IN THE SUPREME COURT OF NEW ZEALAND
AUCKLAND REGISTRY (Admin Div)

M.No.1673/77

RADTON J CCC

No Special Consideration

579

IN THE MATTER of Part 1 of the Judicatu Amendment Act 1972

BETWEEN EASTERN (AUCKLAND) RUGBY FOOTBALL CLUB (INC)

MASSEY RUGBY UNION FOOTBA CLUB (INC)

WESTERN UNITED RUGBY UNIO FOOTBALL CLUB (INC)

TE ATATU RUGBY FOOTBALL CLUB (INC)

EAST TAMAKI RUGBY FOOTBAL CLUB (INC)

MARIST BROTHERS OLD BOYS RUGBY FOOTBALL CLUB (AUCKLAND) (INC)

TEACHERS RUGBY UNION FOOTBALL CLUB (INC)

APPLICANTS

A N D THE LICENSING CONTROL COMMISSION OF NEW ZEALAND

FIRST RESPONDE

A N D THE HOTEL ASSOCIATION OF NEW ZEALAND

SECOND RESPONDE

M.503/78

IN THE MATTER of an appeal by way of Ca Stated from a decision of the Licensing Control Commission of New Zealand

A N D

IN THE MATTER of an application by the TE PAPAPA RUGBY FOOTBALL AND SPORTS CLUB (INC) for General Ancillary Licence

M.504/78

IN THE MATTER of an application by the EAST TAMAKI RUGBY FOOTBAL CLUB (INC)

M.505/78

IN THE MATTER of an application by the EASTERN (AUCKLAND) RUGBY FOOTBALL CLUB (INC)

M.506/78

IN THE MATTER of an application by the MASSEY RUGBY UNION FOOTBA CLUB (INC)

M.507/78

IN THE MATTER of an application by the MARIST OLD BOYS RUGBY FOOTBALL CLUB (AUCKLAND)(

M.508/78

IN THE MATTER of an application by WESTERN UNITED RUGBY UNI(FOOTBALL CLUB (INC)

M.509/78

IN THE MATTER of an application by the TEACHERS RUGBY UNION FOOTBALL CLUB (INC)

Hearing : 19 and 20 July 1979

Counsel : D.S. Morris & L.L. Stevens for Applicants in M.1673/77 and Appellants in M.503-509/78
R.B. Squire for the Licensing Control Commission of New Zealand as First Respondent in M.1673/77 and as Respondent in M.503-509/78
J.J. McGrath for the Hotel Association of N.Z. as Second Respondent in M.1673/77

Judgment: 30 October 1979

JUDGMENT OF McMULLIN J.

THE PROCEEDINGS:

These proceedings relate to the issue of general ancillary licences to a number of sporting clubs in the Auckland area. By consent two sets of proceedings for review were heard together. First there was application M.1673/77, made pursuant to s.4 of the Judicature Amendment Act 1972 by the seven sportin clubs originally named therein as applicants, for a review of th decision of the Licensing Control Commission No.140/77 given on 5 December 1977 on the application of the several clubs for the issue of general ancillary licences in respect of premises operated by them. An eighth club, the TePapapa Rugby Football and Sports Club (Inc.), whose application for a general ancillar licence was the subject of a subsequent decision by the Licensin Control Commission on 23 January 1978, was added as an applicant to the motion for review M.1673/77. Secondly, there were appeal

by way of case stated by seven clubs arising out of the Commission's decisions. These were brought pursuant to s.230A of the Sale of Liquor Act 1962.

It was agreed between the parties that the facts as found by the Commission and recorded in the various cases stated on appeal were to be treated as the facts for the purposes of hearing the application for review. I was invited by counsel fo the applicants to read the evidence given at the hearing of the several applications before the Licensing Control Committee. The matter of what was fairly to be included in the record of the proceedings to be brought before this Court was the subject of a judgment given in those proceedings by Speight J. on 16 March 1979; (1979) 1 N.Z.L.R. p.367. He then declined to make an orde on an application by the applicants that the entire transcript of the evidence of the witnesses, including cross-examination, given at the hearing of the several applications for ancillary licences before the Commission, should be filed in Court. No good reason has been shown to me for departing from that judgment and I decline to look beyond the facts as stated in the cases stated on appeal and refer to them and the decisions of the Commission only.

THE HISTORY OF THE MATTER:

The several clubs who are named as applicants in the proceedings for review, and the Te Papapa Rugby Football Club (Inc which, although not an applicant under M.1673/77, is an appellant by way of case stated, made applications to the Commission for general ancillary licences in respect of premises used by them for sporting interests in the Auckland area. Provision for this type of licence was made in amendments to the Sale of Liquor Act 1962 effected by the Sale of Liquor Amendment Act 1976. It

amended the Sale of Liquor Act 1962 by providing in s.23 for tw further types of licences in addition to those already provided for in s.54 of the Sale of Liquor Act 1962. These were a Caterer's Licence and a General Ancillary Licence. Section 23 c the 1976 amendment effected a number of amendments consequent upon the creation of the two new types of licences. It enacted a new section, s.65 E, which defined the purpose and scope of a general ancillary licence. Section 65 E(1), (2) and (3) reads as follows:-

(1) "Subject to the provisions of this section, a general ancillary licence shall authorise the licensee to sell and dispose of liquor for consumption on the premises described in the licence at any timeduring the time specified in the licence on any day when the premises are being used for any purpose (hereinafter referred to as the principal activity) specified in subsection (2) of this section.

(2) A general ancillary licence shall not be granted in respect of any premises unless those premises are used or are to be used regularly for any of the following purposes:

(a) Taking part in any sporting or recreational activity:

(b) Taking part in any live entertainment of a lawful character, other than the game commonly known as housie or any other activity the carrying on of which on any licensed premises is prohibited by section 248 of this Act:

(c) Holding social gatherings of persons sharing a common occupational, educational, technica sporting, recreational, or cultural interest

(d) Holding gatherings of cultural, ethnic, national or regional associations.

(3) A general ancillary licence shall not be granted in respect of any premises unless, in the opinion of the Commission, -

(a) Because of the nature of the principal activity to be undertaken on the premises, or the days on which or the times at which the principal activity is to be undertaken on the premises, or any other relevant circumstances, the prospective licensee is not entitled under this Act to any other licence or to a permit that would authorise the sale and supply of liquor on the premises on the days on which and during the times at which the premises are or will be used for the purposes of the principal activity; and

(b) The supply and consumption of liquor on the premises will be incidental to the undertak of the principal activity: and

(c) Proper facilities for the sale, disposal, a consumption of liquor are or will be available on the premises; and

(d) During the times at which the principal activity will be carried on the premises will not be readily accessible to persons ot than those who are attending for the purpos of the principal activity."

Section 26 of the 1976 Amendment enacted a new section, s.112 M which relates to applications for general ancillary licences. It makes certain madinery provisions of the principal Act applicable to applications for general ancillary applications. It enacted s.112 N which sets out the circumstances to which the Commission must have regard in determining whether to grant an application for a general ancillary licence. Section 112 N is as follows:-

(1) "In determining whether to grant any application for a general ancillary licence the Commission shall have regard to -

(a) The support given or likely to be given to the principal activity undertaken by the members of the club or association in whose name or on whose behalf the application is made, or, as the case may require, by the public in the area or areas from which persor resort or might reasonably be expected to resort to the premises or proposed premises for the purpose of the principal activity:

(b) The nature of the principal activity conduct or to be conducted on the premises, and the class or classes (including the age groups) of persons who participate or are likely to participate in that activity on the premises

(c) The suitability of the premises or proposed premises and the facilities and services provided or to be provided on the premises f the purpose of the principal activity:

(d) Any prejudicial effect that the licensing of the premises might have on residents in the immediate neighbourhood ofthe premises:

(e) The character and reputation of the applican and any convictions of the applicant for offences against this Act or the Licensing Ac 1908:

(f) The public interest generally:

(g) Such other considerations as the Commission thinks fit to take into account.

(2) The Commission shall not be obliged to grant any application."

It also enacted s.112 O which enables the Commission to fix the hours of sale. Sections 27 to 40 relate to amendments of a machinery nature effected to the principal Act as a result of the creation of the two new licences. Section 27 makes provision for the duration of a general ancillary licence, s.28 for its renewal, s.29 for its transfer, s.30 for its removal an ss.31 to 40 enact other provisions of general relevance.

Pursuant to these provisions, each of the several clubs made application to the Licensing Control Commission for general ancillary licence. So did many other clubs and sporting bodies throughout New Zealand. Indeed, I was informed at the Bar that the Commission has received some 1500 applications for this type of licence since it was first created by the 1976 amendment. On 16, 17, and 21 to 24 November 1977, the Commissi conducted hearings of the applications of many clubs in the Auckland area for general ancillary licences. These included the eight clubs named as applicants in M.1673/77. On 5 Decembe 1977, it delivered its decision in respect of them. On 23 November 1977 and 24 to 26 January 1978, the Commission heard the applications of a further 13 clubs of which the Te Papapa Rugby Football and Sports Club (Inc.) was one. On 23 January 1978 it delivered its decision in respect of these applications It granted the applications of all the clubs concerned in these proceedings but for certain activities and for limited periods and limited hours only. It is plain that the several clubs are not satisfied with the terms of the grant and now seek a review of the Commission's decisions and the determination of several questions which have been raised in the case stated on appeal. The grounds upon which the applicants seek relief are that:-

(a) THE First Respondent misdirected itself in law and misapplied the provisions of the Sal of Liquor Act 1962 relating to the granting general ancillary licences;

(b) THE First Respondent acted or purported to a in excess of its jurisdiction;

(c) THE first Respondent took into account irrelevant factors and/or failed to have regard to relevant factors;

(d) THE First Respondent applied incorrect legal tests in respect of its decisions regarding:

(i) the designation of principal activities for the abovenamed applicants; and/or

(ii) the fixing of times (including times of the year, days of the week, and hours of the day) for the sale and supply of liquor by the abovenamed Applicants.

(e) THE First Respondent failed to give any or a sufficient reasons for its decision or the parts thereof;

(f) THE First Respondent in designating principal activities and/or in fixing times for the sal and supply of liquor by the abovenamed Applicants gave undue weight to the principle of overall consistency between sporting clubs throughout New Zealand.

In the motion for review, applicants seek the following orders:-

(i) AN ORDER FOR REVIEW of the decision of the Commission; and

(ii) AN ORDER in the nature of certiorari QUASHING the decision of the Commission in so far as it relates to designated principal activties of the above applicants and the times during which they may sell and supply liquor; and

(iii) AN ORDER DECLARING that the decision of the Commission is invalid and/or contrary to law; and

(iv) ALTERNATIVELY to (ii) and/or (iii) AN ORDER SETTI ASIDE in part the decision of the Commission in so far as it relates to designated principal activities of the above applicants and the times during which they may sell and supply liquor; and

(v) AN ORDER DIRECTING the Commission to reconsider and redetermine the applications by the above applicants for general ancillary licences; and

(vi) AN ORDER GIVING DIRECTIONS to the Commission as the Court thinks just as to the reconsideration or otherwise of matters to be referred back to th Commission for reconsideration.

AND WITHOUT limiting the generality of the foregoing FOR ORDERS GIVING DIRECTIONS in respect of the following:-

(a) The meaning of the term "principal activity" referred to in section 65E of the Sale of Liquor Act 1962; and

(b) The grounds upon which sporting clubs are entitled to a general ancillary licence for the sale and supply of liquor under the said Act; and

(c) The basis upon which the Commission should fix the time or times at which the sale and supply of liquor under a licence may commence and the time or times at which it shall ceas under section 1120 of the Act; and

(d) The appropriate times (including times of th year, days of the week and hours of the day) during which the above applicants should be authorised to sell and supply liquor; and

(e) Such other matters as may assist the Commissi in determining the applications of the above applicants for general ancillary licences unc the said Act.

(vii) AN ORDER as to the future conduct of the applications by the above applicants for general ancillary licences to the Commission; and

(viii) AN ORDER as to the costs of and incidental to these proceedings; and

(ix) SUCH FURTHER or other order as this Honourable Court may deem just.

The several cases stated on appeal are directed t much the same issues as are covered in the application for review and, as Speight J. pointed out in the judgment to which have previously referred, the two sets of proceedings are designed to effect the same purpose. The cases stated on appe record that each of the several applicants made an application for a general ancillary licence and pose for the opinion of the Supreme Court the question of whether the decisions given by the Commission are erroneous in point of law. They put the following questions:-

(i) Was it a relevant consideration that the Commission should not authorise a licence to the applicant club of a type likely to result in a private tavern?

(ii) Was the Commission correct in limiting the principal activity of the applicant club or Mondays to Thursdays to the playing of rugb including training, lectures on rugby and coaching sessions?

(iii) Was the Commission correct in its interpretation of the words"principal activity" as appearing in s.65 E of the Sale of Liquor Act, 1962?

(iv) If the answer to question (iii) is "No", what is the correct interpretation of the term "principal activity" with particular reference to informal and social gatherings

(v) Was the Commission correct in disallowing the applicant club's application for a licence for the sale and consumption of liquor on the premises for Friday evenings?

(vi) Was the Commission entitled in determining those times of the year during which the premises are to be licensed for the sale and supply of liquor to exclude those periods of the year during which the Commission found the club did not actively participate in any sports and conducted itself solely as a social club?

(vii) If the answer to question (vi) is "No", on what principle should the Commission have determined whether or not it should allow the licence to cover those periods of the year in which the club did not participate in sporting activity?

(viii) Was the Commission entitled when fixing the hours at which the supply of liquor might commence on any day and the hour at which supply had to cease to limit the hours to a period less than that on which the principa activity is being conducted on those days?

(ix) Did the Commission in defining the principa activities of the applicant club specifying the hours granted properly apply the provisions of the Sale of Liquor Act 1962 to the facts as found by the Commission?

(x) Is the Commission bound to give particular and detailed reasons for its determination upon the application by the club for a General Ancillary Licence and, if so, has i adequately given such reasons in this case?

All the applicants were granted a general ancillary licence by the Commission but it is obvious that the hours for which the licences were granted were much less and

the terms upon which they were granted more restricted than tho for which the several applicants had hoped. The case of Eastern (Auckland) Rugby Football Club (Inc.) illustrates this point. Eastern applied for a general ancillary licence in respect of rugby playing matches on Saturdays and Sundays between 10 a.m. and 5 p.m. for the months of February to Octobe inclusive; for after-match functions in respect of rugby on Saturday and Sunday from 5 p.m. to 1 a.m.; for rugby training and social games on Sunday from 10 a.m. to 11 p.m.; for rugby training from Monday to Thursday from 4 p.m. to 11 p.m.; for social gatherings on Friday from 5 p.m. to 10 p.m. all the year round; and for management meetings in the months of February to October inclusive at times which were not stated. The application in respect of rugby playing matches, in respect of rugby training and social games, in respect of social gatherings and in respect of management meetings, were refused in their entirety. The application in respect of the after-match rugby function was granted for Saturday but between 4 p.m. and 7.30 p. only; the application in respect of rugby training was granted from 7.30 to 9 p.m. from Monday to Thursday. In addition, the licence was granted to cover lectures on rugby although in fact the applicant did not seek a licence to cover this activity. The other clubs made applications to cover activities of much the same kind augmented in the case of Massey by netball, judo, pool ; in the case of East Tamaki by softball (applied for at t hearing); in the case of Te Atatu by cricket and softball (the latter applied for at the hearing); in the case of Marist by cricket, darts and pool; and in the case of Te Papapa by squash, softball, indoor bowls, cricket, darts and women's netball. The application of Teachers Rugby Union Football Club (Inc.) was limited to a rugby after-match function on Saturdays in the months of February to October inclusive between 5 p.m. an

12 p.m. and a social gathering on Friday between 3.30 p.m. to 11 p.m. All the licences granted were in terms of that granted to Eastern where the applications related to those kinds of activity.

SUBMISSIONS OF COUNSEL FOR APPLICANTS:

As a background to his more detailed submissions, Mr Morris argued that the Sale of Liquor Act 1962 provided a complete code for the hearing and granting of applications for general ancillary licence and said that the Commission had fail to apply the law as set out in this code to each application. He argued that the effect of the several sections to which I have referred in the Sale of Liquor Amendment Act 1976 is that an application must be made in accordance with theprocedure detailed in the Act and the Sale of Liquor Regulations 1963 (Amendment No.5) (1977/74) and that an application having been made, the Commission must first determine whether the premises in respect of which a licence is sought satisfy the provisions s.65 E(2) and (3). He said that if, at that point of time, the Commission considers the requirements of the Act have not been met, then it must fail. But if the applicant satisfies the provisions of s.65 E(2) and (3) then the Commission must consider s.65 E(4) and (5). Then, provided these further subsections are satisfied, the Commission must look to the provisions of s.112 N and take account of the several matters set out therein. But, he said, the Commission cannot consider s.112 N until it has been satisfied in respect of ss.56 E(2) an (3). Mr Morris submitted that the Commission must consider an application for a general ancillary licence on a two-tier approach, firstly deciding whether or not to grant the licence and then for what hours any grant should be made. He said that s.112 O had given the Commission a discretion as to the hours for which the licence could operate and that it was necessary

to determine for what hours the principal activity was to be conducted and where the hours sought are outside 9 a.m. to 10 p.m., the need for such a licence to operate outside those times. From this Mr Morris went on to argue first that the Commission failed to apply the Act correctly to the facts as established in the evidence and that the activities which had been put forward by the various clubs as activities in respect of which a licence was sought had not been put forward as minor or incidental activities but as genuine activities which of themselves warranted individual consideration. He submitted that the Commission had apparently regarded its task as being to determine the main purpose of the clubs and, having done that, to authorise a licence in respect of such purpose only. Clearly, he said, the main purpose of the clubs was the playing of rugby but this fact did not preclude them from having other sports or activities considered if their premises were used regularly for those other sports or activities at different times or contemporaneously. He submitted that in looking at the applications as it did, the Commission adopted the wrong approach. In its judgment the Commission, by way of detailing its approach to the several applications, said:-

> "In short we were told that so long as present activities (whatever they be) justify the hours sought then hours authorised by us should not be controlled by any particular sport. It was apparent that in many cases the hours sought for purposes that were essentially those of soci intercourse were often longer than for chartered clubs and hotels or taverns and also included extensive hours on Sundays. The statute, in section 112 0, (particularly subsection (2)) doe impose some restriction on hours that the Commission can authorise. (p.3)
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> Our approach has been in respect, for example of rugby clubs, to authorise hours covering the regular use of the premises for rugby including training, etc and for social gatherings (as discussed in decision 88/77) related reasonably directly to rugby. If more than one sport was involved in the premises concerned, then suitabl hours for that sport are also authorised. Some overlapping is probable. Some compromise in the extent of hours sought for more than one sport h become desirable having regard to our overall approach to the matter. By way of example, we say that if a club plays both rugby and cricket

> with mutually exclusive seasons the fact that we authorise hours for cricket does not mean that rugby players belonging to the club are automatically entitled to full liquor supplies during the cricket season. Supply of liquor by virtue of s.65 E(7)(c) and (d) is confined to days on which the premises are being used in good faith for the purpose of the principal activity and only to those who are participating in the principal activity and their invited guests. To make the position clear as we see it, a member of a rugby club who is not an active member of the cricket teams playing under the club's name, cannot have access to the drinking facilities of the club unless he is an invited guest. We consider that the number of "invited guests" must necessarily be in realistic proportion to those actively participating in cricket - "invited" guests is not intended to embrace the whole of a club's membership and its supporters. For reasons such as these we regard membership of a club as giving no right to the supply of liquor by reason of membership alone. There should be little point, therefore, in canvassing for associated or honorary members, at least so far as enhanced liquor turnover is concerned. In a number of instances dealt with in the schedule ancillary sporting activities were proferred as support for more extended hours or a greater licensed period during the year. While, as we say in this decision we do not deal in detail with each applicant we point out that where, in our opinion, the ancillary sporting activities are of a relatively minor nature and not a significant part of what we conceive to be the main purpose of the club concerned, then hours in respect of those minor sports or subsidiary activities have not always been taken into account."

Mr Morris contended that the Commission had proceeded on the basis that where there was more than one activity, its task was to disregard those activities which it considered to be subsidiary to the main activity and to grant a licence in terms of what it considered to be the club's principal activity. It was applicant's submission that a club could have a number of activities each one of which became the principal activity for the purposes of a general ancillary licence when it in fact became the principal activity carried on by the applicant for the time being; in short, the term "principal activity" was to be regarded as a collective term for the activities mentioned in s.65 E(2).

Mr Morris' second submission was that the Commission had taken account of irrelevant factors. On this point he first referred to the Commission's expression of desire for overall consistency. In its decision, the Commissic said:-

> "We have endeavoured to tailor authorised hours to the requirements of each applicant and also have had regard to the desirability of overall consistency."

Applicants complain that each of them was given the same hours (except Teachers, whose application was more limited); that not one of the clubs asked for a licence for rugby lectures and that the grant of a licence for this phase of activity was quit unsupported by evidence; that each applicant gave evidence of a rughy season in respect of which the licence was sought of longer duration than that given by the Commission; that each of the clubs listed the rugby season as falling within the period 1 February and 31 October and the Commission in the case stated found this as a fact. But, they said, the Commission fixed the finishing date as being 30 September as it had in respect of the Porirua Club whose application formed the subjec of an earlier decision. The Commission gave no reasons for disallowing the times for which the applications were made. Accordingly, Mr Morris said that the Commission in considering itself obliged to preserve uniformity did so at the expense of overlooking the merits of each application. But he said that if the Commission had indicated in its decision that it was granting a licence in narrower terms than that sought, and for specified reasons which it had then applied, no complaint could have been made.

The second matter upon which Mr Morris said the Commission had taken irrelevant factors into account was that i said the licences were granted on an experimental approach.

In its decision the Commission said:-

> "To a degree we have assumed an experimental approach. In the light of our experience after the main exercise has been completed, we may consider further adjustments."

The third allegedly irrelevant matter to which Mr Morris alleged the Commission had made reference was that the hours sought by the applicant clubs were longer than those allowed for chartered clubs, hotels and taverns and that they included Sundays. In its decision, the Commission said:-

> "It was apparent that in many cases the hours sought for purposes that were essentially those of social intercourse were often longer than for chartered clubs and hotels or taverns and also included extensive hours on Sundays".

Mr Morris contended that the Commission had taken account of hours of operation of the licence and that it was wrong in doing so because the hours for which the licence was to be operated were only relevant when the Commission had reached a decision t grant a licence. He said that the enquiry into the hours shoul be related to the evidence of demand and that the Act (s.112 O(2 expressly provided for the grant of a licence outside hotel and tavern hours.

Mr Morris' final point was that, in refusing to grant licences in terms of the application, the Commission had erred in law as its findings were wholly unsupported by evidenc and were contrary to the available evidence as disclosed in the case. If the Commission had gone about its task properly, he said, it would have granted licences in the terms sought in the applications.

Mr Stevens conducted the next part of the argumer It was directed in the main to the sufficiency or otherwise of reasons given by the Commission for its decisions. He submitte that the Commission had failed to give sufficient reasons and, in some cases, any reasons for its decisions. He contended that, without sufficient reasons having been given, applicants for licences could not exercise their appeal rights nor avail themselves of judicial review in appropriate cases. His complaint was not so much that the Commission did not give any reasons but that the reasons given were inadequate; that the Commission ought to have given sufficient reasons to enable the applicants to know in what respect their case had failed; and that the applicants had no idea why they had not been granted a licence for some of the principal activities for which they applied. He claimed that, in its decision, the Commission had done no more than make general statements of principle without setting out its primary findings of fact as determined from the evidence. The Commission said:-

> "While, as we say in this decision, we do not dea in detail with each applicant, we point out that where, in our opinion, the ancillary sporting activities are of a relatively minor nature and not a significant part of what we conceive to be the main purpose of a club concerned, then hours in respect of these minor sports or subsidiary activities have not always been taken into account."

Mr Stevens said that no reasons had been given for limiting the hours from 7.30 to 9.30 p.m. Monday to Thursday; that the Commission had merely laid down the period within which the applicant was licensed to operate without saying why some activities applied and others did not; nor were there any reasons given for the inclusion of a licence for lectures on rugby (not applied for) nor for the lack of findings as to the days of the week or hours of business nor for the inclusion of

public holidays when none was applied for. No more was said i regard to licences on Saturdays and Sundays other than "There appears to be insufficient justification". No reasons were given why softball activities were left out; only that a separate application should be considered.

Mr Squires who appeared for the Commission abide the decision of the Court on the specific grounds of the appea but made some general observations as to considerations which, he said, ought to be kept in mind. First, in relation to the complaint that the Commission had been influenced by extraneou factors, he said that the grant of a licence was a discretiona matter and that the Commission was permitted to have regard to predetermined policy considerations provided that they were within the framework of the Act and that they were not so arbitrarily applied as to exclude a consideration of any given case as an exception to the policy or any contention that the policy should be modified. He said that it was proper for bod like the Commission to exercise their discretion and to seek to maintain consistency in the course of the exercise of that discretion in terms of its predetermined policy and that it wa in order for the Commission to make general explanatory remark which were aimed to preserve the distinction between a general ancillary licence and other licences. Mr Squires accepted tha the Commission was under a duty to give reasons but only becau its functions were of a quasi-judicial nature. It had no duty to give reasons on the grounds of fairness or natural justice Administrative Law, H.W.R. Wade, 4th Edition, 463. But, accepting that reasons may need to be given, he said that the Commission should not be overburdened by having to give a judgment of the same kind and quality as might be given by a truly judicial body. He drew attention to the fact that the Commission had as its members two non-legal persons who

themselves could constitute a quorum and that there was no statutory requirement for the Chairman to be a barrister and solicitor. Accordingly, he said, the Court should not be too astute to impute every judicial obligation into a body which might have a membership of lay persons and which had administrative as well as judicial functions. The obligation of the Commission, he said, was to deal with matters adequately not to give a judgment which one would expect from a Court of law. What was adequate would depend on the issues as they arose. Mr Squires also made submissions as to the nature of the relief to be given should the Court accede to the applicant's submissions.

Mr McGrath in his submissions on behalf of the Hotel Association which sought to uphold the decision of the Commission advanced certain principles which he said were at the basis of the grant of a general ancillary licence. He said that this type of licence was one which, compared with other licences, played only a small part in the total licensing scene; that it could only be related to the principal activity concept; that it was not intended to allow clubs to assume the characteristics of hotels and taverns; that in exercising its discretion both as to the granting of a licence and the hours for which it should be granted, the Commission was bound to have regard to these principles as indicating a policy approach. He argued that in considering what was a principal activity the Commission was entitled to look for the main and dominant purpose and to reject any subservient activity. That was not to say that a club could not have more than one principal activity. But it did entitle the Commission to do as it had done and to reject ancillary sporting activities of a relatively minor nature and forming only an insignificant part of what the Commission conceived to be the main purpose of the club concerned. He further submitted that the purpose was something more than a mere user and that an insignificant activity which was entirel

subservient to the club's principal activity could not become a principal activity even for the time being.

He referred to social gatherings and, dealing wit Mr Morris' submission that the Commission had taken account of irrelevant considerations, Mr McGrath argued for the propositior that the Commission had not subjected the individual considerations of each club to the need for consistency. He referred tc passages in the decision as indicating that the approach had been made to take account of the individual needs of clubs. He sought to answer the criticism made that the Commission had given the applicants a licence for activities which they did not seek namely, lectures on rugby, and a right to open on publ holidays, by saying that the Commission found that many clubs did not know what days and hours would be acceptable and that the Commission had issued a licence for Sundays which clubs dic not originally seek. It had done so because it was dealing wit a great number of applications and in recognition that a club v not required by law to open its bar during the hours granted. In short, the Commission was seeking to be helpful in pioneerir a new form of licence and endeavouring to anticipate wants on the part of some clubs which they did not presently realise. This, he said, was no rubber stamp approach. He referred to th fact that the Commission anticipated that some clubs would wisl to come back to it after some experience of operating the licences granted. He said that this was not a consideration leading the Commission to its decision. What the Commission had done was to reach its decision on the individual cases, the recording that if future events proved the Commission to be wrong or the licence to be inadequate, application for further definition could be made. Finally, in his reference to the fac that the applicants sought a licence which would enable them t remain open much longer than would clubs, hotels or taverns, he said that the Commission had adopted what it had said in its decision 88/77 concerning the Porirua Rugby Club where it

expressed the view that the legislation was designed "to authorise licence hours no longer than the reasonable and regular needs of any applicant having regard to its overall purpose and activities". Mr McGrath submitted that the Commission was entitled to take account of the fact that, if the hours sought had been granted, the clubs would have had longer hours than those granted to hotels and taverns, the main outlet for the licensing trade. Sports clubs, he said, should not be allowed to develop the characteristics of taverns.

Then he referred to the complaint that the Commission had failed to give reasons or adequate reasons for its decision. His submission was that the Commission had no duty to give any reasons for its decisions on general ancillary applications either in respect of the decision to grant or refuse licences or in respect of the terms upon which the licences were granted, namely, the hours fixed. But he said that if it did give reasons voluntarily then it had no obligation to give all its reasons for any particular part of its decision. In particular, he submitted that there was no general rule of law that reasons must be given; that if a body like the Commission did give some reasons but not others, the inference could not be drawn that relevant matters had been overlooked or irrelevant matters had been included. Finally, he submitted that the Commission had in fact given adequate reasons. Some of these reasons were specifically referred to and others were by implication incorporated by the Commission making a reference to its decision in the Porirua case in which the Commission had set out its approach to applications of this kind. Finally, Mr McGrath submitted that the Commission had se out in its decision its approach to applications for a general ancillary licence and the policy to be adopted in respect of those applications; that it had discussed the hours in respect of which the applications were made; and that it had given an

indication of a number of areas in which it had not been persuaded by the particular applications from its general approach.

I now deal with the submissions made on behalf of the applicants in the order in which they were made to me. First it was said that the Commission had not approached the several applications in accordance with the statute; that it had failed to apply the criteria of the statute to the evidence; and that it had treated as incidental activities of the applicar clubs' activities which themselves warranted individual consideration seeming to record the main activities of the clubs as being the playing of rugby and ignoring all else.

Where an application is made for a general ancillary licence the application is to be dealt with in accordance with the provisions of the Sale of Liquor Act 1962, some of the provisions of which are applicable to other forms of licence. Section 107 of the principal Act prescribes the form of the application and what information must be contained within it; s.108 provides for the making of a police report upon the application; s.109 for the making of objections; s.111 for the public hearing and s.112 for the issue of the licence. These are all the more formal matters to be dealt with. Section 65 E(1) defines the scope of a general ancillary licence, s.65 E(2) relates to the activities to which such a licence is ancillary and s.65 E(3) lists matters in respect of which the Commission must be satisfied beforethe licence is granted. Section 112 N sets out certain further matters to be taken into account in determining whether a general ancillary licence is to be granted. I do not think that much can be made of the order in which these several matters are deal

with in the somewhat piecemeal provisions of the 1976 amendment. Section 65 E(1) and (2) provide that a general ancillary licence shall authorise the licensee to sell and dispose of liquor for consumption on the premises at any time during the time specified on any day when the premises are used for the principal activity of the club for which the premises are used or are to be used regularly. A principal activity must be within the categories (a) to (d) of s.65 E(2) Section 65 E(3) places other limitations on the issue of a licence. Paragraph (b) of subsection 3 is important. It is that "The supply and consumption of liquor on the premises will be incidental to the undertaking of the principal activity All these are considerations of which the Commission must be satisfied before granting the licence. But there are other matters to which the Commission is directed to have regard. These are contained in s.112 N which provides:-

(1) In determining whether to grant any application for a general ancillary licence the Commission shall have regard to -

(a) The support given or likely to be given to the principal activity undertaken by the members of the club or association in whose name or on whose behalf the application is made, or, as the case may require, by the public in the area or areas from which persor resort or might reasonably be expected to resort to the premises or proposed premises for the purpose of the principal activity:

(b) The nature of the principal activity conducte or to be conducted on the premises, and the class or classes (including the age groups) of persons who participate or are likely to participate in that activity on the premises:

(c) The suitability of the premises or proposed premises and the facilities and services provided or to be provided on the premises for the purpose of the principal activity:

(d) Any prejudicial effect that the licensing of the premises might have on residents in the immediate neighbourhood of the premises:

(e) The character and reputation of the applicant and any convictions of the applicant for offences against this Act or the Licensing Ac 1908:

(f) The public interest generally:

(g) Such other considerations as the Commission thinks fit to take into account.

(2) The Commission shall not be obliged to grant any application.

Applicants complain that the Commission proceeded on the basis that where there are more activities than one carried ou on the premises, its task is to disregard those which it considered to be subsidiary to the main activity and to grant a licence only for the club's principal activity. I do not think that the Commission's decision goes as far as that. The Commission said:-

> "Our approach has been in respect, for example of rugby clubs, to authorise hours covering the regular use of the premises for rugby including training, etc and for social gatherings (as discussed in decision 88/77) related reasonably directly to rugby. If more than one sport was involved in the premises concerned, then suitab hours for that sport are also authorised. Some overlapping is probable. Some compromise in the extent of hours sought for more than one sport has become desirable having regard to our overa approach to the matter. By way of example, we say that if a club plays both rugby and cricket with mutually exclusive seasons the fact that we authorise hours for cricket does not mean that rugby players belonging to the club are automatically entitled to full liquor supplies during the cricket season."

A club can have more than one principal activity for the purposes of s.65 E and, as s.65 E(2)(a) itself provides, that activity may be either "recreational" or "sporting". There is no difficulty over the definition of "sporting activity".But there may be over the definition of "recreational activity". Recreation in its ordinary or dictionary meaning means a pleasurable exercise or employment, a pleasant occupation, pasttime or amusement; the fact of being recreated by some pleasant occupation, pasttime or amusement. It is not limited

to physical or sporting activities to the exclusion of the cultivation of the mind and the satisfaction of man's desire f knowledge. Although recreational activities may often be sporting activities, they may be much wider than these. From the reference to both sporting and recreational activities in s.65 E, it is plain that the draftsman intended to include as principal activities, to which the grant of a licence was ancillary, recreational as well as sporting activities.

Section 65 E(2) refers to a number of purposes for which premises may be used. But a general ancillary licenc shall not be granted for premises unless they are used or are to be used regularly for any one or more of the activities to be carried on. The effect of subsections (1) and (2) is tha to sustain a grant of a general ancillary licence, the premises must be used regularly for one of the purposes set out in (2). Where that requirement is satisfied a general ancillary licence may be granted and, subject to the provisions of s.65 E(3), the premises may be used for the sale and disposal of liquor. Section 65 E(3) places a further restriction on the grant of a general ancillary licence. It restricts the grant of such a licence in terms of the principal activity which is undertaken on the premises. As has already been said, s.65 E(3)(b) makes it clear that the consumption of liquor must be incidental to the principal activity to be undertaken on the premises.

What then is a principal activity? It is the main or dominant activity undertaken on the premises. But I see no reason why there cannot be more than one principal activity within (a) to (d) of s.65 E(2) provided it is the main or dominant activity carried on at a particular time. That much is clear from the reference in (3) to "the days on which or the times at which" the principal activity is to be undertaken.

I see no reason why, in a club at which rugby and cricket are played, rugby should not at one time be the principal activity and at another cricket should be the principal activity. But in saying that I do not suggest that every activity that is carried on at a club becomes a principal activity warranting the issue of a general ancillary licence just because it is the only activity carried on at the club at a particular time. If the position were otherwise, the playing of darts by a social group at a time when no other activity was carried out might be said to justify a licence. The Commission is obliged in terms of s.112 N (1)(a) to have regard to "The support given or likely to be given to the principal activity". It is a consequence of thisprovision that there may be activities which would not warrant the issue of a general ancillary licence even though they are the only activities carried on by the same club on the same premises at the time.

On reading the decision of the Commission, I do not think that it has taken the view which the applicants have attributed to it. Neither in the decision it delivered nor in decision 88/77 relating to the Porirua Rugby Club to which the Commission referred is there any statement which would suggest that the Commission was of the view that only one form of activity would justify the issue of a licence as ancillary to it. Consequently I detect no error in principle in the Commission's approach to the applications on this point although it may well be that the reasons which it gave for limiting its grant to the hours and activities stated in its decision were inadequate on this point.

Then applicants complained that the Commission did not act on the evidence and that it paid little or no regard to the facts as it found them. I have already said that the

evidence before me is confined to the evidence in the cases stated on appeal. In paragraph 4 of the cases stated on appea the Commission sets out the facts stated to have been found by it on the hearing of the application to which the appeal relates I join issue with this statement in the cases stated on appeal. The facts said in the cases to have been found are no more thar a recital of the evidence tendered on the applications. What has been included as facts in the cases stated on appeal is no more than a summary of the evidence tendered in respect of each application. Unless there is some supplementary memorandum containing the reasons for the Commission's decision (and I do not believe that there is), the Commission has not in its judgment found any facts at all. I understand from what counse told me at the hearing that evidence was given before the Commission by each club in support of its application and that there was some cross-examination directed to this evidence. Bu no evidence was called in opposition. Therefore, the only evidence before the Commission was the evidence of the applican There were no findings of facts in disputed areas because there was only evidence from one source. But the Commission in the cases stated on appeal does not state what weight it placed on the evidence tendered. Where an appeal is brought on a point of law, the evidence for the parties should not be set out in the case on appeal, but the conclusions of the Magistrate upon the facts should be stated - Brayton v. Dalrymple Mac. 395, per Richmond and Chapman JJ. The same point was made in Dannevirke Cordial Factory v. Hall, 12 G.L.R. 697 by Cooper J. And in Huddart Parker Ltd v. McGowan (1919) N.Z.L.R. 705, Edwards J. referred to both these cases in a robust judgment. All these cases concerned appeals on questions of law from the Magistrate Court but what was said is true of any appeal on a question of law by way of case stated. In Commissioner of Taxes v. McFarla (1952) N.Z.L.R. 349, a case by a taxpayer against an assessment

of income tax pursuant to s.23 of the Land and Income Tax Act, 1923, F.B. Adams J. said:-

> "But I hope that nothing in our judgments will encourage the idea that a Case Stated should always set forth the evidence, or should do so to a greater extent than is necessary to enable the appellate court to determine, where such questions are raised, whether particular conclusions of fact are supported by the evidence. It has to be remembered that evidence means nothing until one knows how far it is believed; and it is findings of fact, and not evidence, with which the appellate court is concerned". (379)

I incline to the view that the Commission, not having recorded its views on the evidence tendered on the applications save to indicate expressly that it thought the numbers of licences sought was in some cases excessive and by implication that it did not accept that it was bound to grant a licence for every hour an activity was carried on did not accept all the evidence at face value. But applicants may draw some comfort from what Lord Greene M.R. said in Royal Choral Society v. Inland Revenue Commissioner (1943) 2 All.E.R. 101 (cited by Pennycuick V-C in Way v. Underdown (No.2) (1974) 2 All.E.R. 595 at 599:-

> "The next matter relates to the evidence given before them by Sir George Dyson. In dealing with that evidence, they have adopted a form which I have always thought, and on occasions have said, is not a desirable form to use in these cases. They say: "Sir George Dyson gave evidence before us and stated (inter alia)"; and then they set out what his evidence was. To my mind it is quite impossible to interpret that as meaning that, although Sir George Dyson said that, they did not believe him. The only significance and interpretation that can be given to that paragraph is that they accepted that evidence as evidence of fact; otherwise the paragraph is meaningless, if not misleading."

In view of the way in which the cases have been stated, I propose to accept, for the purposes of this argument, that the

facts found were as set out in the cases on appeal. But for that point, it seems to me that while not doubting the sincerit of the evidence tendered on behalf of each club, the Commissior may have regarded some of it as based more on hope than experience.

I return to the submissions made and say that the Commission is not bound to issue a general ancillary licen for every activity which may be carried on in the premises and even though evidence may be tendered of an activity, it will n warrant the issue of a licence if it is to be engaged in only by a handful of participants or if it cannot, against the background of the application, be said to be a principal activity. It would have been better had the Commission recorde in its decision the facts found by it and on which the decisior was based, and it was more important to record in the cases on appeal the evidence the Commission accepted and gave weight to rather than the totality of the evidence tendered whether or not it was challenged in cross-examination.

Applicants' second submission was that the Commission had taken into account irrelevant factors. The Commission said:-

> "We have endeavoured to tailor authorised hours to the requirements of each applicant and also have had regard to the desirability of overall consistency."

In my view, there is nothing which would preclude the Commissi from having regard to the desirability of maintaining an overa consistency in approaching applications of this kind. Courts law in the exercise of a discretion sometimes have regard to a need to maintain consistency from one area to another. And

where the Commission was required to consider literally hundreds of applications of this kind throughout the country under legislation which was broadly phrased, it was understandable that it should wish to have regard to overall consistency. Indeed consistency may be a virtue rather than a fault. Had the Commission delivered itself of decisions granting licences which on their face had no measure of consistency, I have no doubt that complaints would have been made that decisions differed between one club and another. But that is not to say that the Commission was entitled to sacrifice the merits of each individual case on the altar of consistency. Clearly each application was entitled to be considered on its own merits even though, by convenience, the cases of many of the applicants were similar and were heard at the same time. In its reference to consistency, I do not regard the Commission as having introduced irrelevant matters.

Secondly, it was said that the Commission had granted licences in respect of rugby lectures even though these had not been sought; and that the Commission limited the licences granted to a season of lesser duration than that covered by the evidence given to the Commission. I do not see that it can be said that the Commission has acted on any irrelevant considerations in doing this. The Commission explained in its judgment that it had issued licences for days which the clubs did not originally seek being aware that until a discernible pattern emerged from the earlier decisions, many clubs did not know what days and hours would be acceptable. But the Commission pointed out that extensions of this kind did not mean that a club had to open its bar during licensed hours and that if individual clubs did not wish to be licensed for the extra days granted, they should inform the Commission which would make amendments accordingly.

Then Mr Morris said that the Commission had

adopted what it called an "experimental" approach. The use of the word "experimental" is perhaps unfortunate. The Commissio was feeling its way through some recent and difficult legislation which could have wide social effects the extent of which the Commission was not then in a position to gauge. If the Commission went too far in granting licences of this kind it might not later be able to narrow their scope. It was bett on that account in the Commission's view to proceed with some measure of caution recognising that it might be some time befo the working of the licences in practice couldbe observed. I see no objection to an approach of this kind provided that it is held in balance. The Commission was not entitled to use what it termed the "experimental" approach to the exclusion of other considerations or to deny the grant of any application o terms which the evidence warranted.

Mr Stevens directed his attention to what he submitted was an inadequacy of reasons given by the Commission for its decisions. In England, the Tribunals and Inquiries Ac 1971 obliges the tribunals listed in the Act to furnish a statement of reasons for decisions if requested to do so. The reasons when given "shall be taken to form part of the decisio and accordingly be incorporated in the record". There is no such statute in force in New Zealand but there is a body of authority which supports the giving of reasons by administrati tribunals although not obliged by statute to do so. As Profes Wade points out in his work, Administrative Law, 4th Edition, p.464, "... an administrative authority may be unable to show that it has acted lawfully unless it explains itself". Thus, where an Act empowered licensing justices to refuse a licence one of several specified grounds, mandamus was granted to make them state the ground even though they were not obliged to giv their reasons for it; R. v. Sykes (1875) 1 Q.B.D. 52; R. v. Tho (1892) 1 Q.B. 426. Another factor underlying the need to give

reasons is that without them, the unsuccessful party may be unable to exercise effectively any right of appeal on a point of law. Professor Wade comments; "The principle of these decisions comes close to recognising a general right to reasoned decisions, since the right of appeal on a point of law is very common...".

The Commission in hearing the several application was exercising a quasi judicial function. They were required to be advertised, objections were called for, there was a public hearing, evidence was tendered and the objectors were given a right of audience. I have no doubt that the Commission was required to give reasons for its decisions. Mr Squires did not dispute this. Indeed the Commission itself gave reasons. The only question is as to the adequacy of the reasons given. Applicants complain that the Commission should have given sufficient reasons to enable the applicants to know in what respect their cases had failed, why they were given licences for some activities forwhich they did not apply and why they were not licensed for other areas for which they did apply. It was said that the Commission did no more than lay down statements of principle without reference to the facts of each case. I agree with this submission. The Commission has explained why it has given applicants a licence for activities and hours not required by them. But, it having set out in the cases stated on appeal as facts found by it what may have been no more than a recital of the evidence tendered or at least the principal parts of it, the Commission ought to have stated more adequately than it did why it granted the licences for only some of the activities and some of the times sought by applicants. Accordingly, I am of the opinion that there is substance in applicants' complaint that the Commission gave inadequate reasons for its decision on the applications. I have indicated that on the arguments advanced to me, I do not see any error in principle in the Commission's

approach but, on the facts to which it referred in the cases, applicants may have expected to receive licences expressed in wider terms. I say "may" because the Commission has a discretion and was not bound to give a licence to the full extent of the evidence tendered. But all that the Commission said was "We have not hesitated to refuse substantially the hours sought where such have been in our opinion excessive". And, "Our task (as we think it) is to give some reasonable and a not unduly restrictive effect to a liberalising enactment .. and while rendering lawful many previous illegal practices not to give carte blanche beyond an applicant's reasonable requirements ...". From that it may be inferred that the Commission considered that some of what the applicants sought was not reasonably required. But it did not say why. Where reasons are required to be given but are not given, applicants may think that the Commission was capricious in the exercise o its discretion. If the Commission thinks that the terms sough by the applicants are excessive it should say so in more explicit terms particularly in view of the findings of fact which it purported to make.

Before deciding what action is appropriate on the application for review, I think it advisable to answer the questions set out in the cases stated on appeal to the ext that the questions asked are properly questions of law. The questions are:-

(1) Was it a relevant consideration that the Commission should not authorise a licence to the applicant club of a type likely to result in a private tavern?

A tavern premises licence is authorised by s.59 the Sale of Liquor Act 1962. A tavernkeeper's licence is authorised by s.64. The latter authorises the licensee to sell

and dispose of liquor on the tavern premises to any person, for consumption on or off the premises, at any time between the hours of 11 a.m. and 10 p.m. The circumstances made relevant to the issue of a tavern licence are referred to in s.75 of the Sale of Liquor Act. A tavern premises licence differs from a general ancillary licence in the circumstances which justify its grant, and in the scope of the licence (ss.59 and 64). In the case of a tavern premises licence, premises must be open fo consumption on and off the premises between specific hours and without reference to any activity conducted there. In short, the consumption of liquor alone in the tavern premises is recognised by the Sale of Liquor Act 1962 as being the raison d'etre for the issue of the licence. On the other hand, a general ancillary licence does not authorise drinking other tha on the premises at the hours fixed in the licence (not in the Act). It is a licence which limits drinking to those persons only who participate in the principal activity carried on in th premises and their invited guests. That activity must be of a sporting or recreational nature. The licence is limited to the days and for the periods shown in it on which the premises are being used in good faith in the principal activity. There is clearly a great deal of difference between the two forms of licence. It may be that in some cases, probably only a very few the evidence tendered in support of a general ancillary licence application will be such that a licence can be sustained for a large number of hours on a large number of days throughout the year. In terms of the hours for which the premises can be kept open, a general ancillary licence may be of some similarity to a tavern licence. But there are clear lines of demarkation between the two kinds of licence. The question is somewhat unclearly worded but I would answer it in the affirmative.

(2) Was the Commission correct in limiting the principal activities of the applicant club on the dates and times set forth in the decision to the playing of rugby including training, lectures on rugby and coaching sessions, and to the playing of the other sporting activities mentioned in the Decision

This question does not seem to me to be so much question of law as of law and fact and discretion. I have already held that activities other than rugby may be principal activities so that any one of these activities may of itself be a principal activity. But there can, in my view, be only o principal activity carried on at the one time. Whether the Commission on the evidence before it and the facts which it finds limits the principal activity of the applicant club to any particular days or times is a question to be determined on the facts of each case.

(3) Was the Commission correct in its interpreta tion of the word "principal activity" as appearing in s.54 E of the Sale of Liquor Ac 1962?

I have answered this question already in this judgment.

(4) If the answer to question (3) is no, what is the correct interpretation of the term principal activity with particular reference to informal and social gatherings?

No submissions were directed to this question.

(5) Was the Commission correct in disallowing th applicant clubs applications for a licence f the sale and consumption of liquor on the premises for social gatherings associated with the various sporting activities of the groups within the club?

This is a matter of mixed fact, law and discretion.

(6) Was the Commission entitled in determining those times of the year during which the premises are to be licensed for the sale and supply of liquor to exclude those periods of the year during which the Commission found the club did not actively participate in any sports and conducted itself solely as a social club?

The Commission was entitled in determining the times for which premises were to be licensed to exclude those periods during which the Commission found the club did not actively participate in any sporting or recreational activity. But the principal activity referred to in s.65 E(2) includes "holding social gatherings of persons sharing a common occupational, educational, technical, sporting, recreational, or cultural interest" and "holding gatherings of cultural, ethnic, national, or regional associations". Where activities of that kind are found to be the principal activity, a licence may be justified. But it must be noted that a general ancilla: licence is, by its nature, ancillary to a principal activity an(if the latter ceases, then the justification for the licence must also cease for the time being. If what are classed as social activities are themselves principal activities of a sporting or recreational nature, then they may themselves justify the grant of a licence. But the overall purpose of the licence is not to grant drinking facilities under the guis(of a social function.

(7) If the answer to question (6) is no, on what principles should the Commission have determined whether or not it should allow the licence to cover those periods of the year in which the club did not participate in sporting activity?

No answer is required.

(8) Was the Commission entitled when fixing the hours at which the supply of liquor might commence on any day and the hour at which supply had to cease to limit the hours to a period less than that on which the principal activity is being conducted on those days?

The Commission was entitled to limit the hours to a period less than that on which the principal activity is being carried out on any day. The Commission is not obliged to grant a licence tailored to the time for which the activity is being carried out. The matter mustbe one of evidence and the weight which the Commission in its discretion gives to it.

(9) Has the Commission in defining the principal activities of the applicant club specifying the hours granted properly applied the provisions of the Sale of Liquor Act properly to the facts as found by the Commission?

I interpret this question as being an enquiry as towhether the Commission was, in defining the principal activities as it did, properly "applying the provisions of the Sale of Liquor Act to the facts as found". The question is too generally worded to give a specific answer. The Commission is not obliged to grant a licence exactly in terms of the evidence. It has a discretion but the more the Commission accepts and places weight upon the evidence given, the more likely it will be to grant a licence.

(10) Was the Commission correct in limiting the hours of the licence in respect of squash rackets activities as set forth in the Decision, in the light of the times during which the Commission found the club actively participated in the principal activity of squash rackets?

The answer to this question is one of mixed law, fact and discretion. The Commission has a discretion and is not obliged to grant a licence for the full hours sought in any application. But as I have indicated in this judgment, the

Commission should give its reasons in view of its purported findings of fact for limiting the licences to the hours stated in its decision.

(11) If the answer to question (10) is no, what times of the year, days of the week, hours of the day should be fixed for the said Licence?

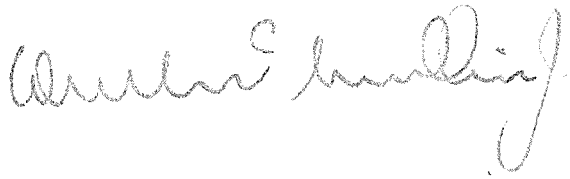
No answer can be given to this question.

(12) Is the Commission bound to give particular and detailed reasons for its determination upon the application by the club for a general ancillary licence and if so, has it adequately given such reasons in this case?

The Commission should give reasons which deal wit the application, the evidence tendered, and the facts found. The degree of particularity and detail will depend on the circumstances of each case. The Commission is not bound to dea with every submission made any more than a Court of law is bound to do so but the decision should leave any reasonable applicant with the view that the principal points made by the applicant have received proper consideration.

I return to the application for review. I decline the invitation extended to me by applicants to substitute my discretion for that of the Commission and grant the applications in any wider terms. The Commission is a specialised tribunal; it has a wide knowledge of the day to day workings of the licensing laws and of applications of this kind. It has considered many of them. It is better that the Commission shoul consider the applications further rather than that I, on this one application, should reach a decision. I set aside the decision of the Commission in respect of the several application

which are the subject of these proceedings and direct it to reconsider and redetermine the applications giving adequate reasons for its decisions. I determine the appeals in accordanc with the answers already given. I allow costs to applicants in the sum of $500 against second respondent. I reserve leave to any of the parties to application M.1673/77 to apply to the Cou for any further determination on matters arising from that application.



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