

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

IN THE MATTER OF the  
Liquor Act;

BETWEEN:

GOLD RANGE INVESTMENTS LIMITED

Appellant

- and -

LIQUOR LICENSING BOARD

Respondent

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Appeal pursuant to s.23(2) of the **Liquor Act** allowed in part, without costs.

Heard at Yellowknife on January 21st 1994

Judgment filed: March 14, 1994

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REASONS FOR JUDGMENT OF THE HONOURABLE MR. JUSTICE M.M. de WEERDT

Counsel for the Appellant: Austin F. Marshall, Esq.

Counsel for the Respondent: John Donihee, Esq.

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REASONS FOR JUDGMENT

This appeal is against the order of the Liquor Licensing Board (established under the **Liquor Act**, R.S.N.W.T. 1988, c. L-9) made on February 18th 1993, in which the Board suspended the appellant's cocktail lounge licence for premises in the Gold Range Hotel at Yellowknife pursuant to the Act.

The text of the order under appeal reads as follows:

This Board orders that on Count 2 Gold Range Investments Limited, Licence number 92-20 be suspended from the regular licensed hours on the 26th day of February 1993. For clarification that is from 2:00 a.m., February 26th to closing hours on the 2nd day of March 1993. Again, for clarification that is 2:00 a.m. on March 3rd, plus a fine of \$2500.00 and a Victims of Crime surcharge of \$375.00 payable by the 8th day of March 1993. The licensee's licence 92-20 will be suspended on March 8, 1993 until the fine is paid in full to the NWT Liquor Licensing Board office in Yellowknife.

The Board orders that on Count 3, Gold Range Investments Limited licence number 92-20 be suspended from regular licensed hours on the 3rd day of March 1993 and for clarification that is 2:00 a.m. on March 3, 1993 to 10.00 a.m. on the 8th day of March 1993.

Further, the licensee will display a sign supplied by the NWT Liquor Licensing Board on the door of the main entrance of the licensed premises. The sign will state that the premises is closed by order of the Liquor Licensing Board, or words to that effect.

3 Counts 2 and 3 mentioned in the order state:

Count 2: On or about the 9th day of May, 1992 between approximately 1:15 a.m. and 2:25 a.m. in the cocktail lounge of the Gold Range Hotel, cocktail lounge licence number 92-20, located in Yellowknife in the Northwest Territories, the licence holder, Gold Range Investments Limited, permitted the number of patrons in the licensed premises to exceed the maximum seating capacity, contrary to section 116 of the **Liquor Act**.

Count 3: On or about the 9th day of May, 1992 between approximately 1:15 a.m. and 2:25 a.m. in the cocktail lounge number 92-20, located in Yellowknife in the Northwest Territories, the licence holder, Gold Range Investments Limited, allowed quarrelsome, violent or disorderly conduct in the licensed premises, contrary to section 98(2)(a) of the **Liquor Act**.

4 The Board's order was stayed by me in Chambers on February 23rd 1993, on terms including the proviso that in the event that the appeal does not succeed then this Court may make an order in terms similar to the Board's order.

5 By agreement of counsel at the hearing of the appeal, the only points to be decided are whether or not the Board exceeded its jurisdiction as to either or both of Counts 2 and 3 above mentioned.

1. Count 2

6 On May 9th 1992 s.7 of the **Liquor Regulations, R.R.N.W.T. 1980, Reg. 100** (as amended), enacted under the **Liquor Act** provided, among other things, that:

(4) The Fire Marshall shall establish the maximum seating capacity in each licensed premises.

(4.1) No licensee shall permit the number of patrons in his licensed premises to exceed the maximum seating capacity of those premises.

7 At that time, the Fire Marshall had not established "the maximum seating capacity" of the licensed premises mentioned in the Board's order, in conformity with the **Liquor Regulations** quoted above. Instead, he had on June 26th 1989 issued a notice of "maximum occupancy load" for the room "Gold Range Hotel Bar" at Yellowknife. This was stated to be "262 persons". Nothing in the notice refers to either the **Liquor Act** or the **Liquor Regulations**; and it makes no reference to "the maximum seating capacity" of the appellant's licensed premises under the Regulations. It appears that the notice may have been given under either the **National Building Code, 1990** or the **National Fire Code, 1990** issued by committees associated with the National Research Council. There is nothing before the Court to show that any notice of that kind met the requirements of subsection 7(4) of the **Liquor Regulations** with respect to the licensed premises subject to the Board's order on the date in question.

8 That being so, there was no evidence of "the maximum seating capacity" of those premises as expressly provided by the **Liquor Regulations** at the time in question.

The most that could be said is that if the premises were, in fact, identical with the "room" mentioned in the Fire Marshall's notice in 1989, then any certificate or notice issued by the Fire Marshall stating "the maximum seating capacity" of the premises would no doubt not have shown that capacity as being greater than the then "maximum occupancy load" of those premises. The evidence before the Board however does not reveal that this is the only reasonable conclusion to be drawn in all the circumstances. The Fire Marshall was not called upon to testify before the Board; and no other evidence was adduced which might have satisfied the requirements of s.7(4.1) of the **Liquor Regulations**, with particular reference to the premises mentioned in the Board's order on the date mentioned. There is consequently a complete absence of evidence as to "the maximum seating capacity" of those premises on that date as contemplated by the Regulations.

9           The Board therefore plainly exceeded its jurisdiction in making its order in respect of Count 2.

**2. Count 3**

10           On the other hand, the Board's order in respect of Count 3 is supported by evidence which the Board found to be fully credible, as it was entitled to do.

11           Nor did the Board err in law in finding that the appellant had failed to show cause why the Board should not suspend the appellant's licence on the basis of that evidence. It was for the appellant to show that it had exercised due diligence to prevent the quarrelsome, violent and disorderly conduct described in the evidence in reference to

Count 3. The appellant failed to do so.

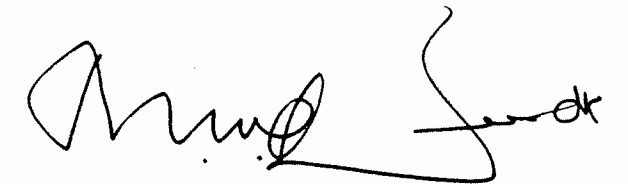
**Disposition**

12           The appeal is therefore allowed as to Count 2 but dismissed as to Count 3.

13           With reference to the terms of the Board's order in respect of Count 3, I remain unpersuaded that the Board erred in any way in ordering that the appellant's licence be suspended during the hours on which it would otherwise have been open for business from 2.00 a.m. on March 3rd 1993 to 10.00 a.m. on March 8th, 1993. March 3rd 1993 was a Wednesday; and March 8th 1993 was the following Monday.

14           An order shall therefore issue forthwith, pursuant to the terms of the Chambers order made by me on February 23rd 1993, as above mentioned, reinstating the Board's suspension of the appellant's licence commencing at 2.00 a.m. on Wednesday, March 30th 1994 and continuing until 10.00 a.m. on Monday, April 4th 1994, on the same conditions as to notice to the public as are contained in the Board's order.

15           Success being divided, there will be no costs of the appeal.



M.M. de Weerd  
J.S.C.

Yellowknife, Northwest Territories  
March 14, 1994

Counsel for the Appellant: Austin F. Marshall, Esq.

Counsel for the Respondent: John Donihee, Esq.

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