

IN THE MATTER of the Sale and Supply of
Alcohol Act 2012

AND

IN THE MATTER of an application by
ROBERT THOMAS LEO BREEN pursuant
to s.219 of the Act for a Manager's
Certificate

BEFORE THE QUEENSTOWN LAKES DISTRICT LICENSING COMMITTEE

Chairman: Mr E W Unwin
Members: Ms M W Rose
Mr J Mann

HEARING at QUEENSTOWN on 18th May 2015

APPEARANCES

Mr Robert Breen - Applicant
Ms J Mitchell – Queenstown Lakes District Licensing Inspector – to assist
Sergeant L K Stevens – N Z Police – in opposition

RESERVED DECISION OF THE COMMITTEE

Introduction.

[1] Before the committee is an application by Robert Thomas Breen (hereafter called the applicant) for a Manager's Certificate. Mr Breen is a 26 year old New Zealand citizen who has been working as a full time sales person for the same employer at "Henry's" Off Licence in Queenstown since 23rd September 2014. In addition he has worked at "Henry's" on a part time basis for three years during his University holidays.

[2] The application was filed with the Queenstown Lakes District Council on 19th March 2015. It was accompanied by confirmation that the applicant holds the required Licence Controller Qualification.

[3] The application drew an adverse report from the Police concerning an incident in July 2014 when Mr Breen was convicted for driving with excess breath alcohol content. The report reflects on Mr Breen's suitability to be the holder of a manager's certificate and the Police recommend a two year stand down before the applicant can be considered for a General Managers Certificate.

The Evidence Tendered by the Police.

[4] The evidence showed that at about 1.00am on 20th June 2014 Mr Breen was the driver of a motor car in Queenstown. When stopped he acknowledged that he had consumed a number of glasses of wine and beer before driving. An Evidential Breath test

gave a result of 554 micrograms of alcohol per litre of breath. Mr Breen was co-operative throughout the procedures. The basis of the objection is that only ten months have elapsed since the offence was committed. Sergeant L K Stevens provided helpful submissions in which she set out the case law supporting a stand down period of two years.

The Evidence tendered by the Applicant.

[5] Mr Breen gave his evidence without the aid of a written brief. He stated that on the night in question it had been several hours since he had consumed his last drink and he perceived himself to be fine to go and get food. He acknowledged from the outset that he made a 'huge error in judgement'. He said that the process of arrest through to sentencing in Court was a 'scary' process and he believed that it had left a 'black cloud' over him. He argued that he was much more aware of his behaviour nowadays, and stated that his behaviour at social gatherings has altered. In other words if he is driving he will consume no alcohol at all.

[6] Mr Breen accepted that the process for him to obtain a Managers Certificate was not going to be straight forward, but he wanted to pursue it as it was important to his future and his commitment to the family business. He believes that apart from this incident, he has good character and is respected amongst his peers both socially and professionally.

The Licensing Inspector.

[7] The Inspector provided a full report in which she drew our attention to a number of relevant cases determined by the Liquor Licensing Authority in particular the 1997 decision of *Deejay Enterprises Limited* LLA 531/97 – 532/97, where the Authority stated:

"The 'guiding hand' or 'hands-on' operator of any company or the potential holder of a General Manager's Certificate now receives greater scrutiny from both the Police and other reporting Agencies. Character and reputation are closely examined. The law and human desires frequently take different directions. The Police cannot be everywhere. Little but a licensee's or Manager's character and suitability may stand between upholding the law and turning a blind eye. Self imposed standards in accordance with the law must be set by licensees and by holders of General Manager's Certificates."

[8] The Inspector also referred to a more recent case of Samantha Joanne McAlpine QLDLC 0007/14 where the DLC stated:

"It's abundantly clear that Parliament expects that the management of licensed premises will be conducted only by persons of integrity who are committed to the reduction of alcohol related harm. The effect of these provisions is that a Manager Certificate has not only become a symbol of responsibility and competence.....As long as standard are kept high the value of a certificate will not be diminished, by making sometimes difficult decision we hope to send a message that reinforces the new object as contained in section four of the act"

The Committee's Decision and Reasons.

[9] The criteria that we must consider are set out in section 222 of the Sale and Supply of Alcohol Act 2012 as follows:

- (a) The applicant's suitability to be a manager;**
- (b) Any convictions recorded against the applicant;**
- (c) Any experience, in particular recent experience, that the applicant has had in controlling any premises for which a licence was in force;**
- (d) Any relevant training' in particular recent training, that the applicant has undertaken and evidence the applicant hold the prescribed qualification required under section 218;**
- (e) Any matters dealt with in any report made under section 220.**

[10] The issue in the case is suitability and Mr Breen carries the onus of establishing an entitlement to a certificate. His character and reputation are at stake. He produced a reference from the Assistant Manager, Jessica Hastings at 'Henry's'. There was no support at the hearing as apparently the owners did not want to be seen to support a breach in the law regarding excessive consumption of liquor. This has to be commended especially when Mr Breen is a valuable member of their staff.

[11] On the one hand the applicant clearly demonstrated remorse and a clear acceptance and understanding of the Object of the Act. On the other hand there are the following leading cases. In *Martin Ferguson v Alistair Robert Lyon* (PH 57/2003) the Authority stated:

“New Zealand's drinking culture has become defined by many factors and social changes. Its manifestation is often seen in binge drinking or drinking harmfully. If the object of the Sale of Liquor Act is to be taken seriously, then eventually standards of good drinking behaviour will have to be set. Because people are inclined to be tolerant of alcohol abuse, then the focus must inevitably fall on the law. If the law becomes tolerant towards such behaviour the object of the act will lose credibility. If managers of licensed premises are shown to lack discipline, then why should patrons take the issue seriously.”

[12] In particular the well-known decision of *G L Osbourne* (LLA 2238/95) established certain guidelines. In this case the authority stated:

“Without fettering ourselves with this or other applications it may be helpful if we indicate that we commonly look for a five year period free of any serious conviction or any conviction relating to or involving the abuse of alcohol or arising in the course of an applicant's duty on licensed premises. Less serious convictions are also weighed. By way of example is an isolated excess breath or blood alcohol conviction or a single driving offence disclosing no pattern of offending. In these and similar cases we frequently indicate that a minimum of two years from the date of conviction may result in subsequent favourable consideration.”

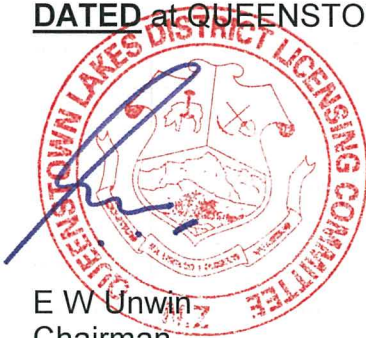
[13] We were not persuaded that we should depart from the guidelines to the extent of granting the application. However the way the applicant conducted himself and the quality of his responses to questions gave the Committee confidence that he could be a positive influence to the industry. A further significant factor is the undertaking he gave. That undertaking will be recorded on any manager's certificate with the words "Undertaking Given". This will warn other potential employers that the certificate is not what it may seem. In its solemn form the undertaking reads:

“I Robert Thomas Breen hereby undertake that if granted a

Managers Certificate it will be used only at 'Henry's' (Off Licence). And further, that any breach of this undertaking is accepted as a sign of lack of suitability. It is acknowledged that any time after twelve months from the date of the issue of the Manager's Certificate the undertaking can be changed to other suitable employment or cancelled, by decision of a Licensing Inspector of the Queenstown Lakes District Council."

[14] It is now nearly a year since the incident. On the basis of this undertaking we are prepared to bend the rules slightly in the applicant's favour. The decision of the Committee is that the application will be adjourned for six months from the date of the decision. During this 6 month period Mr Breen may be employed as a temporary manager, but only for a total period of 6 weeks. If at the end of the six months there are no more concerns expressed by the Police or the Inspector, the application will be granted on the papers without further public hearing. If there are adverse matters, then another public hearing will be called.

DATED at QUEENSTOWN this 17th day of June 2015



E W Unwin
Chairman