

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

**THE COMMISSIONER OF THE NORTHWEST TERRITORIES**

Applicant

- and -

**GOLD RANGE INVESTMENTS LTD.**

Respondent

**REASONS FOR JUDGMENT**

1 The parties hereto have asked for a determination of the following question:

Is a conviction under Section 98(3) of the *Liquor Act* RSNWT 1988, c. L-9 one of those offences referred to in paragraph 10(a) of the *Liquor Regulations* RSNWT 1990, c. L-34 as amended, that would prevent the issuing, renewal, or transfer of a liquor licence and thereby require the cancellation of Liquor Licences 95-20 and 95-21 pursuant to paragraph 37(e) of the *Liquor Act*.

2 The Liquor Licences referred to are held by Gold Range Investments Ltd.

3 In 1992 and 1993, Gold Range was convicted of offences under s.98 (3) of the

*Liquor Act*, which reads as follows:

(3) Except as authorized by this Act or the regulations, no licence holder shall allow any person under or apparently under the age of 19 years to remain in that part of the

licensed premises where liquor is sold or kept for sale unless that person has in fact attained the age of 19 years.

4                   The Commissioner of the Northwest Territories, as represented by the Liquor Licensing Board, concedes that the fact situations for which the s.98(3) convictions were entered did not involve the selling, supplying or manufacturing of liquor. In each case, the facts were that individuals under the age of 19 years were in a cocktail lounge for which Gold Range holds a licence.

5                   It is agreed by the parties that the only issue I need consider is whether an offence under s.98(3) is an offence involving the keeping for sale of liquor so as to bring a conviction for that offence within paragraph 10(a) of the Regulations under the *Liquor Act*. Paragraph 10 in its entirety reads as follows:

10. No licence shall be issued, renewed or transferred to or in respect of a person who has, within the five years preceding the application for issuing, renewal or transfer of the licence, been convicted of an

- (a) offence against the provisions of the Act, the *Excise Act* (Canada) or the *Northwest Territories Act* (Canada), involving the selling, keeping for sale, supplying or manufacturing of liquor;
- (b) offence against the laws of Canada or the Territories involving moral turpitude; or
- (c) offence against the Act involving the making of a false statement or the failure to make full disclosure to the Board.

6                   It follows that if a s.98(3) offence falls within paragraph 10(a) of the Regulations, sections 24(1)(b) and 37(e) of the *Liquor Act* apply. Those sections, in their entirety, read as follows:

24. (1) No licence may be issued, renewed or transferred under this Act to or in respect of any person who

- (a) in the opinion of the Board, is not the true owner of the business carried on at the premises for which the licence is sought;
- (b) has been convicted of any of the offences under such of the laws of the Territories or of Canada as the regulations prescribe;
- (c) is disqualified under this Act or the regulations or has not complied with the requirements of this Act or the regulations;
- (d) being a corporation, does not comply with this Act or the regulations;
- (e) being a club, does not comply with this Act or the regulations; or
- (f) is an Agent, an employee of an Agent or a vendor.

37. The Board shall cancel a licence if

- (a) the licence holder persistently fails to comply with this Act or the regulations;
- (b) the licence holder persistently fails to carry out the orders of the Board or the Fire Marshal appointed under the *Fire Prevention Act*;
- (c) the licence holder persistently fails to keep the licensed premises in a clean and sanitary condition in accordance with the *Public Health Act* or the regulations made under that Act;
- (d) the licence holder persistently fails to comply with any municipal by-law affecting the licensed premises;
- (e) any of the circumstances exist that under subsection 24(1) or 25(1) would prevent the issuing of a licence; or
- (f) the licence holder dies or becomes bankrupt or a mortgagee enters into possession of the licensed premises, but the Board may issue a temporary licence to a trustee or a mortgagee in possession for a period not exceeding six months in order that the trustee or mortgagee may settle the estate or dispose of the licensed premises.

Therefore, if sections 24(1)(b) and 37(e) apply, the Board shall cancel the licence(s) of Gold Range.

7           Counsel for the Board urges me to use a purposive approach to the statutory provisions. He submits that when one reads paragraph 10(a) of the Regulations and sections 24 and 37 of the Act together, it is evident that the legislature intended to put into effect a system of control and discipline of licence holders. He submits further that in enacting these provisions, the legislature anticipated that some actions or transgressions would by their nature be so serious as to leave the Board with no choice but to cancel or refuse to issue a licence. The question of course is whether the offence created by s.98(3) is such an act or transgression.

8           The purpose of the *Liquor Act* is clear from the Act itself. The Act is divided into three parts. Part I establishes the Liquor Licensing Board and its powers and the licences and permits which may be granted for the sale of liquor. Part II deals with administrative matters, liquor stores and the revenue from sales of liquor. Part III deals with eligibility to purchase, possess and consume liquor and creates various offences. The purpose of the legislation is clearly the regulation of the sale, purchase, supply and consumption of liquor. Included in that is the regulation and discipline of licence and permit holders. The "mischief" the legislation seeks to prevent is the misuse of liquor. Included as a misuse is clearly the consumption by minors of liquor, except in certain defined circumstances; thus sections 85, 89 and 93, which prohibit the sale and supply of liquor to minors and the purchase, possession and consumption of liquor by minors.

9           In furtherance of the objective of prohibiting the misuse of liquor by minors, the legislation has made it an offence, under s.99 of the Act, for a minor to enter or be in licensed premises except as authorized by the Act or the Regulations. Similarly, s.98(3) makes it an

offence for a licence holder to allow a minor to remain in the part of the licensed premises described in that section. One exception to these prohibitions is found in s.98(4) of the Act, which in effect permits a minor to be in a licensed premises for the purpose of providing entertainment. Paragraph 25(4) of the Regulations also permits a minor to be in the kitchen area of a licensed premises if he or she is over the age of 16 and is employed to help in the kitchen.

10           The exceptions just referred to lead me to conclude that it is not the mere presence of a minor in licensed premises that the legislature considered to be a serious matter. Rather, it is the presence for no approved purpose (approved purposes under the legislation being the provision of entertainment and working in the kitchen), which presumably leads to the temptation to consume liquor, which the legislation seeks to prevent.

11           This is not to say that allowing a minor to remain on licensed premises is not a serious matter. It is. But it is not, in my view, the real mischief at which the legislation is aimed. Rather, the prohibition against minors being in licensed premises except for certain purposes is one of the means by which the legislature hopes to accomplish the aim of preventing the misuse of liquor by minors.

12           In this regard, I have considered section 10 of the *Interpretation Act*, RSNWT 1988, c. I-8, which reads:

10. Every enactment shall be construed as being remedial and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

13           Provisions such as that found in section 10 above are viewed as casting doubt on

the applicability of the strict construction rule, which has traditionally been applied to penal legislation, that is, legislation that creates offences punishable by fine, loss of freedom or curtailment of a privilege or right: R. Sullivan (ed.), *Dreidger on the Construction of Statutes* (3d), (Butterworths, 1994), pp. 357-360. In my view, both the purpose of the legislation and the strict construction rule ought to be considered in this case.

14                    Counsel for the Board submits that in enacting ss.24(2) and 37(e) of the Act, the legislature decided that some offences were so serious that the Board should have no choice but to cancel or refuse to issue a licence as a result. He submits that paragraph 10 of the Regulations sets out these offences, including those involving the keeping for sale of liquor.

15                    For the very reason, however, that the legislature intended and enacted such a severe penalty (cancellation of a licence even after the licence holder, after conviction, has, as in this case, paid a fine and had the licence suspended for a time), the legislation should be strictly construed so long as that construction is in keeping with the purpose of the legislation.

16                    Clearly the offences which fall within paragraph 10(a) of the Regulations must be serious ones; thus, the severe penalty that will result from a conviction.

17                    Counsel for Gold Range submits that paragraph 10(a) refers to dealings with liquor or alcohol from the time of manufacture to the time of consumption. Paragraph 10(a) refers not only to the *Liquor Act*, but also to the federal Excise Act, which deals with the regulation of breweries and distilleries, and the *Northwest Territories Act*, which deals with the

manufacture of alcohol in the Northwest Territories.

18 Counsel for Gold Range asks me to conclude that the phrase "offence ... involving the ... keeping for sale" in paragraph 10(a) must refer to offences arising within this cycle of manufacturing to consumption. He submits that paragraphs 17 to 41 of the Liquor Regulations impose the obligations relating to keeping liquor for sale.

19 Paragraphs 17 to 41 make up Part II of the Regulations, entitled "Operation of Licensed Premises". Within that Part are specified such things as the stock of liquor that a licence holder must maintain, the method of ordering and making known the type of liquor that is kept for sale by the licence holder and the admission of inspectors to the licensed premises. As I understand it, counsel for Gold Range submits that these obligations on a licence holder are the essence of "keeping for sale". He cites *R. v. Hoare* (1915), 49 N.S.R. 119 (C.A.), in which it was held that keeping liquor for sale is not a transaction with another person, rather it is the act of a single person, in support of this proposition.

20 I think there is merit in these submissions. But, in any event, the essence of the offence under s.98(3) is not a transaction, as is the essence of the offences under s.85(2) and (3) of the Act, relating to the selling and supplying of liquor to minors.

21 It is to be noted in this regard that s.99 of the Act, the "reciprocal" obligation on the minor not to enter or be in licensed premises, uses only the words "licensed premises", and not the more specific wording of s.98(3), "that part of the licensed premises where liquor is sold or kept for sale". One would expect that the obligations of the licence holder and the minor with

respect to this issue would be identical. The definition of licensed premises in the Act is "the premises or place in respect of which a licence is issued". It would seem logical that the objective of both sections 98(3) and 99 is to keep minors out of licensed premises, subject, of course, to the exceptions I have noted earlier and any other exceptions that may relate to particular types of licences or permits.

22                    In my view, the phrase "where liquor is sold or kept for sale" is merely descriptive of the premises. The keeping of liquor for sale is not the essence of the offence created by s.98(3). The obligations imposed on the licence holder directly relating to how and in what manner liquor is to be stocked and ordered might, on the other hand, give rise to offences involving the keeping for sale of liquor.

23                    Counsel for the Board relies on the definition of "involved" found in *Health Sciences Association of British Columbia v. British Columbia (Industrial Relations Council)* (1992), 91 D.L.R. (4th) 582 (BCCA). In that case the Court stated that the word "involved" means "entangled". The specific phrase the court was dealing with was "a person ... involved in a dispute".

24                    Can it be said that the offence of allowing a minor to remain on licensed premises is entangled in the keeping for sale of liquor? I think not, when one considers that it is the presence of the minor in licensed premises that is the circumstance the section seeks to prevent. The presence of the minor has no effect on the keeping for sale of liquor, nor does the keeping for sale of liquor have any effect on the presence of the minor. In contrast, a person



involved in a dispute would normally be considered a person affected by, or having an effect on, the dispute.

25 I find further support for this view when paragraph 10(a) is read in context. Each of the words and phrases "selling", "keeping for sale", "supplying" and "manufacturing" of liquor refers to an activity which is regulated by the legislation referred to in paragraph 10(a). In my view, it is those activities which must form the basis of an offence for the offence to fall within paragraph 10(a). Selling liquor, keeping liquor for sale, supplying liquor and manufacturing liquor are all activities or active steps which may only be undertaken in accordance with the Act; otherwise, they are unlawful. They are what might be called "active" offences.

26 In contrast are sections 37(a) to (d) of the Act, which provide for cancellation of a licence in situations where the licence holder persistently fails to comply with obligations imposed on it by various statutes, regulations, by-laws and orders. The legislature has decided that such failures will result in cancellation of a licence only if they are persistent. These might be described as passive offences; the offender simply fails to do what he is obligated to do. Thus, persistence is required before cancellation of the licence can result.

27 It can therefore be seen that the legislature has created two categories of offences for which cancellation of a licence would be the ultimate penalty: (i) persistent failures falling within sections 37(a) to (d) of the Act, and (ii) active offences falling within paragraph 10(a) (as well as 10(b) and (c)) of the Regulations. In my view, these two categories of offences fit with the purpose of the legislation, that being to regulate the sale, purchase, supply and consumption of liquor.

28                   Although not necessary to the above analysis, I think that the concession made by counsel for the Board also supports the view I have taken. That concession was that the fact situations under which convictions were entered against Gold Range do not involve the selling, supplying or manufacturing of liquor.

29                   The fact situations under which the convictions were entered can be summarized as follows. The 1992 convictions were based on Gold Range having allowed minors to remain in licensed premises known as the Gold Range cocktail lounge. The Reasons for Judgment of de Weerdt J. given on Gold Range's unsuccessful appeal from conviction (and appended as Exhibit 2 to the Affidavit of Paul Craig filed on this application) state that liquor was in fact being sold in the Gold Range cocktail lounge at the time. The charges of which Gold Range was convicted were that it did allow the minors in question "to remain in that part of the licensed premises where liquor is sold contrary to Section 98(3) of the *Liquor Act*" (Exhibit 1 to the Affidavit of Paul Craig).

30                   The 1993 conviction was for a charge that Gold Range allowed a minor "to remain in that part of the licensed premises where liquor is sold or kept for sale, contrary to Section 98(3) of the *Liquor Act*" (Exhibit 4 to the Craig Affidavit). The facts, found in the Reasons for Judgment of de Weerdt J., in Exhibit 5 of the Craig Affidavit, were that the minor was found sitting near the bar where liquor was sold in the licensed premises known as the Gallery Neighbourhood Pub.

31                    These fact situations can be said to involve the selling of liquor only if one concludes that allowing a minor to remain on licensed premises where liquor is sold involves the selling of liquor. But counsel for the Board concedes that these facts do not involve the selling of liquor. I agree. That is, however, exactly the proposition that is presented with respect to the keeping for sale of liquor - i.e. that allowing a minor to remain on licensed premises where liquor is kept for sale involves the keeping for sale of liquor. It seems to me that the proposition I am asked to consider is inconsistent with the concession made.

32                    The factors I have referred to lead me to conclude that an offence under s.98(3) of the *Liquor Act* is not an offence involving the keeping for sale of liquor.

33                    Accordingly, it follows that I would answer the question posed in the negative.

34                    I thank counsel for their excellent submissions, both oral and written.

V.A. Schuler  
J.S.C.

Yellowknife, Northwest Territories  
March 29, 1996

Counsel for the Applicant:     Paul B. Bachand

Counsel for the Respondent:   Gary J. Boyd