

Ravens Pub v. Liquor Licensing Board, 2002 NWTSC 52

Date: 2002 08 08

Docket: S-001-CV 2002 000154

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

994401 NWT LTD. o/a Ravens Pub

Appellant

- and -

THE LIQUOR LICENSING BOARD

Respondent

Appeal from a decision of the Liquor Licensing Board pursuant to s.23 of the *Liquor Act*.
Appeal dismissed.

Heard at Yellowknife, NT on August 1, 2002

Reasons filed August 8, 2002

REASONS FOR JUDGMENT OF THE HONOURABLE JUSTICE J.E. RICHARD

Counsel for the Appellant: Douglas G. McNiven

Counsel for the Respondent: Charles McGee

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REASONS FOR JUDGMENT

[1] The appellant is the licensee of a cocktail lounge, Ravens Pub, situate on 50th Street in Yellowknife. Its license issued by the Liquor Licensing Board pursuant to the *Liquor Act* permits it to have 170 patrons in its licensed premises. In November 2001 the appellant sought the Board's approval for an expansion of its licensed premises. The proposed expansion would increase the occupancy load to 340 patrons. The Board denied the request. The appellant appeals the Board's decision to this Court, pursuant to s.23 of the *Liquor Act*.

[2] The right of appeal is limited to an error of law or an excess of jurisdiction:

s.23(1) Subject to this section, every order of the Board is final.

(2) A licence holder that is a party to a decision or order of the Board may appeal the decision or order to the Supreme Court on the ground that the Board has erred in law or exceeded its jurisdiction.

[3] From the contents of the Notice of Appeal and the appellant's brief, I glean, essentially, four grounds of appeal:

1. The Board exceeded its jurisdiction in citing the existence of a "social problem" proximate to the licenced premises as a reason to deny the expansion request.

This ground of appeal was also phrased as an error of law by discriminating against the appellant on the basis of the location of its licensed premises.

2. The Board erred in law in denying the appellant's request to appear personally before the Board.
3. The Board erred in law in failing to give reasons for its decision.
4. The Board erred in law in showing bias against the appellant.

[4] The first ground is obviously the main issue on this appeal. I shall initially deal briefly with each of the other three grounds of appeal.

[5] The second ground of appeal was abandoned by appellant's counsel at the commencement of oral argument.

[6] As to the third ground of appeal, the Board, in advising the appellant of its decision by its letter of November 26, 2001, simply stated that the expansion request "was considered and denied by the Liquor Licensing Board". Such a bald statement by a tribunal charged with important statutory responsibilities is, by any measure, insufficient and unsatisfactory. The appellant's solicitor, not surprisingly, sought from the Board the reasons for its decision. In due course, by letter dated April 23, 2002, the Board provided those reasons. An excerpt from that letter reads, "...the Board considered the problems on 50th Street where there is a cluster of licensed establishments. The problems are due to the large number of people who enter 50th Street from licensed establishments at bar closing time, some of which leave the premises in an intoxicated state, which leads to problems; therefore, the licensee's request was denied based on the location of the proposed premise." It is these reasons, of course which give rise to the first and main ground of appeal. Reasons having (eventually) been provided, the third ground of appeal is moot.

[7] As to the fourth ground of appeal, there is nothing in the Record of Proceedings that substantiates any bias by the Board. In an affidavit filed with the Notice of Appeal, James B. Sturge, the shareholder of the appellant company, alleges two specific incidents that he says indicate the Board is biased against the appellant. Firstly, he says that on a specific date in April 1991 both the Ravens Pub and another licensee were convicted of breaching the *Liquor Act* by allowing an underage person on the licensed premises. He says the Board assessed a harsher penalty against the Ravens Pub than against the other licensee. That assertion alone, of course, is not evidence of bias. There may have been

valid reasons why one penalty was harsher than the other. Secondly, Mr. Sturge says two other named licensees in Yellowknife (not on 50th Street) have, in recent years, received a favourable response from the Board for expansion of their licensed premises and resultant increase in occupancy load. Once again, without further particulars, it cannot be said that this is evidence of bias by the Board.

[8] Accordingly, the fourth ground of appeal is dismissed as being without substantiation.

[9] I turn now to the main ground of appeal.

[10] The enactment of the *Liquor Act* is an exercise by the legislature of its authority to make laws in relation to property and civil rights and also in relation to intoxicants. *Northwest Territories Act*, R.S.C. 1985, c.N-27, s.16. The purpose of the Act is to regulate the sale, purchase, supply, possession and consumption of liquor. By s.84 of the Act, it is unlawful for anyone to sell liquor except as provided in the Act. In Part I of the Act, the legislature establishes a Liquor Licensing Board and grants to the Board specific powers and responsibilities for the issuing of licenses and permits to individuals and corporations to sell liquor to the public.

[11] By the language of the Act, and s.6(2) and s.13 in particular, the legislature intended to give a broad discretion to the Liquor Licensing Board:

s.6(2) Subject to this Act, the Board shall control:

- (a) the conduct of licence holders;
- (b) the management and equipment of licensed premises; and
- © the conditions under which liquor may be sold or consumed on licensed premises;
(emphasis added)

...

s.13(1) Subject to this Act, the Board, in its absolute discretion, on receipt of an application for a licence accompanied by the prescribed fee, may by order issue to the applicant in respect of specified premises, a licence of any of the following classes:

...

(e) cocktail lounge licence for the sale and consumption of liquor;

...

(1.1) The Board, in issuing a licence, may set out such terms and conditions in the licence respecting the matters referred to in subsection 6(2) as the Board considers appropriate.

(1.2) No person shall contravene a term of condition of a licence.

...

(4) A licence authorizes the licence holder to purchase, sell, possess and use liquor subject to this Act, the regulations and the terms and conditions set out in the licence.

(emphasis added)

[12] Regulations enacted pursuant to the *Liquor Act* include the following, relevant to this appeal:

7. Unless otherwise authorized in writing by the Board, no licence shall be issued in respect of any establishment unless the plans, location, accommodation and facilities of the establishment have been approved by the Board.

(emphasis added)

...

41.(1) No licence holder shall make any structural addition or alteration to the licensed premises without first submitting to the Board, in duplicate, the plans and specifications of the addition or alteration and obtaining the approval of the Board in writing.

(emphasis added)

(2) The plans and specifications referred to in subsection (1) shall be approved by the Fire Marshal and the Medical Health Officer for the Territories.

[13] Each license issued by the Liquor Licensing Board states, *inter alia*, the location at which the license holder is authorized to sell liquor, and also the occupant load of those

premises. For this appellant, its cocktail lounge license states the location as 5030-50th Street and occupant load as 170 patrons.

[14] The thrust of the appellant's argument on this appeal is essentially that, in the Board's decision whether or not to issue a given license, the location of the proposed premises, the occupant load of the proposed premises, and the number of existing licensed premises in the community or the neighbourhood are not relevant considerations. With respect, I disagree. The discretion granted to the Board is wide in scope and provided the exercise of that discretion is not inconsistent with the Act, the Board's power is not restricted to a mere administrative assessment of the applicant's qualifications and fire and safety issues within the proposed premises. The Board's licensing powers enable it to regulate and control businesses that are licensed to sell liquor. Within its powers are those necessarily or fairly implied by the words of the Act and the purpose of the Act. In the exercise of its discretion, it is a function of the Liquor Licensing Board to decide whether it is in the public interest that a license be issued or not. To interpret the Act in a manner such that the Liquor Licensing Board cannot control the number or size of cocktail lounges or bars in a given community or neighbourhood is an unreasonable interpretation and is inconsistent with the purpose and objectives of the Act.

[15] The Record of Proceedings on which this appeal is based does not contain a full articulation of the factual foundation for the Board's stated reasons. However, on the hearing of this appeal the parties did not disagree on the essential circumstances underlying the Board's decision. There are three licensed premises within one-half block or one block of each other on 50th Street in Yellowknife — the Ravens Pub (the appellant), the Gold Range and the Right Spot. As stated earlier, the appellant's license allows 170 patrons. There is no evidence before the Court of the occupant load of the other two premises but presumably each is the same size as, or larger than, the appellant's premises.

[16] Bar closing time for each of the three is 2:00 a.m. In recent years the community, including the RCMP and the Liquor Licensing Board, has been concerned about the social problems, e.g., street fights, other violence, public nuisance, public drunkenness, etc., that have frequently resulted from the simultaneous emergence from these three bars of 400-500 people who have been drinking alcohol. There is no evidence that any particular troublemakers emanate from any one of the three licensed premises — it is rather the collective volatility or chemistry of the crowd of drinkers at one time in one place that is of concern in maintaining a peaceful and safe community. The Record of Proceedings indicates that the Liquor Licensing Board has taken steps, e.g., meetings

with the RCMP and with the license holders, with the objective of alleviating these social problems.

[17] It is within this larger context that the Board received the application of the Ravens Pub to expand its licensed premises from a capacity of 170 patrons to one of 340 patrons.

[18] The appellant submits that the Board erred in law or exceeded its jurisdiction in taking into consideration the existence of a social problem in the proximate area when making its decision on the appellant's request to double the capacity of its licensed premises. I disagree. It is a proper, relevant and important consideration. To ignore such an important consideration the Board would be remiss in its control and management, in the public interest, of the sale and consumption of alcohol in licensed premises. Considerations which focus on public safety and public peace are consistent with the purpose of the *Liquor Act* and the intention of the legislature.

[19] Accordingly, I find that the Board acted within its jurisdiction and committed no error of law in reliance on the adjacent "social problem". There should be no interference by the Court with a statutory tribunal honestly endeavouring to comply with the duties and responsibilities which the legislature has seen fit to impose on it. The first ground of appeal fails.

[20] Before concluding these reasons, I will deal with two procedural issues raised by the respondent on the hearing of this appeal.

[21] The first of these issues concerns the appellant's standing to appeal a second, and related, decision of the Liquor Licensing Board.

[22] As stated earlier, in November 2001 the appellant as licence holder of the Ravens Pub, made application to the Board for approval of an expansion of the licensed premises. At the same time, James B. Sturge, on behalf of a corporation to be incorporated, made a separate, fresh application for an entirely new cocktail lounge license for the same (expanded) premises to accommodate 340 patrons. The Board denied both applications.

[23] In the Notice of Appeal filed in this Court, the appellant purports to appeal both decisions pursuant to s.23 of the *Liquor Act*. I agree with the respondent's submission. The appellant has no standing to appeal the Board's decision on Mr. Sturge's application.

It is Mr. Sturge who is the aggrieved party with respect to that decision. That aspect of the appeal is struck as being not properly before this Court.

[24] The second procedural issue concerns the affidavit of James B. Sturge sworn May 23, 2002 and filed at the same time as the Notice of Appeal and, by its wording, in support of the appeal. The respondent complains that much of this affidavit is inadmissible, irrelevant, scandalous or otherwise oppressive. In seeking an order striking the impugned paragraphs, the respondent cites Rule 373 and Rule 375:

373.(1) Subject to subrule (3), a deponent may state in an affidavit only what the deponent would be permitted to state in evidence as a witness in court.

(2) In an action or proceeding to which a corporation is a party, any affidavit required by these rules to be made by a corporate party may be made by an officer, servant or agent of the corporation who has knowledge of the facts to be deposed to and the officer, servant or agent shall state in the affidavit that he or she has that knowledge.

(3) An affidavit may contain statements of the deponent's information and belief with respect to facts that are not contentious, if the source of the information and the fact of the belief are specified in the affidavit.

375. The Court may order to be struck out of any affidavit any matter that is scandalous, irrelevant or otherwise oppressive.

[25] At the hearing of the appeal, the appellant's counsel conceded that some of the contents of Mr. Sturge's affidavit did not meet the test of relevancy.

[26] Upon careful examination of the subject affidavit, I find there is merit in the respondent's submission. I order struck out paragraph 6 as inadmissible hearsay. I order struck out paragraphs 45 and 46 as inadmissible expressions of opinion. I order struck out paragraphs 4, 5, 10, 17-22 inclusive, 28-36 inclusive, 39-44 inclusive, and exhibits C, D and E as irrelevant. In deciding this appeal I have not had regard to the contents of any of these paragraphs and exhibits.

[27] For the foregoing reasons, the appeal is dismissed. The respondent shall have its costs of these appeal proceedings.

J.E. Richard.,
J.S.C.

Dated at Yellowknife, NT, this
8th day of August 2002

Counsel for the Appellant: Douglas G. McNiven
Counsel for the Respondent: Charles McGee

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