidence strongly suggested Mr Cao played an on-going managerial role in the business. If that was no longer the case, evidence of the updated position would seem to have been material to the appeal.

[54] Nevertheless, as Mr La Hood submitted, the present involvement (or lack thereof) of Mr Cao in the management of Capital Liquor does not detract from its poor record of suitability, especially given that Mr Liu continues to be involved in the business. The concerns about Mr Cao constituted only an aspect of the Committee's wide-ranging assessment of Capital Liquor's suitability. The Committee and the Authority also expressed considerable reservations about Mr Liu. Accordingly, even if the Authority should have considered the updating evidence, it did not err in law by

reaching its conclusion, in the absence of that evidence, that Capital Liquor is unsuitable to operate an off-licence other than during normal business hours.

[55] Nor did the Authority err in taking into account the incidents of crime reported by Capital Liquor. Such occurrences, while possibly out of Capital Liquor's control, are obviously relevant to the risk level of the area and to the amenity and good order of the locality. The public policy concerns raised by Capital Liquor are unfounded. A responsible licenced operator is unlikely to refrain from reporting the theft of its product to the police out of concern that doing so might have an adverse effect on a future licence application.

[56] The appellant has not made out this ground of appeal.

Second ground of appeal – irrationality

Submissions for Capital Liquor

[57] Ms Pender submitted that the Authority (and the Committee) ignored “the abundance of choice for alcohol consumers within the Te Aro/Cuba Street area after 6 pm”. She argued this means there is no realistic prospect the licence condition would have any impact on the consumption of alcohol, and the related harm, within the area. Consumers could simply purchase their alcohol elsewhere. In her submission, conditions must not be imposed unless there is a realistic prospect the conditions will change consumer behaviour.

[58] Ms Pender further submitted trading hours are properly a matter for a local alcohol policy applicable to all traders rather than directed only to a single supplier. A trading hours policy would recognise the reality of consumer choice and provide a more effective mechanism to minimise alcohol-related harm. Furthermore, local alcohol policies are subject to consultation and other procedural requirements.³³ Ms Pender argued that restricting the trading hours of an individual operator when it would have no realistic prospect of changing consumer behaviour is both contrary to the purpose and object of the Act and unfair to the individual operator.

³³ Sale and Supply of Alcohol Act 2012, ss 75–97.

[59] Ms Pender addressed the “precautionary principle”, in respect of which the Court of Appeal’s decision in *My Noodle Ltd v Queenstown-Lakes District Council* is frequently cited.³⁴

[74] In our view, the Authority is not required to be sure that particular conditions will reduce liquor abuse. It is entitled to apply the equivalent of the precautionary principle in environmental law. If there is a possibility of meeting the statutory objective (as the Authority found there was in this case), then it is entitled to test whether that possibility is a reality. In this case, it clearly intended to test its hypothesis and keep the matter under review...

[60] Ms Pender submitted the precautionary principle is not applicable to the 6 pm closing time condition imposed by the Committee and upheld by the Authority. She argued there must first be a possibility the condition will meet the statutory objective and the availability of consumer choice meant there is was no such possibility here. She also argued the condition has now been in force since 24 December 2018, yet no updating evidence has been filed to show that the condition has been effective.

Submissions for respondents

[61] On this point the respondents’ case is that changes to trading hours are not the sole responsibility of territorial authorities through the mechanism of local alcohol policies. Licencing decisions are an equally legitimate means of advancing the object of the Act to minimise alcohol-related harm and ensure the safe and responsible sale, supply and consumption of alcohol. While licence decisions affect one operator at a time, that does not detract from the efficacy of the mechanism as a whole. Mr La Hood submitted that even if it were necessary to demonstrate a tangible reduction in alcohol-related harm arising from a single licencing decision, the reduction of trading hours of a single trader in a high-risk area could reduce opportunistic purchases of alcohol although pre-planned purchases might still take place elsewhere.

[62] Mr La Hood further argued that the focus on consumer behaviour is misguided. The Act is aimed not only at promoting the responsible consumption of alcohol but also the responsible sale and supply of alcohol. That means, in his submission, conditions might be appropriate for reasons bearing on the suitability of the operator rather than just the effect on consumer behaviour. Mr La Hood highlighted the

³⁴ *My Noodle Ltd v Queenstown-Lakes District Council* [2009] NZCA 564, [2010] NZAR 152.

relevance of that submission in the present case, where both the Committee and the Authority had serious concerns about Capital Liquor’s suitability to operate in a high-risk area outside normal business hours.

Analysis

[63] As I have previously remarked,³⁵ regulating the availability of alcohol through restrictions on trading hours was one of the policy levers the Law Commission recognised as being available to reduce alcohol-related harm, especially in relation to off-licence premises.³⁶ There is no sound reason why this policy lever can only be utilised through local alcohol policies and not on a case-by-case basis through the imposition of conditions on licences.

[64] The ability to set trading hours as a condition of a licence is not only permissible, it is mandatory, strongly indicating a reduction in trading hours may legitimately be used as a policy lever to advance the object of the Act to minimise the harm caused by the excessive or inappropriate consumption of alcohol.³⁷ This conclusion is also consistent with the requirement, when granting or renewing a licence, to consider “the days on which and the hours during which the applicant proposes to sell alcohol”.³⁸ I accept the respondents’ submission that the Committee is well placed to implement the reduction of trading hours on a case-by-case basis by use of the precautionary principle. The Committee receives evidence from the police, the Medical Officer of Health and the Licensing Inspector to assist it in determining appropriate conditions to impose on licences.

[65] Nothing arises on the facts of this case that made it inappropriate to test the condition. Capital Liquor is clearly located within a high-risk area, a fact it has not disputed at any stage. The other off-licence operators in the area include two supermarkets supplying only wine and beer, a food market supplying only wine and beer, and a high-end wine store that is unlikely to be frequented by vulnerable consumers. There are only two comparable off-licence operators in the area: Discount

³⁵ *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Ltd*, above n 8, at [72](c).

³⁶ Law Commission, above n 5, at [9.40]–[9.49].

³⁷ Sale and Supply of Alcohol Act 2012, s 116(2)(a).

³⁸ Section 105(1)(d).

Liquor Centre and Cuba Liquor World. The former is presently the subject of an opposed renewal application before the Committee, while no suitability issues were raised when the latter's licence was renewed.³⁹

[66] It is worth emphasising that the Committee only marginally concluded Capital Liquor was suitable to hold a licence at all, let alone during evening trading hours in a high-risk area. In a sense, Capital Liquor's submissions miss the point by focusing on what it contends is the appropriate way to implement the regulatory regime. The real message is that Capital Liquor is unsuitable to operate an off-licence alcohol store during the evening in an area known for alcohol-related harm. That remains true regardless of whether Capital Liquor contributes to that alcohol-related harm or whether the reduced trading hours would be effective at changing consumer behaviour. The Committee was entitled to test whether Capital Liquor could operate responsibly within normal business hours.

[67] This ground of appeal also fails.

Third ground of appeal – unreasonableness

Submissions for Capital Liquor

[68] Ms Pender referred to the following observation of the Court of Appeal in *Meads Brothers Ltd v Rotorua District Licensing Agency*, regarding the object of the former Sale of Liquor Act:⁴⁰

The stated object envisages that the licensing system should be reasonable. This indicates the intention that the controls that are imposed under it should be neither excessive nor oppressive. The object also reflects a legislative perception that controls provided by the licensing system have the capacity to contribute to the reduction of abuse of alcohol in the community but that there are limits to that limited capacity. Section 4 also requires the agencies involved in the Act's administration, as well as the Courts on appeal from their decisions, to exercise their powers to promote the object.

[69] The Court of Appeal went on to remark:⁴¹

³⁹ See [71] below for further discussion on the comparison with Cuba Liquor World.

⁴⁰ *Meads Brothers Ltd v Rotorua District Licensing Agency* [2002] NZAR 308 (CA) at [23].

⁴¹ At [53].

The proposition that the economic impact of particular restrictions on a liquor outlet will never be relevant to the terms of renewal of its licence is too great a generalisation. It is to be remembered that the statutory object is to establish a reasonable system of control. This envisages that at a certain point, at the extreme end of the scale, the administration of the licensing system may become unreasonable in its pursuit of the aim of reducing liquor abuse.

[70] Ms Pender submitted the licence condition is excessive and oppressive and was “intended to curb Capital Liquor’s business” by deliberately targeting its busiest trading time. Ms Pender argued that the Committee and Authority were required to consider whether the condition would be the most proportionate means of achieving the Act’s object. She submitted it was not, meaning the condition was unreasonable and in violation of s 117 of the Act. Ms Pender argued that while evidence of alcohol-related harm occurring after 9 pm had been presented, there was no evidence of alcohol-related harm occurring during the hours of 6 pm – 9 pm.

[71] Ms Pender also submitted that the 6 pm closing time is inconsistent with the licence conditions of the appellant’s competitor, Cuba Liquor World, which closes at 9 pm. She argued the integrity of the regulatory system requires consistency and fairness as between competitors. In her submission, natural justice required the Authority to inform Capital Liquor of any “change in standards” to enable it to adapt its operations accordingly. Ms Pender submitted that Capital Liquor was being unfairly “singled out” from its competitors.

Submissions for respondents

[72] Mr La Hood submitted the Authority was correct in concluding it was not obliged to take account of Capital Liquor’s commercial position. Commercial considerations do not feature in s 131 of the Act, nor are they implicit in the purpose or object of the Act. The purpose and object provisions of the Act are materially different from those under the Sale of Liquor Act. In particular, the object provisions now place exclusively public welfare concerns at the forefront of decision-making under the Act.

[73] Mr La Hood also submitted there is no requirement under s 131 of the Act to compare conditions imposed on other off-licence operators within the locality. But in any event, there are clear distinguishing features between Cuba Liquor World and

Capital Liquor that justify the imposition of different licence conditions. The Committee had no concerns about the suitability of Cuba Liquor World to hold a licence and it also received no evidence to suggest Cuba Liquor World was responsible for an increase in the noise levels, nuisance or vandalism in the locality.

Analysis

[74] The appellant’s argument that the Committee erred in not having regard to the likely prejudicial effect on Capital Liquor of the trading hours condition is unsupported by the Act itself or case law. A condition may not, of course, be capricious or grossly disproportionate but there is no requirement to consider whether a response to an application for a licence, or renewal of a licence, is the *most* proportionate means of achieving the Act’s purpose. Section 3 contains a powerful statement of the legislative purpose and puts public health front and centre. The appellant’s focus on the stated purpose of the Act that one of the characteristics of the new system of regulation is that “it is reasonable”, and its argument that the Act therefore requires a consideration of the economic consequences for licence holders, are misplaced. The appellant takes support for its position from the Court of Appeal’s observations in *Meads Brothers Ltd v Rotorua District Licensing Agency*. However, as the Court of Appeal stated in that decision:⁴²

Most restrictive licensing controls will have an economic impact on licensees which sometimes will be substantial. That is a normal incident of a system of reasonable control of liquor abuse. The general provisions for grant and renewal of licences allow no basis for the expectation that a licensee will be able to run a particular type of business successfully.

[75] The Court said economic considerations might be relevant in “exceptional” or “extreme” circumstances (where conditions “would effectively negate the act of renewal”) but that “such a case would be, if not entirely theoretical, then certainly a rarity”.⁴³

[76] There is a strong argument the Court of Appeal’s acknowledgement of the “theoretical” or “rare” cases was due to the particular wording of the object provision under the former Sale of Liquor Act:

⁴² At [56].

⁴³ At [53] and [56].

4 Object of Act

- (1) The object of this Act is to establish a reasonable system of control over the sale and supply of liquor to the public with the aim of contributing to the reduction of liquor abuse, so far as that can be achieved by legislative means.

[77] The Court of Appeal stated:

[52] ... The policy of the Act, however, is that licensing decisions are not to be made for the purpose of giving licensees' economic protection, or for that matter maintaining an advantageous position. ... For this reason alone we would dismiss this ground of appeal.

[53] As the question was fully argued before us, however, we think it may be helpful if we make some further observations about when evidence of impact on the viability of a business of fresh licence conditions may be relevant. The proposition that the economic impact of particular restrictions on a liquor outlet will never be relevant to the terms of renewal of its licence is too great a generalisation. It is to be remembered that the statutory object is to establish a reasonable system of control. This envisages that at a certain point, at the extreme end of the scale, the administration of the licensing system may become unreasonable in its pursuit of the aim of reducing liquor abuse. Evidence that there would be such an extreme situation if particular additional restrictions were imposed may be relevant, not as a general rule, but to demonstrate that a particular case is exceptional in this way. These observations are certainly not intended to encourage applicants for renewals of on-licences which are contested to adopt the practice of presenting extensive evidence of economic impacts on their businesses. It is within the power of the Authority to control the nature and scope of evidence it will receive in this area to ensure its proceedings are not extended by evidence which is purely collateral to the real issues before it.

[78] It is evident the Court of Appeal connected the statutory object of that statute (to establish a reasonable system of control) to a need for reasonableness in "the administration of the licensing system". In the 2012 Act, those two aspects have been made deliberately distinct. The purpose of the Act, being for the benefit of the community as a whole, puts in place "a new system of control over the sale and supply of alcohol" and the characteristics of the new system are that:⁴⁴

- (a) it is reasonable; and
- (b) its administration helps to achieve the object of this Act.

[79] The fact that reasonableness is separated from administration strongly suggests a deliberate step by the legislature to narrow, if not close, the potential that existed

⁴⁴ Sale and Supply of Alcohol Act 2012, s 3.

under the 1989 Act to require, even if only rarely, commercial interests to be considered in licencing decisions. The focus of licensing decisions is now directed solely to attaining the objects of the Act. Nevertheless, the Act seeks to implement a regime that is reasonable, and no reasonable regime could permit the imposition of capricious or grossly disproportionate licensing conditions.

[80] Returning to the immediate case, there is nothing to suggest that the condition imposed by the Committee, and upheld by the Authority, was grossly disproportionate or capricious. While it is undoubtedly correct that the condition prevents Capital Liquor from trading during some of its most profitable hours, it does not follow that the Committee “deliberately targeted” those hours with the intention of curbing Capital Liquors’ business. It is abundantly clear from the Committee’s explanation of the condition, that a 6 pm closing time was chosen because the Committee did not consider Capital Liquor to be a suitable operator of an off-licence in a high-risk area outside ordinary business hours. Viewed in that light, the condition cannot be said to be disproportionate, as its principal purpose is not the reduction of alcohol-related harm but rather ensuring that the sale and supply of alcohol in the high-risk area adjacent to Te Aro park is undertaken safely and responsibly. Being imposed for that legitimate reason, the condition is not capricious.

[81] With respect to Cuba Liquor World, it is obvious the two operators are not analogous. No more need be said than that the Committee had no concerns about the suitability of Cuba Liquor World to hold a licence. It is therefore unnecessary to consider the extent to which the Committee and Authority should be required to take into account the conditions imposed on comparable licensees.

[82] The appellant has not established this ground of appeal.

Improper attempt to negotiate trading hours

[83] In the course of her submissions, Ms Pender also raised an issue with what she said were improper attempts by the respondents to negotiate trading hours with Capital Liquor. She alleged that police and the Medical Officer of Health had taken the position that they would consent to Capital Liquor’s renewal application if it agreed to voluntarily reduce its closing time to 9 pm. She argued that this was

inappropriate behaviour because it exceeded the role of those parties under the regulatory system.⁴⁵

[84] In response, Mr La Hood submitted that this allegation had not been raised before either the Committee or the Authority, and it was not the subject of evidence before this Court. Accordingly, Mr La Hood argued it would be inappropriate for this Court to consider the allegation at this stage. I agree entirely and propose to say nothing further on the matter.

Summary

[85] Evidence of suitability includes not only evidence of an applicant's past conduct, processes and understanding of risk but, importantly, evidence bearing on trustworthiness. Reporting agencies can only sporadically and infrequently supervise the supply of alcohol. Because the licensing system fundamentally turns upon honesty, or trustworthiness, the Authority has, "quite rightly and not surprisingly, regarded it as one of the prime obligations".⁴⁶

[86] The Committee had ample evidence before it to reach its "overwhelming view" that Capital Liquor is one of the most high-risk off-licences in central Wellington "if not the highest risk", calling for "exceptional management practices on the part of the licensee".⁴⁷ There was more than sufficient evidence to support the Committee's decision that the appellant was not suitable to manage a high-risk premise during evening hours and to support the Authority's decision to uphold those findings. The fact the appellant breached the new licensing condition on 21, 22 and 23 December 2018 only further exemplifies its ongoing, casual disregard for regulatory compliance.

Result

[87] The appeal is dismissed.

⁴⁵ Referring to *Rapira-Davies v Palmer* [2017] NZARLA PH 52–53 at [77]–[79].

⁴⁶ Alan Dormer and Alastair Sherriff *Sale of Alcohol* (online ed, Thompson Reuters) at [SA105.04(1)(c)].

⁴⁷ *Committee decision*, above n 1, at [186].

[88] Costs following the event, the respondents are entitled to costs. If costs are unable to be agreed between the parties they may file memoranda addressing also costs on the stay application. The respondents should file any memoranda within 14 days working days from the date of this decision. The appellant may file its memorandum in response within a further 14 days working days. If the respondents seek to reply, any memoranda should be filed within five working days of filing and service of the appellant's memorandum. Memoranda are not to exceed six pages in length.

Karen Clark J

Solicitors:
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