10/8

(3) FNT

A NO 250/84

IN THE HIGH COURT OF NEW ZEALAND
WELLINGTON REGISTRY

919

IN THE MATTER	of Part I of the Judicature Amendment Act 1972
BETWEEN	GUINNESS WINES & SPIRITS LIMITED
	Applicant
AND	THE LICENSING CONTROL COMMISSION
	First Respondent
AND	HARDWICKE & ROBERTSON N.Z. LIMITED
	Second Respondent
AND	LION BREWERIES LIMITED
	Third Respondent
AND	BRIAN THOMAS COLLECUT
	Fourth Respondent
AND	OTUMOETAI LICENSING TRUST
	Fifth Respondent
AND	DOWNTOWN WINE CELLAR LIMITED
	Sixth Respondent
AND	B.W. SIDES
	Seventh Respondent
AND	BAY OF PLENTY WINES & SPIRITS
	Eighth Respondent

AND	GOLDING SUNSET HOLDINGS LIMITED
	Ninth Respondent
AND	THE NEW ZEALAND WINE RESELLERS ASSOCIATION (INCORPORATED)
	Tenth Respondent
AND	T. Miles trading as HILLSDENE WINE CELLARS
	Eleventh Respondent
AND	B.M. ROBERTS
	Twelfth Respondent
AND	HOTEL ASSOCIATION OF NEW ZEALAND (INCORPORATED)
	Thirteenth Respondent
AND	THE COACHMAN TAVERN LIMITED
	Fourteenth Respondent

Hearing: 20 July 1984

Counsel: P M Salmon, QC, and C J Booth for Applicant
W R Flaus for First Respondent (Abided decision of court)
D S Morris and W A Smith for Second Respondent
Third to Fourteenth Respondents Not Represented

Judgment: 24 July 1984

JUDGMENT OF JEFFRIES J

The decision to dismiss the application for an interim order prohibiting the hearing of a removal of a

wholesale licence which is to take place at Tauranga on 24 July 1984, has already been given to counsel on 23 July. I indicated that I would give a short judgment setting out the reasons why the application was dismissed if counsel requested it, which they do. Because I imagine the issues raised in the substantive application by applicant before the High Court will also be raised at the hearing before the Licensing Control Commission I do not intend to explore the validity of the applicant's allegations set out in the statement of claim beyond what is absolutely necessary to make this decision.

Perhaps the best way of commencing the reasons for the judgment is to set out a calendar of events:-

29 February 1984	Second respondent makes application for removal of wholesale licence from Napier to Tauranga.
5 March 1984	Application for removal advertised.
19 March 1984	Report of inspector of licensed premises on removal.
20 March 1984	Objection lodged with Commission by applicant.
26 April 1984	New Zealand Wine Resellers apply to Commission for review.

25 May 1984	Applicant receives notice of hearing for 24 July.
Early June	Applicant instructs town planner.
20 June 1984	Applicant wrote to Commission requesting a review.
26 June 1984	Commission writes declining review.
13 July 1984	Report of town planner received by applicant.
16 July 1984	First application to Commission by applicant for inspector's report.
18 July 1984	Copy of report received by applicant's solicitors.
20 July 1984	Application filed and heard.
23 July 1984	Decision given.
24 July 1984	Hearing of removal to commence in Tauranga.

The gravamen of applicant's case is that the Licensing Control Commission should not decide upon a

removal of a wholesale licence without holding either at the same time, or prior to the hearing of the application for removal, a review pursuant to s 74 of the Sale of Liquor Act 1962. In this particular case the applicant is the holder of a wholesale licence which it operates from premises situated at Harrington Street, Tauranga. The second respondent, on 29 February 1984, made application to the Commission for the removal of its wholesale licence from Napier to premises to be situated at the corner of Burrowes Street and 15th Avenue, Tauranga. The grounds of the objection filed on 20 March were that the removal of the licence is unnecessary and undesirable in the locality. The third to fourteenth respondents are objectors who have also lodged objections to the Commission to the granting of the application for removal. As can be seen from the calendar above in April the New Zealand Wine Resellers' Association (Inc.) asked for a review, and in June the applicant also requested a review. By letter dated 26 June 1984 the Commission replied to applicant's letter declining the review on the grounds that the allocation of time for formal hearing and the removal had been programmed in Tauranga and there would be insufficient time for the appropriate investigation and report by the inspector of licensed premises. Applicant challenges those grounds as being insufficient for declining to hold a review. The court observes that the applicant cannot rely to any degree upon alleged inadequacy of an administrative reply unless it discloses some very substantial misconception of the role of the Commission.

Applicant alleges that in proceeding with the second respondent's application for removal and not undertaking a review the Commission is:-

(i) Pre-determining issues which are required to be determined at the hearing and/or has fettered its discretion to conduct a review pursuant to s 74 prior to or during the consideration of the removal application.

(ii) Has or will pre-determine issues which will be required to be considered in any subsequent review under s 74 and/or has fettered or will fetter its discretion in respect of such issues.

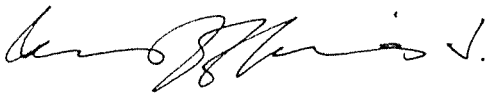
The statement of claim also raises other matters concerned with natural justice and/or fairness. The prayer of the statement of claim seeks an order directing the first respondent to consider, according to law and taking into account all relevant factors, the question as to whether it should hold a public sitting to determine on a review under s 74 of the Sale of Liquor Act 1962 whether the further wholesale licence or licences is or are necessary or desirable in the Tauranga area. The second prayer of the statement of claim is really the issue which is before this court, namely, whether an order should be made prohibiting the Commission from hearing and determining the second respondent's application for removal of its wholesale liquor licence until it has held a public sitting pursuant to s 74 of the Act. The court

does not wish to travel any distance into the issue of whether or not the Licensing Control Commission ought, or must, hold a review before or at the same time as a hearing of the application for a removal of a wholesale licence. As can be gathered from the judgment of Mr Justice Speight in Gilbeys New Zealand Limited v A.H. Herbert & Company Limited and Others (Unreported, Wellington Registry, A.2367/75, 26 February 1976), the legislation clearly provides two tracks which are independent of each other, namely the granting of a new licence after a review, and the removal of licences. The legislation is open to the argument that parliament deliberately promoted removals of wholesale licences to meet public demand rather than issue of new ones. The court is satisfied that not sufficient justification has been advanced by the applicant for such a drastic step as the issue of an interim order prohibiting a hearing on an application filed just two working days from the commencement of the hearing. The case for the applicant that would persuade a court so to act would need to have real strengths and it just does not have them, but as there is litigation before more than one tribunal, where the issues can be adequately explored, this court says no more.

There are other reasons in the way the applicant has gone about the application for an order. The application for removal was made on 29 February and advertised on 5 March 1984. On 20 March applicant lodged an objection. It then delayed an application to prevent the hearing fully four months to 20 July 1984. It knew by letter dated 25 May, that is two months before the

application for an interim order, that the hearing was to take place on 24 July 1984. The reasons advanced by applicant were that it did not get its town planning report until 13 July and that it did not know of the existence of the inspector's report until 16 July. The court considers both of those reasons quite inadequate. The applicant did not think it necessary to instruct its town planner until three months after advertisement. Town planning evidence is essentially concerned with peripheral issues, although definite weight must be given to it at a hearing. The issues of town planning are not so much at the very heart of an application for removal that such evidence is likely to cause the step I have referred to above. The court is aware that sometimes reports of inspectors of licensed premises are produced at a hearing but it is also well known to those engaged in applications before the Licensing Control Commission that reports are called for from an inspector very soon after applications for removal are lodged. The applicant did not take any steps to call for the report of the inspector until little more than a week before the hearing was to commence, and four months after it became available. Apart from the legal fragility of the applicant's case the culmination of the delays referred to in this paragraph convince the court that it ought to exercise its discretion to refuse to grant an interim order pursuant to s 8 of the Judicature Amendment Act 1972.

Costs reserved.



Solicitors for Applicant:	Wallace McLean Bawden & Partners, Auckland
Solicitors for First Respondent:	Crown Law Office
Solicitors for Second Respondent:	Alexander Bennett & Co., Auckland