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THE GENERAL ANCILLARY LICENCE: A PORTENT HERALDING THE COMING-OF-AGE OF THE LIQUOR LICENSING SYSTEM?

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I PROLOGUE

The general ancillary licence, as created by the Sale of Liquor Amendment Act 1976, represents possibly the most innovative and prescient legislative development in the tortuous history of liquor licensing in New Zealand.

The concept behind the general ancillary licence is primarily significant in that it represented the first attempt to move away from a system of narrowly defined licences administered by the Licensing Control Commission towards a greater discretion for the Commission in authorising the sale of liquor as an adjunct to lawful social activities. Instead of requiring amendments to the already replete liquor laws for each new type of outlet, and thereby merely adding to the plethora of existing licences [1], the concept was to adopt a more flexible approach that, within statutory parameters and guidelines, would enable the Commission to issue a licence that would fit the circumstances of the case, rather than the activity having to be forced within the definition of a rigid form of licence. The Elworthy Committee recognised this departure:[2]

> The general ancillary licence in particular was seen as a bold innovation, because it represented a move away from a system of licences which are narrowly defined for specific purposes, in favour of a comprehensive licence which was sufficiently flexible to accommodate a variety of applicants carrying on diverse activities.

And the Hon. Dr A M Finlay, Minister of Justice, in the course of introducing the relevant provisions, as they were, in the Sale of Liquor Amendment Bill (No 2) 1975 stated:[3]

> The creation of a general ancillary licence is a milestone in the development of our

> liquor licensing, in that it is a move away from the concept of a particular licence for a particular activity, a course which has led to a proliferation of different licences in recent years. The Government will, of course, be watching very carefully the development of this form of licence, but I am confident that the good sense of the Licensing Control Commission will ensure the success of the development.

This general theme arising from these quotes, that of the novelty of the flexibility of the general ancillary licence concept and of its potential importance as a foundation for a fundamental rationalisation of the licensing system, is central to this paper and will underlie much of the discussion to follow.

As Dr Finlay's statement suggests, the corollary of this concept of a comprehensive licence is that the Licensing Control Commission be required to work under, and interpret more equivocal and flexible legislative guidelines as to eligibility for licences than it had been familiar with, and to exercise a kind of active discretion as to the fixing of hours and conditions for individual licences which was unprecedented in modern licensing legislation. In fact the Hon. Mr D S Thomson, Minister of Justice, described this prototypal discretion to tailor hours and conditions as "the hallmark of the licence".[4]

This potentially extensive discretion entrusted to the Licensing Control Commission as the administrative basis of the general ancillary licence will be analysed in some depth in the course of this paper.

The 1976 Amendment Act was most visibly significant in that it constituted an unacceptably overdue legislative recognition of, and attempt to deal with, the reality of the sale and consumption of liquor in sports and suchlike clubs. The practice of selling alcoholic beverages in clubs to members as a natural concomitant to the club's activities has long been a facet of the New Zealand way of life,and the obstinacy in refusing to legitimise this generally desirable pattern of social drinking has only served to engender disrespect for the law and render as law-breakers perfectly well-meaning and respectable citizens. The Statutes Revision Committee, while it was considering the Sale of Liquor Amendment Bill in 1976, had a report tendered to it commenting:[5]

> It will be a matter for consideration by the committee how far the development of the liquor laws to accommodate changing social habits and desires should be constructed ... The essence of the case for licensing sports clubs in particular and other social activities covered by the proposed general ancillary licence can be summarised as follows:
>
> (1) A large number of people are drinking in these circumstances; in many cases probably illegally. We are therefore dealing with an existing social habit.
>
> (2) Moreover, this pattern of drinking at sports clubs is obviously acceptable (either for themselves or for others) to a considerable body of responsible opinion.
>
> (3) It is both unreasonable and harmful to respect for the law to ignore this state of affairs and continue to attempt (probably without much success) to proscribe it, either on the general principle of curtailing drinking or because legalisation might reduce the profitability of hotels and taverns.

This 'social context' aspect is fundamental as providing the ultimate impetus for the radical change embodied in the general ancillary licence concept; and it is to an historical discussion of the development of the 'social need' addressed by the general ancillary licence concept that the first part of this paper will be devoted.

These three major themes associated with the general ancillary licence concept - namely, its conception in response to a social demand; the conferral of a unique discretion upon the Licensing Control Commission in order to satisfactorily meet the widely divergent needs of groups for whose benefit the licence was intended; and the possibility of the general ancillary licence formula, comprising a broad statement of a comprehensive licence coupled with a wide discretion within that licence to enable the Commission to fashion the licence to suit individual applicants, providing the blueprint for the future rationalisation of the licensing system - constitute the recurrent theses of this paper.

II THE DEVELOPMENT OF THE NEED FOR AN ANCILLARY-TYPE LICENCE

Although the concept of a general ancillary licence was never intended, and was not drafted, merely to apply to the sports club situation, but rather to encompass a broad range of activities to which the sale and consumption of alcohol could be condoned as being properly ancillary, nevertheless it was the plight of such organisations as sports clubs which first suggested the need for such a licence. A selective historical exegesis focusing on the attempts by clubs to provide their members with refreshments and yet stay within the law will provide a necessary backgrounding for discussion to follow and demonstrate the need for some form of legitimation and control through licensing.

A. Recognition of the Sports Club Predicament

As already mentioned in the Introduction, the occurrence of non-licensed and illegal sales and consumption of liquor in clubs

has long been a reality. This fact of life was readily admitted by the last three Parliamentary inquiries into aspects of the liquor industry. The Keeling Committee in 1960 stated:[6]

> Consumption of liquor upon the premises of sports clubs is a practice that has existed for many years. Some clubs break the law by engaging in, or permitting, or conniving at the sale of liquor to members. In very many instances, a locker system - which is quite within the law - has been developed. In a few cases individual members resort to the practice of bringing a supply of liquor with them and of consuming it with their friends. Such practices are not in harmony with the better forms of club tradition, nor do they fit in smoothly with sports club life as it is lived today.

The 1974 Royal Commission on the Sale of Liquor made similar observations in its report[7], and the Elworthy Committee stated:[8]

> Many clubs had long operated unlawful liquor facilities for the benefit of their members, though this had largely been ignored by the authorities. Some clubs were carrying on an illicit trade of considerable proportions and using the profits from that trade to help finance most of the club's activities and its premises.

And the Licensing Control Commission also recognised that the ancillary licence legislation was at least partially aimed at bringing the law into line with existing practices, and even used this reality as a general guide to interpretation:[9]

> It is hardly necessary for the Commission to say, along with a great number of New Zealanders, it has long been aware of the extent of the unlawful supply and consumption of liquor in unlicensed sporting and social clubs, and that because these

> activities were socially and morally acceptable to most people there have been few attempts to restrict them by law enforcement agencies. The previously existing law was regarded as bad by the public generally (if the public thought about it at all) and was ignored without feeling of moral obliquity. That the 1976 amendment was designed to liberalise the previous law and to bring it into some accord with longstanding and socially acceptable practices is clear beyond peradventure, and this Commission proceeds accordingly.

Also bearing witness to the phenomenon was the constant trickle of club/liquor related cases coming before the courts from as early as the beginning of this century.

B. Schemes Designed to Avoid the Law

The liquor licensing system in New Zealand has long been based on an absolute reservation to the State of the power to authorise the sale of liquor and this has manifested by a double prohibition whereby it is an offence for unlicensed persons to sell liquor and it is an offence for liquor to be sold on unlicensed premises.[10]

Such attempts as were made to avoid the rigours of the prohibiting sections generally took either of two forms. The first was aimed at avoiding a sale in the terms of the Act, so that various transactions and schemes were tried in an effort to overcome the characteristics of a sale. The second form of avoidance was to attempt to stretch the effect of certain exempting provisions in the Act itself to cover the club's activities. Neither form produced a workable solution, but the cases provide an interesting legal and social commentary.

1. Avoidance of a 'sale'

In Watford v Miller[11] the Full Court gave its approval to the notorious "locker system". This was a test case involving a club in Masterton. The club was incorporated, well controlled, with subscriptions and rules, and where any profits made from the operation of the club would be used exclusively for club purposes. A quantity of liquor was found by the police on the club premises, in a room fitted with lockers. All of the liquor so found was admitted to be the property of the members. The appellant was the custodian of the club who had been convicted in terms of "...storing or keeping ... in any building or place ... under his control ... any liquor for or by any other person ..." The appellant claimed that the alcohol was not in the custody of the club but rather in the possession of members and to be used by them on their own premises. The court agreed, holding that, subject to the rules of a club, every member may use the club-house and club's property as he would use his own home and property, subject to the right of other members to exercise the same right in relation to the club's property. So that it was quite open for a member to keep his own liquor in the club-house as he would in his own home.[12]

The locker system in its pure form as in Watford v Miller was highly unsatisfactory to all parties concerned - the individual member had the continual trouble of having to personally replenish his supply of liquor and he was unlikely to keep much of a range of liquor himself, and as far as the club was concerned it was losing the revenue it could make by being able to sell liquor to its members and also the club had little control over the supply. These disadvantages led to more adventurous schemes as was the case in Opie v Peterson[13] where a rugby league club which operated a locker system for its members also operated a scheme for re-stocking their lockers. Each of

thirty club members would notify the club secretary that they required a dozen bottles of beer and would pay him the retail price, the secretary would then combine the orders into one for the total amount required and would order it giving the names of the members purchasing. The supplier would send the order to the clubrooms with a delivery docket addressed to the secretary stating "1 dozen to the following ..." and the secretary would then arrange to have the beer put into the respective lockers. The club would retain the profit, being the difference between the retail and wholesale prices. The appellant secretary was convicted for "selling" without a licence and the appeal by him was dismissed on the grounds that the transaction did constitute a sale to the members by the secretary. The transaction was seen to constitute two contracts of sale - a purchase by the secretary of all the liquor, whether in bulk or separate parcels, and then a sale by the secretary, an unlicenced person, to each member who had ordered. In dismissing the appeal Callan J. sympathised:[14]

> It may be that this conclusion is to be regretted, because it may be that the environment created by the rooms of the association and the companionship there afforded create conditions for drinking at least as desirable as much which does not offend against the statute.

Other Magistrate's Court decisions, such as Police v Corinthian Sports Club[15], extended the Opie v Peterson line to hold that, notwithstanding the appearance of individual orders separately carried out by an officer of the club as an agent of the individual members, such factors as the quantities ordered, or the disposition of money ostensibly received in settlement of individual orders, or the multiplication of orders by one person and so on may make it clear that the club or one of its officers has actually been selling liquor to members.

What appeared at the time to be a major loophole in the law was discussed by Callan J. in Opie v

Peterson[16]. This was the system as approved in the English case of Graff v Evans[17] whereby a club owns and keeps a stock of liquor for consumption by its members generally. A member orders, pays for, and obtains liquor out of stock. The transaction was held not to be in law a sale but rather part of the distribution in specie of property in which all members have a common interest; the member is acting on his rights as a member. This principle was applied early on in New Zealand in the case of Upton v Colonial Secretary[18], but Callan J. in Opie's case, although not feeling bound to decide the point, doubted the applicability of the principle under New Zealand legislation[19]

> even in circumstances where it is clear that what really happens is that a member by order and payment acquires for his own consumption a portion of the general stock of liquors held by or on behalf of the club for consumption by all its members generally.

Callan J. thought that the legislative context of the word "sell" in the prohibitory section suggested a meaning wider than that of the same word in the English legislation. His Honour also points out that s. 264 of the 1908 Act (now s. 171 Sale of Liquor Act 1962) denies the effect of the Graff v Evans principle in relation to chartered clubs:

> For all the purposes of this Act, liquor disposed of by a chartered club to its members shall be deemed to be sold to them.

The failure of Callan J. to decide the point left much scope for unchartered clubs to circumvent the necessity for a licence, but predictably the point was very rapidly seized upon and tested in NZ All Golds Old Boys Association v Goldfinch[20], again by Callan J. It was held that a sale of liquor under such circumstances by an

unchartered club to its members is a sale without a licence in breach of the licensing statute, Callan J. drawing the analogy between the relationship of a charter to a club and that of an ordinary licence to a licensee. His Honour also considered that s. 267 of the 1908 Act (the forerunner of the present s. 294 Sale of Liquor Act 1962) disposed of the Graff v Evans principle, particularly in light of the peculiar preambular language which existed at the beginning of the section addressed precisely to the Graff v Evans principle:

> Whereas certain practices exist by which associations or clubs, not holding charters under the Licensing Acts, supply liquor to their members or enable the members to procure liquor on the premises ... under circumstances which may not constitute a sale in law ... and whereas all such practices are illegal evasions of the law relating to illicit sales of liquor: Be it therefore enacted ....

which provides a nice example of the legislature trying to interpret its own enactment.

This decision was immediately assumed to have completely abnegated the Graff v Evans principle and the issue does not seem to have been argued since, but, it is submitted, the NZ All Golds decision could be read as applying only to unchartered clubs which could obtain a charter but have not done so and still sell liquor, as opposed to clubs which are incapable of ever acquiring a charter because they do not come within the restricted definition of "club" in s. 162 of the 1962 Act, or its precursors, for the purpose of obtaining a charter. Callan J's references to a charter to a club as being equivalent to a licence may further this contention if what he is saying is that a procedure has been specifically provided for a club to obtain a "licence" and the club must therefore operate

within that scheme as that scheme would supercede any common law position. Is the corollary of this then that as no such scheme is provided for the numerous clubs which cannot come within the s. 162 definition and therefore cannot get a "licence" then they are entitled to rely upon the common law position which may be as stated in Graff v Evans?

A final point worth noting from the NZ All Golds case is again a sympathetic statement from the judge, but this time phrased in somewhat more forceful language:[21]

> Now the very estimable persons who compose the membership of this club like the drinking amenities of the club. It is no sham. It is a real club, and drink is just a part of the things there; but, unfortunately, as the law at present stands, it is not a place which the law allows and this Court and other Courts must insist upon citizens respecting the law; and when you get a law like this which a great many of them think very silly, that is just the sort of law they are minded to be disrespectful about, and just the sort of law, therefore, which you cannot get any support for unless you impose really deterrent penalties ...

2. The Use of Statutory Exemptions

The second general method of legitimising club liquor sales involved attempting to have the activity fall within one of the exempting provisions of the licensing legislation. Two such provisions have been employed in this manner.

Section 219 of the Sale of Liquor Act 1962 is

intituled "Consumption of liquor at social gatherings on unlicensed premises" and provides that liquor may be supplied and consumed on unlicensed premises at any social gathering held on those premises at which not less than twenty persons are present provided that certain conditions are complied with. Those conditions are that the persons present are members of a society or body by whom the social gathering is held or promoted or are specially invited guests, that no charge be made for liquor other than a reasonable charge for admission, and that any profit arising from the holding of the gathering belongs to the society or body rather than to any member. When the conditions are complied with then the making of a charge for admission or the selling of tickets entitling admission will not be considered to be a sale of liquor. The section was plainly intended to authorise one-off social functions which would otherwise be illegal, its enactment being a response to the decision in Harvey v Barling[22] that the making of a charge for admission which was attributable in part to the providing of liquor would have amounted to a sale, but the section was invoked in an attempt to cover more frequent club activities in Police v Merivale Football Club[23]. The facts of the case are summarised in the judgment of F B Adams J.:[24]

> It appears that acting on legal advice, and doubtless with no intention of infringing the law, the club has adapted the practice of holding so-called "social gatherings" which are normally attended by from forty to seventy members, and are held with regularity three nights a week .... it was alleged that supper ... was available ... the price of which, as well as the beer, is included in an admission charge of 4s. which members attending the function are required to pay.

The issue in the case came down to whether or not the function was a "social gathering" within the terms of the Act. His Honour was openly fearful of the consequences that would flow from the wide meaning of "social gathering" which would result from giving the term what His Honour regarded as its literal interpretation:[25]

> if it be permissible to do what the Merivale Football Club has done, a similar course may be followed by every sporting club in the country, with the result that the consumption of liquor might soon become an almost invariable accompaniment of every form of sport, and initiation into drinking habits the almost inevitable consequence of indulgence in any organised form of sporting activity.

His Honour eschewed any attempt to define "social gathering" but after considering the frequency, regularity and lack of a specific purpose or character of the get-togethers had little hesitation in holding that they were not "social gatherings" within the meaning of the Act. The decision was undoubtedly made easier by the adducing of evidence that there was no admission fee for non-drinkers therefore supporting the view that the four shillings charged was not in reality an admission fee but rather a payment for refreshments.

Before leaving Police v Merivale Football Club it is worth noting that, possibly through an unfortunate piece of drafting, the phrase "social gathering" was employed in defining the purposes for which a general ancillary licence could be granted[26] and its meaning again exercised the court in Re Porirua Rugby Football Club[27] and in Re Winton Holdings[28]. Notably, the phrase does not appear in the new club licence provisions[29], but this point will be discussed at some length later in this paper, particularly in Part VII.

The second legislative provision called in aid in an attempt to legitimise club activities is the current s. 294 (2) Sale of Liquor Act 1962.

The forerunner of s. 294 (1) has been discussed in relation to the Graff v Evans principle above[30] as being enacted for the purpose of preventing clubs from providing liquor for members, who were expected to make 'voluntary' contributions according to the quantity of liquor they consumed. But s. 294 (2) provides an exemption which allows a club to operate in a very limited way by allowing an association, society,or club to supply at its meetings to its members and their guests alcoholic refreshments, provided that these refreshments are supplied at the expense of the association, society,or club even though the refreshments may have been financed indirectly by the members through subscriptions and voluntary payments. The exemption is of little practical use as it is not applicable to the supply of liquor to individual members or their guests apart from meetings of the association, society,or club, and in Harvey v Barling[31] the exemption was held to be inapplicable if the liquor was supplied to persons who had paid an admission fee to the entertainment or gathering even though there may have been no intention, when the charge was originally fixed, to supply alcoholic liquor.

C. The Relevance of the Club Charter

It is convenient at this point, while engaged in an examination of the various devices available to associations and clubs to facilitate the sale of liquor, to discuss the institution of the chartered club.

Club charters are provided for in Part V of the Sale of Liquor Act 1962 and permit the sale and disposition of liquor to members and visitors generally only for on-premises consumption, but provision does exist for off-premises sales. Working-men's clubs and R.S.A. clubs are the classic examples of chartered clubs.

To obtain a charter a club must come within the definition in s. 162 of the Act, and this definition provides the stumbling-block for sports and such-like clubs. Section 162 states (emphasis added):

> In this Part of this Act ... the term "club" means any voluntary association of persons (whether incorporated or not) combined for promoting the common object of private social intercourse, convenience, and comfort, or for promoting the sport of big-game fishing, and providing its own liquor, and not for purposes of gain.

The 1974 Royal Commission notes the[32]

> existence of doubt as to whether sports clubs fall within the meaning of the term "club" appearing in section 162 ... which refers to the "common object of private social intercourse, convenience, and comfort" but not sport, except that of "big-game fishing".

Apparently this uncertainty was the reason that a number of applications made over the years by sports clubs for charters were not proceeded with.

The Licensing Control Commission had decided in 1963 in An application by Whakatane Bowling Club[33] that a club charter could not be granted to a sports club as a matter of law as it was not within the s. 162 definition of "club". This determination was not appealed. In Re an application by Auckland Aero Club[34] it was held that the type of club to which a charter could be granted was one formed for the promotion of the "common object of private social intercourse, convenience, and comfort" and that an association of persons formed primarily to further an interest in aviation and to provide facilities for flying instruction was not within the definition. A unique exception was made in the case of Royal NZ Yacht Squadron[35] which had long provided club-rooms for the enjoyment of social intercourse, and other club facilities for persons interested in aquatic activities. The Commission warned that few sports clubs would qualify for a club

charter and that the special circumstances in this case were based upon a strong feature of club activity unrelated to sport in the sense of 'physical activity'.

The question of charters for sports clubs finally, in 1979, came before the High Court in Ponsonby District O.B. Club v H.A.N.Z.[36] The circumstances of the case were far from conducive to a finding favourable to the club - the appellant club maintained very strong links with its parent rugby club and the Commission had stated that the club was merely taking over many of the social activities associated with the rugby club. In fact the appellant club admitted that it was a "social club albeit with a sporting flavour". The court found justification for the Commission taking the view that the appellant club was merely the alter ego of the rugby club, and stated:[37]

> In my view s. 162 ... was not intended to include a sporting club simpliciter although there may be circumstances where a sporting club may qualify as a club for a charter under the Sale of Liquor Act where it can truly be said to be a "voluntary association of persons ... combined for promoting the common object of private social intercourse, convenience, and comfort"

and that:[38]

> A sporting club is not entitled by virtue of its activities as a sporting club to a club charter under Part V ... but that is not to say that there may not be some cases in which a sporting club will be entitled to a club charter if it can show that it is formed for promoting the common object ... [etc.]

His Honour intimated that the fact that the case was brought in the era of the general ancillary licence, and that the licence catered for sports-type clubs, did not help the appellant's case,

but His Honour then goes on to add, rather sardonically, "It is sometimes difficult to detect in the amendments to the Sale of Liquor Act 1962 any legislative philosophy."[39]

A sports club in the fortunate position of coming within the definition for the purposes of a charter as well as being eligible for a general ancillary (now club) licence will find that its choice will be dictated largely by its needs. Charters are preferable for clubs with a large membership[40] and contemplate the operation of liquor facilities on a permanent basis. Charters have advantages[41] in relation to the amount of hours, conditions of sale and of the licence itself, and renewal fees. An ancillary licence allows Sunday hours and has a much greater flexibility as to hours granted beyond the rigid 10 pm closing time for chartered clubs.

As, prior to the general ancillary licence, the charter was the closest thing to a licence for sports-type clubs, suggestions were occasionally made that the charter concept be extended to cover sports clubs or else that a special sports club charter be created. The Keeling Committee recommended a new type of sports club charter to be available initially only to golf and bowling clubs as those clubs tended to closely resemble the existing chartered clubs anyway, many have their own land and substantial buildings providing full facilities for members, and their members were considered to be more senior than those of most other clubs and more likely to continue their membership for a longer period.[42]

The 1974 Royal Commission noted the Keeling Committee's recommendation and agreed with the idea of granting charters to golf and bowling clubs, but it then went on to speak of limited "licences" for other sports clubs.[43]

The Royal Commission in fact recommended that serious consideration be given to the adoption of the interpretation of 'club' for the purposes of a charter as defined in Halsbury's Laws of England (3 ed., vol 5, p. 252) which would accommodate sports clubs:[44]

> a society of persons associated together

> for social intercourse, for the promotion of politics, sport, art, science or literature, or for any purpose except the acquisition of gain. The association must be private and have some element of permanence. The purpose of social intercourse may be combined with any other purpose.

The superficial attraction of merely extending club charters to accommodate sports clubs meant that prior to introduction of the ancillary licence Bill in 1975 there was much debate within and between the interested Government Departments (principally the Justice Department) as to whether there should be a specific sports club charter, or whether the sports club problem should be dealt with under the rubric of the, then still vague, proposed ancillary licence. These alternatives represented the conceptual dichotomy involved; on one hand yet another rigid, specialised licence, and on the other a flexible, multi-purpose licence. The policy decision to accommodate sports clubs within the framework of the new ancillary licence was made only relatively shortly before drafting of the Bill commenced.[45]

D. Non-Sporting Clubs

The discussion of the development and manifestations of the need for an ancillary-type licence has so far centred around the predicament of sports clubs, and while sports clubs presented possibly the most forceful case for some form of licence to allow the sale and consumption of liquor as an adjunct to their primary activities they were by no means the only such groups affected by the lack of such a licence.

The 1974 Royal Commission received submissions from such diverse groups as The Fourth Estate Inc. (The City of Auckland Press Club) to whom a charter was effectively useless as its inflexibility as to hours would prevent sales to the sizeable number of the club's members who would be on late shift work at any given time; and from the Auckland Yugoslav Benevolent Society whose membership comprises of whole families, including

young children, and for whom no licence or charter could be issued to allow wine to be consumed in their clubrooms in the presence of children.

Such organisations demonstrated a genuine and acceptable need, but the law in its rigidified form of narrow licences for strictly defined activities was unable to give them satisfaction.

III EARLY DEVELOPMENTS IN THE LEGISLATIVE RESPONSE TO THE NEED FOR AN ANCILLARY-TYPE LICENCE

A. Introduction

We have discussed at some length the historical limitations of the liquor licensing legislation in relation to the provision of liquor on an informal basis as an adjunct to some other predominant activity. The principal licences available prior to 1960, with the possible exception of the tourist-house licence, were concerned with licensing premises where the principal motive for attending those premises was the consumption of liquor, and the sale of liquor was the licensee's principal business. This pattern was no doubt due in no small part to the formerly prevalent public attitude that drinking was a social evil and if it had to be tolerated then it should be restricted and concentrated into as few outlets as possible. Also of general interest as to the forces involved is the submission made to the 1974 Royal Commission by Mr J F Jeffries as counsel for the New Zealand Liquor Industry Council to the effect that[46]

> The legislative history of our present law is very much a product of the necessities of fortune, the changing climate of opinion, social pressures, changing incomes and life styles. In fact the history of our liquor laws more than anything else represents a microcosm of New Zealand social history as a whole.

The Prohibition movement, having secured the passage of a series of highly restrictive pieces of legislation between 1881

and 1918, began to lose popular, and Parliamentary, support from about 1919 onwards, but its legacy remained. Between 1918 and 1939 there was no significant legislation touching on liquor and for that period the law was frozen in a form which had almost completely segregated the drinking of liquor from other forms of lawful activity. In a quest for some kind of objective assessment of the licensing laws a Select Committee of the House of Representatives, under the chairmanship of Mr F Hockly MP, was established in December 1921. The Hockly Committee[47] made quite extensive and far-reaching recommendations on the licensing laws but these were largely ignored by the legislature.

B. The 1945 Royal Commission on Licensing

The liquor industry was festering and urgent reform was necessary to bring the licensing system out of its 'Dark Ages'. Reform came in two ways; the first was the passing of the Invercargill Licensing Trust Act 1944 which introduced the concept of trust control of the sale of liquor, the second came with the setting-up of the Royal Commission on Licensing in 1945 under the chairmanship of Sir David Smith.

The manifold and fundamental changes that these two developments inspired in the licensing system generally are beyond the limited scope of this paper but certain recommendations and observations of the 1945 Royal Commission are directly relevant to our discussion as showing the earliest official public acknowledgement of the emergence of the problems which we have been examining to date. A second aspect of the 1945 Report which is significant, in a general sense, for our purposes is that it was as a consequence of its recommendations that the Licensing Control Commission was established in 1948. Although the Commission, as finally established, turned out to be more powerful than the Liquor Licences Distribution Commission envisaged by the majority of the Royal Commission,which was to have the main purpose of licence redistribution.

The 1945 Royal Commission Report, under the heading of "Mischiefs Alleged to Arise from Government Policy", looked at the problem of unchartered clubs and noted in particular the

widespread use of the locker system and the disadvantages attendant upon its use.[48] The Royal Commission discussed the potentially large memberships of certain unchartered clubs, such as golf clubs and mentioned specifically the Rugby League Football Association, and stated that "Prima facie, there is no reason why unchartered clubs of this type should not be granted some form of charter suitable to their type and management",[49] while noting at the same time that "The attitude of the trade towards the chartering or licensing of further clubs appears to be governed by the fact that any substantial increase in charters would bring the clubs into competition with the holders of publicans' and accommodation licences"[50] - which is a factor that recurs throughout this topic and goes to explain to some degree the past inertia which confounded attempts at reform.

The eventual recommendation of the Royal Commission in relation to clubs was based around an extension of the existing legislation as to charters.[51] The recommendation adopted parts of the Victorian Licensing Act 1928, especially ss. 251 and 252 of that Act in relation to the chartering of clubs. Section 251 (1) (b) of the Victorian Act required that "The club must be a body, association, or company associated together for social, literary, political, sporting, athletic, or other lawful purpose" but then the fact that para (c) of that section, requiring that "The club must be established for the purpose of providing accommodation for the members thereof...", was also adopted by the Royal Commission goes to suggest that only the largest and most organised clubs were being contemplated.

A further statement made by the 1945 Royal Commission provides evidence of contemporary thinking on the relationship of the drinking of liquor to other social activities, and as perhaps presaging developments and policy to follow, warrants repetition at length:[52]

> In our view, the conditions for consuming alcoholic liquor in a properly conducted club are inherently better than those in a licensed hotel or a licensed bar, for

the following reasons:-

(1) Clubs exist, as the definition in the statute indicates, for private social intercourse, convenience, and comfort. Incidental to these purposes they provide comfortable rooms, sometimes including dining-rooms for meals ... They also provide for lawful games. The members of these clubs are interested in social enjoyment as well as in the consumption of alcoholic liquor. There is no reason for the club to push the sale of alcoholic liquor, because the club is not run to make profits.

(2) All properly conducted clubs restrict their membership to those persons who have maintained and are likely to maintain a certain standard of reputable conduct. Members expect that other members will maintain this standard. The sense of self-respect and of the need of self-control is strongly supported by the corporate feeling. No member of a good club would willingly lower the standard expected of him. Hotel bars, on the contrary, are open to the public. Entry therein is not subject to any test of good reputation. There is no standard supported by corporate feeling to which the individual feels he must conform.

(3) In properly conducted clubs there is provision for drinking in a leisurely and comfortable manner while the member is seated. There is comparatively little provision for this class of drinking in hotel bars.

A final point of interest to be taken from the 1945 Royal Commission on Licensing is the long-forgotten minority report of Frederick George Young of Auckland, a Member of the Legislative Council, recommending[53]

> That Licensing Committees be empowered to grant additional club charters in the case of bona fide clubs possessing suitable premises, subject to an allocation of additional club charters being made to that area by the national authority ... Preference should be given to ... recognised sporting bodies, such as golf and bowling clubs, industrial or workers' social clubs, the hours of sale to be fixed by the Licensing Committee to meet the reasonable needs of the club members, having regard to the type of club concerned, such hours of sale to be set out in the licence and exhibited in the club in a place accessible to all members.

This notion of tailoring the hours to fit the licensee club was particularly novel as, perhaps ironically considering the mood of the times, the legislature was only concerned with stating the statutory opening and closing times within which licensees and chartered clubs could, or were required, to operate without being concerned to provide any mechanism for delimiting the hours according to the needs of the licensee or club. So by this recommendation Young can be seen to be foreshadowing the discretion ultimately reposed in the Licensing Control Commission by the general ancillary licence.

Young's minority report was prophetic in a number of other ways, especially in relation to licensed restaurants, night-club and cabaret licences, and tourist-house licences, and his "Liquor Control Commission" which would deal with the planned initial redistribution of licences and then remain active by, for instance, laying down codes as to standards of accommodation,

services, fire standards, and hygiene provisions, is to be contrasted with the majority's impotent "Liquor Licences Distribution Commission" discussed above.[54]

C. The 1959 Keeling Committee

Public dissatisfaction with the slow pace of improvement and with the comparative lack of substantive reform in relation to the general standard of drinking conditions prompted Parliament to set up a Select Committee on Licensing in 1959 under the chairmanship of Mr R Keeling, MP. The Committee's Report again presaged many important changes in the licensing laws and provided the basis for the extensive Licensing Amendment Act 1961, which was shortly followed by a restatement and further revision of the law in the Sale of Liquor Act 1962. Again, our pre-occupation must lie with the Committee's recommendations as to the sale of liquor in certain classes of sports clubs.

The Committee began its discussion of sports clubs by acknowledging the widespread use of the locker system and illegal connivances by sports clubs, and states quite boldly that[55]

> There is no question, therefore, whether liquor should be available for consumption on sports club premises: the points for consideration are concerned with the manner in which and the persons for whom such an amenity should be provided.

The Committee then distinguished the needs of sports clubs from the needs which would be catered for by the existing club charter and suggested that if it was decided to grant charters to any kind of sports club to sell liquor then a different set of conditions would have to be drawn up or a new type of charter provided for. But before launching into its recommendations the Committee enunciated a statement of caution:[56]

> we have given due attention to the changes that have taken place, and are occurring, in the social habits of the people. We have tried to avoid the mistake of thinking that change is in itself and of necessity a good and desirable thing. Not all things

> that are new are for the public good. In any attempt to liberalise the licensing law as it exists at present care should be taken to ensure that the best interests of the people are safeguarded: an innovation, if it is to be adopted, must be shown to be likely to do more good than harm and to have the backing of thoughtful popular support.

The Committee recommended[57] a new type of "sports club charter" issuable at the Commission's discretion to golf or bowling clubs whose club premises provided facilities of a proper standard for the supply and consumption of liquor. The reasons for the restriction to golf and bowling clubs have been canvassed earlier.[58] The charter to be for a year, but renewable except where an adverse report has been lodged by the Police, the terms and conditions of the charter to be determined by the Commission, and the sale of liquor should be restricted to members and their invited guests and within the hours of 11 am till 2 pm and 4 pm till 6 pm including Sundays.[59]

The Committee considered that "the recommendations that it is putting forward involve some rather radical changes in existing law" although it felt sure that "they are in harmony with the outlook and habits of mature men of balanced judgment." And it felt that there was no real risk of abuse because of the considerations that:[60]

> (1) The matter would be within the jurisdiction and control of the clubs;
>
> (2) The club spirit and tradition should be a good guarantee of the existence of reasonable discipline; and
>
> (3) There would be substantial supervision by the Licensing Control Commission by reason of the penalties it could impose and also from the fact that the charters would be renewable annually.

Despite the increased role of the Licensing Control Commission

envisaged by this "sports club charter" it was still just that; a charter, another very specific licence to be added to the ever-growing list of licences. Although it attempted to cater to the plight of sports clubs, it did so in a manner which in principle is diametrically opposed to the principle behind the general ancillary licence.

Perhaps fortuitously, for the sake of the ultimate rational development of the licensing system, the legislature appeared to take the Committee's rhetoric, concerning the caution as to making "radical changes in existing law", to heart as the Committee's recommendations as to liquor in sports clubs were never carried into effect.

IV THE FOUNDATION OF THE GENERAL ANCILLARY LICENCE : THE 1974 ROYAL COMMISSION ON THE SALE OF LIQUOR

A. Introduction

Following the Keeling Committee's report the liquor licensing system literally blossomed - acceptance by Parliament, and presumably by the public, of a wider range of circumstances in which liquor could properly be supplied as an amenity meant a proliferation of new types of licence: the restaurant licence in 1960 (astonishingly, in retrospect, at first limited to ten for the whole country), the tavern licence in 1961, the theatre licence in 1969, the airport licence in 1970, and the cabaret licence in 1971.

By 1973 the need was again seen for some kind of authoritative, objective examination of licensing. A Royal Commission to Inquire Into and Report Upon the Sale of Liquor in New Zealand was constituted, under the chairmanship of Mr A A Coates SM, with wide terms of reference to consider deficiencies in the existing law, and the changes in New Zealand society and in public attitudes, habits, requirements and wishes in relation to the purchase and consumption of liquor.

The Royal Commission's 365-page report has again proved highly influential, particularly in relation to its examination of the social problems arising from alcohol abuse and its consequential recommendations leading to the establishing of the Alcoholic Liquor Advisory Council. But for our purposes the 1974 Royal Commission's report is of primary significance in that it brings us to the threshold of the ancillary licence era and, as a vehicle used by the Justice Department, as we shall see, to air its ideal licence classification, the report perhaps unwittingly lays down the programme for the future development of the licensing system.

The Royal Commission's report makes two recommendations, entirely independantly of each other, which are subsequently combined in the Sale of Liquor Amendment (No 2) Bill 1975 to create the general ancillary licence. At different stages in the report the Royal Commission advocates a "special ancillary licence"[61] to allow the provision of liquor for consumption on premises where such consumption is incidental or ancillary to the main facility to be provided for patrons on those premises, and then recommends later in the report[62] a licence to allow sports clubs to sell liquor on a restricted basis, but the Royal Commission appears never to see any conceptual link between the two.

B. Sports Club Licences

The recommendations in regard to a sports club licence can conveniently be dealt with first. The Royal Commission noted the Keeling Committee's recommendation of a new type of club charter to be called a "sports club charter" to be made available to golf and bowling clubs, and agreed in principle that golf and bowling clubs should be licensed on a restricted basis. But whereas the Keeling Committee recommended fixed hours for such a charter, the Royal Commission recommended that conditions and hours of sale be determined by the Licensing Control Commission, and added a rider that:[63]

> The above recommendation is based on the principle that, particularly, in respect to hours of sale, there should be some flexibility to meet the requirements of

> individual clubs who may be granted a licence.

Interestingly, this is the basis of the discretion as recommended in the "special ancillary licence" and as ultimately conferred in the general ancillary licence.

The Royal Commission then proceeded to recommend that other sports clubs, apart from golf and bowling clubs, whose premises measured up to prescribed standards and who could give suitable guarantees for responsible administration of liquor sales be permitted to apply for a licence.[64] It was recommended that such a licence, unlike one in respect to bowling and golf clubs, should be subject to a condition that the hours of sale be restricted to six to eight hours weekly - the hours being fixed at the time the licence was applied for and issued and would not be subject to alteration during that year.[65] The Licensing Control Commission's discretion in relation to these 'other' clubs was clearly intended to be less pervasive.

Sunday hours proved something of a bugbear for the Royal Commission in considering sports club licences, particularly considering the recommendation against Sunday trading in general.[66] The Royal Commission recognised the realities of the situation:[67]

> Our society has approved and accepted the holding of social events and fixtures on Sunday. A large proportion of our population is engaged in Sunday sport of some kind. Those who work during the week are obliged to pursue their sporting activities in the weekend and often on Sunday. Many members of sports clubs would like to be able to purchase and consume liquor as ancillary [sic] to engaging in the sport of their choice on Sunday ...

but then having seemingly justified the contention the Royal Commission beats a hurried and inconsequent retreat, asserting that[68]

> While Sunday trading generally is not permitted it would be unreasonable and unfair to allow all sports clubs the right to apply for a permit to sell liquor to members on Sunday.

Yet while denying Sunday trading to the industry generally, and to 'other' sports clubs, the Royal Commission seemed to be bullied into recommending[69] Sunday sales by golf and bowling clubs, perhaps feeling that the precedence accorded to them by the Keeling Committee should in some way be perpetuated. The illogicality of this preference was stressed at the highest levels during the early stages of the drafting of the Sale of Liquor Amendment (No 2) Bill 1975 and the probability of a backlash from other types of sports clubs was recognised, resulting in the omission from the Bill of any such differential.[70]

C. Justice Department's Recommendations and the Special Ancillary Licence

The second, and more important, of the two relevant recommendations made by the Royal Commission related to the introduction of a "special ancillary licence". The recommendation is significant not only as constituting the immediate forebear of the general ancillary licence but also for the submissions made by the Department of Justice, leading to the recommendation, which provide the origins of the general ancillary licence concept and which may also yet provide the basis for a revolutionary rationalisation of the liquor licensing system.

In its submissions to the 1974 Royal Commission the Justice Department advocated that a new and simple classification of licences to sell liquor be substituted for the existing system of separate licences contained in the Sale of Liquor Act 1962. It submitted that four basic situations are required to be dealt with:[71]

(a) Where the principal purpose of attending particular premises is to procure and consume liquor there;

(b) Where the provision of liquor for consumption on the premises is incidental to the main facility to be provided to patrons;

(c) Where liquor is purchased for consumption off the premises; and

(d) Where liquor is required for some function or occasion.

and it was suggested that to meet these four cases the law might provide for four types of licences, along the lines of:[72]

(a) *General Licence*—to relate to present hotel premises and tavern premises and would authorise sales of all kinds of liquor for consumption on or off the premises.

(b) *Ancillary Licence*—to authorise sale of liquor on premises wherein some other amenity is provided, to which the use of liquor is reasonably ancillary, e.g., theatre and restaurant licences.

(c) *Off-sale Licence*—authorising the sale of liquor for consumption away from the premises where it was sold. It was envisaged that this type of licence could apply to grocers' shops, supermarkets, and other outlets in addition to the existing licences—wholesalers and wine resellers.

(d) *Special Licence*—this would supersede the booth licence, but would also be available for such special occasions as reunions, weddings, balls, parties, and other special functions.

This proposal was criticised and opposed by the New Zealand Liquor Industry Council (the representative body for the liquor trade) and by the New Zealand Association of Licensing Trusts, on somewhat reactionary grounds, both of whom supported the existing system of licensing which, it was claimed, was understood by all parties concerned and had worked satisfactorily. In response to the Justice Department's claims that the number of existing licences individually defined caused rigidity and anomalies they tendered the predictable retort that definition and precision which can be readily understood are preferable to simplification possibly resulting in uncertainty.

The Royal Commission sided with the NZLIC and the NZALT, considering that "the present licensing system should be retained, and not be dismantled to make way for an entirely new, untried system."[73] The Royal Commission's reasons for recommending the maintenance of the status quo reflected the criticisms made by the NZLIC and the NZALT against the proposal and stressed; the considerations of the acceptance and understanding of the existing types of licences by those who have to deal with them, including the police in their enforcement role, the certainty resulting from a rigid form of individual licences, an applicant's advance

knowledge of what the licence he seeks will authorise him to do, the fear that the proposed "off-sales" licence could result in the Licensing Control Commission being inundated with a wide range of applications making it difficult to adjudicate on each application to ensure that proper facilities and adequate standards will be maintained, and that the proposed "off-sales" would create greater availability and consequently increased total consumption of liquor thus exascerbating the perceived drinking problems in society. The final consideration stressed by the Royal Commission is interesting:[74]

> The lack of precise statutory definition of licences, their purpose, and extent will leave much to the discretion of the Licensing Control Commission, thus making more onerous its task of granting or refusing applications for licences. If its discretion is too wide the Licensing Control Commission is really being called upon to exercise a legislative function which is the prerogative and the responsibility of Parliament itself.

The Royal Commission's stated reasons for disapproving with the Justice Department's rather radical classification are not overly convincing, being based in the main on a mood of conservatism evidenced by such statements as, "As to the proposed general licence we can see no compelling reason for a change", and "To change the accepted structure for something new might well result in confusion or lack of certainty without any compensating advantage." As to the more specific criticisms levelled at the Justice Department's proposals, those in relation to the "off-sale licence" appear to be knee-jerk reactions to the possibility that this type of licence could eventually apply to grocers' shops and supermarkets whereas a single "off-sale licence" to cover both of the socially acceptable existing wholesale and wine reseller's licences makes perfect sense when the inflammatory suggestions as to supermarket liquor sales are disregarded. Perhaps it was something of a tactical error on the part of the Justice Department to include such controversial and emotive suggestions in the middle of an already innovative concept.

The most serious criticism against the Justice Department's proposal, for our purposes, is that quoted above,[75] to the effect that a broad statutory definition of licences would leave too wide a discretion to the Licensing Control Commission and would require the Licensing Control Commission to exercise a legislative function and thus usurp the powers and duties of Parliament. This criticism has some superficial force, and raises the question of the appropriate constitutional roles of Parliament and the Commission, but when it is considered that a Parliament which does enact such a broadly stated licensing scheme does so consciously and no doubt with much deliberation and would certainly carefully circumscribe the outer limits of the discretion, then the idea of the existence of such a discretion is not so objectionable nor unusual. Neither is the Royal Commission consistent on this point for, as we shall see, their recommendation as to the introduction of a "special ancillary licence" seemingly invests the Licensing Control Commission with a discretion much akin to that criticised.

Despite the Justice Department's proposals being rebuffed by the Royal Commission the ultimate victory may yet belong to the Department. The Royal Commission, as we shall discuss, went part of the way to undermining their own stance by condescending to recommend the special ancillary licence, which in turn provided the basis for the general ancillary licence and thus entrenched the basic rationalisation concept underlying the Department's proposals. The Department seems to be quietly pursuing its policy objective in spite of the rebuke it received in 1974 and this is evidenced by the developments in 1980 regarding the comprehensive food and entertainment licence. The Licensing Control Commission appears to be willing party as shown by the statement in its annual report for the year ending 31 March 1981:[76]

> The Sale of Liquor Amendment Act 1980 introduces important changes to the Act. The amalgamation of the restaurant, cabaret, caterers' and theatre licences into one licence - the food and entertainment licence - is seen as a welcome

> move towards rationalisation of the licensing system, and one which could be extended further. For example, Tasmania[77] makes do with only 4 different kinds of licences (whereas New Zealand has 23, even allowing for the 1980 Amendment Act), and Northern Territories has no particular classification specified in the legislation at all, the grant made being tailored by the Commission to fit the particular circumstances. Amendment heaped upon amendment over the years has reduced this legislation to a patchwork of provisions ....

The Justice Department is still committed, in the long-term, to a sensible rationalisation of licences along the lines of a small number of broadly stated licences coupled with an ancillary licence-type discretion to enable an applicant to be given a licence, within one of the broad headings, tailor-made to his situation. But sources within the Law Reform division concede that such a radical restatement is not practicable in terms of the present Act and if contemplated would have to form part of the hopefully foreseeable fundamental review of the licensing system.

As has been mentioned, the 1974 Royal Commission went on to recommend the enactment of a special ancillary licence, perhaps finding the logic in the Justice Department's proposals a little too forceful to disregard completely:[78]

> While we favour the retention of the existing main structure of the present system of licences we agree with the Department of Justice's submission that it is undesirable and inconvenient to have Parliament amend the law whenever a new type of licence is needed to meet changing circumstances or because such a licence is not specifically available under the existing statute. It is in

> the area of the special licence which authorises the sale of liquor on a special occasion or for some particular purpose that the unusual or unforeseen situation is most likely to arise. We recall that a number of witnesses emphasised the need to encourage social drinking as something incidental to an acceptable activity or pursuit to be enjoyed with congenial companions who share a common interest. They advocated shifting the emphasis from drinking for the sake of drinking in an hotel or tavern to drinking in a relaxed and friendly atmosphere as part of a meal or of some worth-while leisure pursuit or socially accepted form of relaxation. It was to this sort of drinking that the Department of Justice envisaged its proposed ancillary licence would relate.

The proposed special ancillary licence was to be available where the provision of liquor for consumption on the premises is incidental or ancillary to the main facility to be provided for patrons on those premises and the appellant would have to establish that no other type of existing licence would meet his reasonable needs. The Royal Commission was then forced to partially disavow its earlier criticism of the Justice Department's plan to grant a wide discretion to the Licensing Control Commission, stating:[79]

> Having regard to the great variety of circumstances which could conceivably be relied on to justify an application for such a licence it would be necessary to allow the Licensing Control Commission a wide discretion in dealing with such an application.

The licence was envisaged as being flexible enough to satisfy the needs of a social club requiring a night charter, and also to act as a caterer's-type licence to enable sales to people attending social functions on the caterer's premises, both providing examples

conforming to the raison d'etre of the ancillary licence - the right to sell liquor being merely incidental to the main facility provided for patrons or members.

The detailed provisions[80] recommended by the Royal Commission provided for:

> (1) an Ancillary Licence authorising the licensee to sell and dispose of liquor for on-premises consumption at any gathering at which not less than 20 persons normally are, or will be, present for the purpose of partaking of a meal or refreshments provided for patrons or participating in an activity, as defined, in which those present share a common interest, in such circumstances that the consumption of liquor is incidental or ancillary to that purpose;
>
> (2) "activity" being defined as: a social, educational, musical, artistic, recreational, or cultural gathering; dancing, entertainment, study, and social intercourse;
>
> (3) the hours during which, and the days of the week (including Sunday in appropriate cases) on which, liquor may be sold under the licence would be fixed by the Licensing Control Commission having regard to the reasonable requirements of the licensee, but only while the licensed premises are actually being used for the specified purpose, provided that the total number of hours during which liquor may be sold in any one week would not exceed 66;[81]
>
> (4) the Licensing Control Commission must be satisfied that no other type of licence would suit the applicant's reasonable requirements;

(5) no licence would be issued or renewed unless:

(a) suitable and reasonable premises and facilities are provided for the purposes specified in the application or licence; and

(b) the premises are used in good faith and genuinely for the specified purpose;

(6) proprietory clubs, that is, clubs where an individual, company, or syndicate owns the club and draws profits from the club while letting the club members actually run the club essentially as licensees rather than co-owners, would only be able to apply for a licence under special circumstances;

(7) the licence would be liable to suspension or cancellation for any breach of condition or abuse by the licensee.

Conspicuous by its absence from this formulation is any reference to sporting activities under the definition of "activity". Presumably the Royal Commission must have felt that sports clubs were adequately catered for under its proposed sports club licences. There appears to be no logical reason for separating-out drinking conducted as ancillary to sports activities and drinking conducted as ancillary to some other form of activity, and as the Royal Commission never overtly explores the conceptual link between its proposed ancillary licence and its proposed sports club licence it must perhaps be assumed that either there was some hidden policy motive for keeping the two separate or else the Keeling Committee's recommendations as to a sports club charter diverted the Royal Commission's thinking onto one track in relation to sports clubs so that the link-up was simply never considered.

Although this special ancillary licence was never enacted as such, nevertheless, the scheme of the recommendation provided

the basis for the structure of the eventual general ancillary licence and, as shall be discussed shortly, many of the ideas and phrases employed in the Royal Commission's model formulation recur in the general ancillary licencé, and club licence, legislation. One noteworthy example of this is the inclusion of "social intercourse" as an approved "activity" for the purposes of the special ancillary licence. The consequences arising from the omission of the same phrase from the general ancillary licence, and the subsequent resurrection of the phrase in the club licence legislation, will be discussed at some length later in this paper.[82]

Despite making criticisms, always respectfully, and pointing to shortcomings, always with the benefit of hindsight, in this paper of the 1974 Royal Commission's report it is willingly acknowledged that the report constitutes a penetrating commentary and farsighted prognostication, and its immortality is assured by reason of its success where the 1945 Royal Commission and the Keeling Committee failed - in that it finally pushed the legislature into acting to ameliorate the predicament of sports clubs.

V THE LEGISLATIVE HISTORY OF THE GENERAL ANCILLARY LICENCE

Progress was rapid following the report of the 1974 Royal Commission. The report was submitted to the Governor-General in late November 1974, and by April 1975 the legislative machinery was already in motion and a draft Bill to give some kind of effect to the Royal Commission's recommendations was being prepared.

This very first draft Bill, dated 10 April 1975, carried with it an explanatory note stating that while it was designed as a response to the principal recommendations of the Royal Commission nevertheless no attempt at drafting provisions in response to the ancillary licence recommendations had been included on the grounds of complexity and the need for a coherent approach to the licensing

of liquor. The same explanatory note voiced the Justice Department's policy that it was considered that the ancillary licence should be introduced as part of a general rationalisation of liquor licences and that that was something which could only be attempted when the Act as a whole was reviewed, otherwise the enactment of an ancillary licence would merely be to add another residual licence to the multiplicity of existing licences.

At this stage the Royal Commission's dichotomy of ancillary licences and sports club charters or licences was still strait-jacketing the thinking in relation to the drafting of any such provisions. This is evidenced by an internal Departmental memorandum dated just prior to the first draft Bill concerned about the provisions to be made for sports clubs and querying the practical realities of the division between golf and bowling clubs and other sports clubs as suggested by the Royal Commission. And as noted earlier[83] such a division between types of sports clubs was soon after scuttled for all purposes in relation to licences, a high level communication stating that the criteria governing the permission to sell liquor for consumption on club premises should not be confined to particular sports but rather should be related to the degree of support enjoyed by and the facilities provided in a club. This was bracketed with the statement that any assessment of the degree of support enjoyed by a club would of course have to be considered in relation to the <u>particular activity as a whole</u> that the club indulges in; to do otherwise would ensure the licensing of large sports clubs but not the small clubs. Another memorandum at this time questioned whether sports clubs should be licensed under the auspices of the proposed ancillary licence or whether under an extended form of the existing club charter.[84]

The doubts, firstly as to whether the time and circumstances were right for the enactment of an ancillary licence, and secondly as to whether sports clubs should be catered for by such a licence, were subsequently resolved as matters of policy within the interstices of the Departmental stratification and renewed drafting activity commenced along these guidelines.

The first draft of the operative provisions of the new ancillary licence was couched in very broad terms so as to stimulate intra- and inter-departmental discussion on the form of the new licence. This original draft was worded to allow a licensee to:

> ... sell and dispose ... in conjunction with any activity that the Licensing Control Commission in its discretion considers to be an activity in connection with which the consumption of liquor would be desirable and is ancillary to that activity. ... "activity" includes any social, cultural, or sporting purpose for which individuals gather for the purpose of sharing a common interest.

This formulation invested the Licensing Control Commission with an almost unbridled discretion stated in broad terms requiring it to determine activities to which it would be "desirable" to allow the consumption of liquor as an adjunct, and even the definition of "activity" is not exclusive and could hardly be worded more vaguely.

Perhaps this original draft had the desired effect in prompting reaction, as a far more refined and workable draft was soon composed. This draft, dated June 1975, begins to show the general form which the final enacted provision was to take but the draft contained a number of provisions fundamentally different from those in the final draft and which although omitted from the general ancillary licence would return in principle in the ultimate club licence.

Subsection (1) of this draft corresponds closely to subsection (1) of the final provision, being s. 65E(1) of the Sale of Liquor Act 1962 as inserted by s. 23 of the 1976 Amendment Act, and, emphasising the ancillary nature of the licence, provided that the licence would authorise the sale and disposition of liquor for on-premises consumption "at any time during the time specified in the license [sic] on any day when the premises are being used

for either of the purposes specified in subsection (2) of this section." This then introduces the soon-to-be familiar formula of the sale of liquor under the ancillary licence being tied to some 'principal activity' to which the consumption of liquor is properly ancillary.

Subsection (2) of the draft then states these purposes and warrants quotation in full for the purposes of comparison:

> "(2) A general ancillary licence shall not be granted in respect of any premises unless those premises are used or to be used by persons for the purpose of—
>
> "(a) Taking part (whether as active participants or as spectators or otherwise) in any social, cultural, sporting, or other leisuretime activity, (in this section referred to as the principal activity), participation in which, in the opinion of the Commission, is commonly or may reasonably be accompanied or immediately followed by the consumption of liquor; or
>
> "(b) Relaxing and engaging in social intercourse (in this section referred to as the principal activity) by persons who share some occupational, educational, sporting, or other interest in common with one another.

Subsection (2)(a) contains the seeds of the final s. 65E(2) but is still much wider than the final form in that is specifies that "taking part" includes non-active participants such as spectators or "otherwise" presumably meaning club officials and such like, and it allows potentially wide scope for manoeuvre within the phrase "other leisuretime activity". Subsection (2)(a) also includes a discretionary element to be exercised by the Licensing Control Commission, which does not appear in the final form, as to reasonable accompaniment.

Subsection (2)(b) is particularly noteworthy in that it includes as a "principal activity" the non-specific activities of "relaxing" and "engaging in social intercourse" although these non-specific activities are still constrained by the element of the sharing of some interest in common by those engaged in the relaxing or social intercourse. The eventual s. 65E (2)(c) used the phrase "social gatherings" of persons sharing certain common interests and, as will be discussed in Part VII, this phrase was

given a very restricted meaning requiring essentially that there be some link between the social gathering and the principal activity of the club, so that mere social intercourse between club members even though they share a general interest in the principal activity and the particular clubs activities was held not to justify the granting of extended hours.[85] It is arguable that if "relaxing and engaging in social intercourse" had been retained in the section then such a requirement would have been less likely to have been intended by the legislature. The term "social intercourse" was favoured over the term "social gathering" in the club licence legislation, presumably for this very reason.

Also of note in the draft subsection (2)(b) is the lack of an attempt to define exclusively the types of interests involved, the provision is for "some occupational, educational, sporting, or other interest" which, although susceptible to being read-down according to the ejusdem generis rule, would presumably allow greater scope than the exclusive s. 65E (2)(c) stating "occupational, educational, technical, sporting, recreational, or cultural interest".

It appears that the draft subsection (2)(b) provisions as to "relaxing and engaging in social intercourse" were deleted as being seen as a threat to existing chartered clubs.

Apart from these crucial 'purposes' provisions,the June draft already embodied much that would go straight into the Act. Subsection (3) of the draft became, without further amendment subsection (3) of s. 65E and subsection (4) of the draft became the nucleus of s. 65E (7).

A further draft was produced in late July 1975 which, amongst other changes, made explicit reference to the ancillary licence being available for commercial caterers. To this end a new subsection (2)(a) was slotted in providing that an ancillary licence could be granted for the purpose of:

> Holding social receptions and functions, including wedding breakfasts and birthday and anniversary celebrations.

Also in this draft was the first suggestion that proprietary clubs should be precluded from obtaining the licence. But the 1976 Amendment Act, by s. 65E (6), expressly sanctioned the availability of the licence to proprietary clubs, no doubt as a result of pressure brought to bear by such organisations as Winton Holdings Ltd. The tables were turned again in the 1980 Amendment Act by the definition of "club" in s. 67B (1) as excluding an association of persons combined for the purposes of gain.

Another matter dealt with in this July draft was the suggestion that the Licensing Control Commission not be able to fix a closing time later than one hour after the cessation of the principal activity. A rather influential committee[86] considering this provision felt that this was too rigid and suggested a longer, more flexible period but in no case to be later than 10 pm. As a direct consequence of this suggestion s. 112o (2), as enacted by the 1976 Amendment Act, made 10 pm the general closing time limit and s. 112o (6) introduced the flexibility aspect by requiring the Licensing Control Commission when fixing the closing time in respect to any application to have regard to the likely time of termination of the principal activity.

The Sale of Liquor Amendment Bill (No 2) 1975, incorporating the new general ancillary licence, was introduced in Parliament by Dr A M Finlay, Minister of Justice, on the 20th of August 1975. Dr Finlay's introductory speech, as would be expected, provides a useful precis of the intended effect of the licence:[87]

> A new licence, to be known as a general ancillary licence, will be created by this Bill ... Despite the proliferation of new types of licences in recent years, there still remain a number of instances where the supply of liquor should legitimately be permitted as an ancillary to a principal activity, and this was recognised by the

> Royal Commission in its report. The emphasis of this new licence is that liquor is to be permitted in instances where its supply and consumption is incidental to another and designated dominant purpose. Accordingly, the licence will be available to a number of organisations, including sports clubs, and will permit the sale of alcohol on Sundays in appropriate cases and subject to careful limitations. Because of its very nature, a considerable discretion is placed in the hands of the Licensing Control Commission, and I am confident that the Commission is more than equal to its task.

After outlining the purposes for which a licence could be obtained and the provisions for determining the hours of sale for each application Dr Finlay went on to allay the understandable reservations held in respect of this new broad licence:

> There are a number of safeguards designed to ensure that only bona fide applicants obtain this licence. First, no club or association will be granted a licence unless it has existed for the purpose of the principal activity for at least two years before its application for the licence. Secondly, the Licensing Control Commission must be satisfied that no other licence is available to the applicant, that the supply of alcohol will be incidental to the principal activity, that proper facilities are available, and that the premises will not be readily accessible to persons not attending for the purpose of the principal activity. The Licensing Control Commission will have an overall discretion whether or not to grant the licence.

Following this introduction and first reading the Bill was referred to the Statutes Revision Committee and the attention which the Bill would receive in that committee was adverted to by Mr Wilkinson MP:[88]

> Perhaps a comment should be made on the quite revolutionary ancillary licence provision. This represents a very major departure from the present laws,which basically restrict people to drinking in hotels, taverns, licensed restaurants, and chartered clubs. Very obviously this will be a most complex matter, and it will require a great deal of thought and planning to mould the concept to a very wide and diverse set of organisations. I hope - and I am sure that the minister agrees with me - that when the Bill goes before the Statutes Revision Committee a very wide representation of organisations likely to be involved will appear. At this stage I do not think there is any more I can say. The Bill will be given very close scrutiny by members of the Opposition when it appears before the Statutes Revision Committee.

The report of the Statutes Revision Committee was tabled before Parliament more than a year after the Bill's introduction. Mr McLay MP summarised the report and outlined the major change to the Bill recommended by the committee, viz. that separate provision be made for a caterer's licence because the special need of caterers did not fit easily into the framework of the general ancillary licence:[89]

> the proposal to establish general and ancillary licences to provide legal drinking facilities on club premises and the like enjoyed widespread public support from those who made submissions

on this matter to the committee. The committee recommends that in essence the provisions in the Bill be adopted, although some changes are proposed to make the provisions more workable. The committee was concerned at the possibly anomalous position of persons who come under the general description of "caterer". Although the committee was of the opinion that a caterer's activity was probably covered by the proposed general ancillary licence, it considered this to be an inappropriate category of licence for what is essentially a profit-making service industry. The committee therefore proposes the establishment of a second category of caterer's licence with, in certain circumstances, the addition of a caterer's permit where liquor is served away from the caterer's premises.

Other changes recommended, apart from the severance of the caterer's licence, were:

(a) the provision, noted in an earlier Bill draft, as to spectators at a sport or live entertainment being entitled to drink on the licensed premises to be deleted because of fears that sporting clubs could turn into de facto taverns;

(b) the fact that an organisation would otherwise be eligible for a club charter would not prevent the grant of a general ancillary licence;

(c) the Licensing Control Commission may require any association of persons applying for a licence to become incorporated, thus assisting enforcement procedures;

(d) that the holder of a general ancillary licence must buy his liquor from the holder of a hotel, tavern, or wine reseller's licence or, if relevant, from a district licensing trust. Although the majority of the Statutes Revision Committee favoured the exclusion of wholesalers from this provision, nevertheless

wholesalers were included in the list in the Committee stage of the Bill;[90]

(e) the Licensing Control Commission may require records of the purchase and sale of liquor under the licence to be kept and sent to the Commission so as to ensure that the supply of liquor remains incidental to the stated dominant purpose, rather than becoming the principal purpose itself;

(f) the holder of the licence be allowed to appoint more than one manager thus reducing the burden that would otherwise be placed on one individual who may be acting in a part-time capacity;

(g) the licence may be granted despite the fact that someone may make a profit out of the licence. This provision, as noted earlier, was aimed at allowing proprietary clubs to apply for the licence and in fact in presenting the Bill for its second reading the Hon. Mr Thomson stated expressly: "This is to permit proprietory clubs, such as the Ohariu Valley Country Club, to obtain a general ancillary licence."[91]

The significance of this statement will become apparant in light of the discussion in Part VII of the Commission's refusal to grant Winton Holdings (Ohariu Valley Country Club) a licence.

The Bill came up for its second reading on the 2nd November 1976. The Hon. Mr Thomson, Minister of Justice, prefaced the reading and discussion of the Bill with the, by now, familiar statement as to the purposes of the licence, the terms of its availability, the safeguards incorporated, and the nature of the discretion being conferred on the Licensing Control Commission, and continued:[92]

> As the name implies, the essence of the licence is that it provides for the consumption of liquor as subordinate to a dominant activity rather than as the principal object of the gathering. The Bill provides a general framework for the hours of sale, leaving it to the Commission to fix the hours in each

> individual case which may, where appropriate, include Sundays. The commission will not be obliged to grant a licence in every case. This will allow a licence to be refused where an applicant might measure up to the various criteria but for some other reason the commission is not convinced that the issue of a licence would be in the public interest. No doubt the greatest impact of this new licence will be on sporting clubs. I do not think that I am overstating the case if I say that this licence, like the proposal to lower the drinking age, is to some extent an attempt to legalise present practices. I shall certainly be watching the operation of this licence very closely, and shall not hesitate to suggest amendments if necessary.

The Bill passed through its second reading and Committee of the House stages unscathed - the House being more concerned about the provisions in the Bill relating to the drinking age, the extension of the "drinking-up" time in bars and the unlicensed restaurant permit.

The Sale of Liquor Amendment Act 1976 received the royal assent on the 19th of November 1976, but it was provided in s. 1 (2) that the sections relating to the general ancillary licence would not come into force until the 1st day of April 1977, so as to give the Licensing Control Commission a period of grace in which to prepare for the introduction of the new licence.

VI THE GENERAL ANCILLARY LICENCE

A. The Legislation

The basic law in relation to the general ancillary licence was contained in s. 65E and ss. 112M, 112N and 112o of the Sale of Liquor Act 1962, as inserted by the 1976 Amendment Act. These sections are annexed in full as the first appendix to this paper.

In addition to the basic licence, two permits were available to a general ancillary licensee under the terms of ss. 216B and 217 (1B), which are also included in the first appendix.

1. Section 65E - the substance of the licence

Section 65E was the central provision. Subsection (1) can be traced back to the first clause of the 1974 Royal Commission's special ancillary licence.[93] It refers to the nature of the general ancillary licence: "a general ancillary licence shall authorise the licensee to sell and dispose of liquor for consumption on the premises described in the licence", and then ties the sale and disposal of liquor to times when the premises are being used for the designated principal activity:" at any time during the time specified in the licence on any day when the premises are being used for any purpose (hereinafter referred to as the principal activity) specified in subsection (2) of this section." This immediately stresses the ancillary nature of the licence - the use of the licence depends upon the subsisting of another stated activity, being the principal activity of the organisation.

Subsection (2) sets out the purposes for which a licence may be sought and it is within these four stated purposes that an organisation seeking a licence must fit its principal activity. Subsection (3) again can be traced back to the Royal Commission's recommendations, but as discussed in relation to the drafts of the Bill in June[94] and July[95] of 1975 these purposes were often radically

redefined. Subsection (2) proved to be the most difficult provision to formulate and draft, and the shortcomings within subsection (2) provided some of the prime reasons necessitating the superceding of the general ancillary licence by the club licence.[96] Subsection (2) of s 65E provides that the licence shall not be granted unless the premises "are used or are to be used regularly for any of the following purposes ..." - thus the idea of regular, habitual use of the premises for the principal activity is introduced. The crucial purposes which may constitute the all-important principal activity are then enumerated:

> (a) Taking part in any sporting or recreational activity:
>
> (b) Taking part in any live entertainment of a lawful character, other than the game commonly known as housie or any other activity the carrying on of which on any licensed premises is prohibited by section 248[97] of this Act:
>
> (c) Holding social gatherings of persons sharing a common occupational, educational, technical, sporting, recreational, or cultural interest:
>
> (d) Holding gatherings of cultural, ethnic, national or regional associations.

So already at this early stage of the analysis it is possible to distil the essence of the general ancillary licence : an organisation must nominate its principal activity, in the case of a sports club this is easily done, this activity must fall within one or other of the approved purposes in subs. (2), the licence may then be granted where the premises to be licenced are used regularly for that purpose and the effect of the licence lasts only so long as the principal activity

lasts. In short the general ancillary licence could be described as parasitic; it can have no existence independant of the principal activity. The rest of the statutory provisions relating to the general ancillary licence can be said to merely clothe this basic concept.

Subsection (3) of s 65E provides for certain matters of which the Commission must be satisfied before a licence can be granted. Parts of this subsection have their origins in the 1974 Royal Commission report and the subsection as a whole has remained intact from as early as the June 1975 draft. Paragraph (a) incorporates the necessity for the prospective licensee to satisfy the Commission that because of the principal activity, or the days or times during which the principal activity is to be undertaken the licensee is not entitled to any other licence or permit under the Act. Prior to the Bill going before the Statutes Revision Committee a reference to a club charter was included in this paragraph but as has been noted earlier this provision was recommended by the committee to be deleted.[98] Paragraph (b) requires that the Commission be of the opinion that the supply and consumption of liquor on the premises will be incidental to the undertaking of the principal activity. This paragraph stresses again the ancillary nature of the licence and acts as an explicit bar on 'drinking clubs' which may seek a licence by relying on a sham principal activity. Paragraph (c) merely requires that proper facilities for the sale, disposal, and consumption of liquor will be available on the premises. Paragraph (d) represents one of the anti-abuse provisions in the licence by requiring that the Commission be of the opinion that during the times at which the principal activity will be carried on the premises will not be readily accessible to persons other than those who are attending for the

purpose of the principal activity. The drafting of this paragraph is open to criticism in that the paragraph requires restricted access "during the times at which the principal activity will be carried on" rather than during the time when the licence is operating. There may be times when the organisation may wish to engage in the principal activity but chose not to seek a licence, or were not granted a licence, for those times. By paragraph (d) it would appear that the Commission would still be required to be satisfied of restricted access to the premises during these times before it could grant a licence. This point was remedied in the 1980 Amendment.

Subsections (4) and (5) represent further safeguards. Subsection (4) providing that, except in special circumstances, an application shall not be granted unless the organisation had existed for the purposes of the principal activity for a period of at least two years, although again problems can be foreseen in tying the length of time to the principal activity.[99] Subsection (5) gives the Commission the power to require an organisation making an application to become incorporated.

Subsection (6) contained the ultimately ill-fated[100] provision attempting to enable proprietary clubs to obtain the licence.

Subsection (7) is important in that it contains a list of conditions subject to which the licence is deemed to be issued. Paragraph (a) relates to the need to conform to minimum standards which the Commission may set in respect of classes of premises. Paragraph (b) restricts the licensee's sources of obtaining liquor.[101] Paragraph (c) reiterates the central proposition implicit in s. 65E (1), that the sale of liquor is only authorised at a time when the premises are being used for the principal activity, by stating

that

> liquor shall be sold and supplied pursuant to the licence only on days on which the premises are being used in good faith for the purpose of the principal activity.

Paragraph (d) soon became a contentious provision, by requiring that

> liquor shall be consumed on the premises only be those persons who are participating in the principal activity and their invited guests

so that the right to use the club's liquor facility was determined not by club membership but by taking part in the sport, or other principal activity as the case may be, or by being invited to the club by someone who has. And different classes of people would be permitted to use the club's liquor facilities depending upon which of the s. 65E (2) purposes the club's principal activity came within, for example a sports club which has been granted hours under the terms of s. 65E (2)(c) for the principal activity of holding social gatherings. As, by s. 65E (7)(d), it is participation in the principal activity - not club membership - which determines the right to use the club's liquor facility, then under s. 65E (2)(c) the principal activity that must be engaged in is not the sport itself, as it would be if the hours were granted under subs (2)(a), but the social gathering that follows the game. In other words, all those sharing a common interest in the club's matches played on that day, including players, officials, club spectators and other supporters, would be entitled to drink at the after-match function in their own right as participating in the principal activity as required by subs. (7)(d).

Paragraph (e) of subs. (7) is somewhat less esoteric, providing that bottles and glasses must be cleared away

after the expiration of thirty minutes from the time at which the sale of liquor is to cease.

Subsection (7) concludes with a provision that a licence shall also be subject to such other conditions as the Commission may in its discretion impose. On this authority the Commission has produced a set of standard additional conditions[102] for ancillary licences, and further sets of conditions applicable to different sorts of clubs, to be discussed under the next heading.

Subsection (8) of s. 65E provides that the Commission may impose as a condition that records be kept and filed relating to the purchase and sale of liquor pursuant to the licence so as to provide a means of checking that the consumption of liquor is not itself becoming the principal activity of the organisation. This condition has been included as condition (4) in the standard additional conditions mentioned above.

2. Section 112M - application, objections, hearing, etc

Section 112M adopts, with necessary modifications, the application, report, objection, hearing, and issue procedures of a restaurant licence for the general ancillary licence. The machinery involved is non-contentious and need not detain us beyond noting the limited nature of the objection rights provided through the adopted procedure in s. 109 of the principal Act. The only grounds for objection relate to bad character, previous licensing offences[103] or that

> the licensing of the premises will have a prejudicial effect on residents in the immediate neighbourhood of the premises

These grounds are repeated in s. 112N (1) as circumstances to be taken into account by the Commission in granting

an application, so the only thing gained by virtue of the objection provisions is the right to point out such matters to the Commission.

The limited effect of these objection provisions becomes apparent when compared to those relating to hotel or tavern premises licences. By s. 81 of the principal Act a local authority or any 50 electors resident in the district can force an area poll to be taken by objecting in writing and without having to specify any reasons for so objecting.

Although the standing for objectors is quite limited the Commission has been willing to hear submissions from other interested persons and bodies, for example, the Auckland Hotel Workers' Union and particularly the Hotel Association of New Zealand which has played a major watchdog role in the development and operation of the licence.

3. Section 112N - circumstances to be taken into account

Section 112N provides, in subs. (1), a list of circumstances to which the Commission is required to have regard in determining whether to grant any application. Paragraph (a) of subs. (1) directs the Commission to consider the support given, or likely to be given, to the principal activity. This is presumably a safeguard going to the bona fides of the application, ensuring that the organisation is one of substance and not merely a device. And by relying upon some minimum level of support this provision prevents the situation whereby every activity that is carried on at club would become a principal activity warranting the issue of a licence just because it is the only activity carried on at the club at that particular time. Paragraph (b) calls attention to the nature of the principal activity itself and to the class or classes of persons who participate, or are likely to participate in that activity. This latter consideration includes the age

groups of those participating so that a club which is comprised largely of under-age persons is unlikely to obtain a licence. Paragraph (c) relates to the suitability of premises, and services on those premises, for the purpose of the principal activity.

By para. (d) regard is to be had to any prejudicial effect that the licensing of the premises might have on residents in the immediate neighbourhood. This paragraph was applied in a rather startling fashion in the decision of the Commission in Re Applications by Seatoun Bowling Club and others:[104]

> With some of the applications dealt with in this decision there were objections from local residents. These objections were based on allegations of past misbehaviour by the clubs concerned. We find there is substance in these allegations. We are required to take into account the prejudicial effect on residents in the immediate neighbourhood. We have considered in some instances whether we should not refuse some applications to which there were objections but have decided not to do so in the present instances. We take this attitude because we think the regularisation of hours may restrict rather than extend the existing liquor practices of the bodies concerned. Nevertheless, applicants who face such objections may well find that their authorised hours could be more restricted than the normal scale of hours for the type of club involved.

This final comment as to the reduction of hours as a result of past bad behaviour or because of objections will be discussed shortly in relation to s. 112o as it is strongly arguable that such factors have no relevance in the Commission's decision in fixing hours as opposed to its decision whether or not to grant the licence in the first place. No provision exists for regard to be had to the interests of other interested parties, particularly other licence holders.[105]

Paragraph (e) of s. 112N (1) directs the Commission to have regard to the character and reputation of the applicants and any convictions for offences against the Act or its predecessor. This immediately raises the question of how a club is to be treated which received a conviction prior to the passing of the general ancillary legislation. It has been conceded by all concerned - club's themselves, the police, The Commission, and Members of Parliament in discussing the legislation in the House - that illegal club drinking was a widespread and popularly acceptable reality, so that any club which had received a conviction in recent times before the legislation would have to be considered as unlucky rather than reprehensible, yet para. (e) explicitly directs the Commission to have regard to such convictions. Perhaps the solution would lie in the Commission noting the existence of the conviction but finding that other factors in the club's favour mitigated the negative effect of the conviction. In Re Application by Winton Holdings[106] the Commission noted the applicant's past convictions for breaches of the Act but stated that those, in that instance, would be ignored.

One instance where the "character and reputation" aspect of para. (e) may have been employed so as to deny a licence was in Re an Application by Naenae Old Boys' R.F.C.[107] where in the recent history of the club:

> There was an unpleasant incident which resulted from a 16 year old youth becoming intoxicated at the club and later causing damage ... We realise that such incidents do occur, but we were quite unimpressed with the action (or the comparative absence of action) on the part of the club in investigating the matter or in the taking of measures to prevent a recurrence.

Paragraphs (f) and (g) of s. 112N (1) provide the usual catch-all provisions, that the Commission shall have regard to the public interest generally, and shall have regard to such other considerations as the Commission thinks fit to take into account.

Subsection (2) of s. 112N provides the overriding discretion that the Commission shall not be obliged to grant any application thus making it clear that a licence can be refused where an applicant might satisfy the various criteria but for some other reason the Commission is not convinced that the issue of a licence would be in the public interest.

4. Section 112o - the exercise of the crucial discretion as to hours

Section 112o deals with the manner in which the Commission is to exercise the prototypal discretion as to the fixing of hours for individual applications. Subsection (1) contains the basic provision that wherever the Commission grants an application it shall fix the times at which the sale of liquor may commence and at which it must cease. This represents the great schism as perpetrated by the general ancillary licence. Every other type of licence before this had its opening

and closing hours decreed by the statute and which were essentially invariant, providing no recognition of an applicant's particular needs.

The remaining subsections qualify this discretion. Subsection (2) states that the time fixed for opening shall not be earlier than 9 am, and that fixed for closing not be later than 10 pm, unless there are certain special circumstances in a particular case. Subsections (3) and (4) allow for different times to be fixed in respect of different periods of the year or different days of the week, and for the Commission to require premises to be closed for the sale of liquor on any day or for any period of the year. Subsection (5) forbids the Commission from fixing a commencement time, on any day, earlier than thirty minutes before the commencement of the principal activity on that day; and subs. (6), the origins of which have been discussed earlier,[108] provides that in fixing a time for the cessation of the sale of liquor the Commission shall have regard to the time at which the principal activity will be concluded on that day. Subsection (7) is merely administrative and is mentioned only for the sake of completeness.

Returning now to the point made above in relation to the comment by the Commission in the Seatoun Bowling application[109] that applicants facing objections may receive more restricted hours, as has been seen there is no specific power s. 112o for the Commission to reduce otherwise appropriate hours on such a basis. Section 112o (1) provides that wherever the Commission grants an application it shall fix the times for the sale of liquor. It is strongly arguable that the relevance of objections goes to the determination of whether or not to grant the licence and that once it has been decided to so grant in spite of the existence of objections then the relevance of objections can not,

in the terms of s. 112o, be carried over into the decision as to the fixing of hours. This contention is strengthened by the very limited nature of the objection rights, as discussed earlier,[110] and which expressly state their relevance as being to the "grant" of a licence.[111] The discretion conferred on the Commission by s. 112o (1) is a potentially wide one, but it is doubtful whether that discretion includes the power to reduce the hours which a club may expect as being the normal scale of hours for that type of club because of the seemingly irrelevant consideration of the existence of objections. This is strengthened by the apparent code of rules circumscribing the discretion contained in subss. (2) to (6) which contains no reference to the appropriate hours for the club being reduced on such grounds.

5. Sections 216, 217 (1B) and 218B - Supplementary permits

Finally, in relation to the general ancillary licence legislation, mention must be made of the permits available to a general ancillary licensee under the terms of ss. 216B and 217 (1B).

The s. 216B extended hours permit allows the sale of liquor beyond the hours prescribed in the licence when the principal activity continues beyond the normal time. Application for such a permit is made to a District Court Judge who must be satisfied that because of some special event, occasion or reason, the principal activity to be conducted on the premises on that day is likely to continue beyond the time at which it usually concludes. The permit is still tied to the principal activity and sales under the permit are again limited to persons actively participating in the principal activity and their invited guests.

The s. 217 (1B) permit is one granted by the Commission itself authorising purely social gatherings

which may be unrelated to the licensee's principal activity. The permits have been used to cover the regular and established occasions forming part of a club's annual programme such as opening- and closing-day functions, presidents' evenings, annual balls, and the like, and the Commission will even accept monthly social evenings.[112] The Commission has granted these permits in a "blanket" form, describing such occasions other than by reference to a date so that a permit might last from year to year and not require renewal, and meaning that clubs would only have to apply to the Commission for occasions which arise during the course of the season and are not annual functions. This blanket type permit is probably the only administratively feasible way of handling the situation; the Commission itself feared that if "we were to try and deal with these social gatherings on an individual basis we feel we would disappear beneath a sea of paper."[113]

For the sake of completeness, reference must be made to the s. 218B permit as enacted by the 1977 Sale of Liquor Amendment Act. This permit was found necessary to overcome the difficulty presented by the fact that once an ancillary licence is authorised the premises becomes licensed premises under the terms of the principal Act and it becomes an offence against s. 253 (2c) to procure or consume liquor on those premises at any time when the premises are required to be closed for the sale of liquor. This would appear to prevent the hiring out or use of the club premises for private functions outside of licensed hours whereat liquor was to be consumed. The s. 218 permit overcomes this difficulty and is hedged with safeguards preventing the issue of such a permit to the licence holder and preventing the club selling or supplying liquor at such gatherings.

B. The Role of the Licensing Control Commission

The general ancillary licence legislation develops upon the Licensing Control Commission's standing as a highly active body by adding to its pre-existing experience in investigating matters relevant to the granting of licences a degree of autonomy and self-sufficiency without precedent in the philosophy of liquor licensing.

Prior to the general ancillary licence there had really only been one stage of decision in licensing an applicant, that is, the basic decision of whether or not to grant the licence to the applicant. Once that decision had been made the consequences followed automatically from the statute. This decision to grant a licence came only after much active investigation on the part of the Commission itself and was usually made with the benefit of having had a reasonable degree of external input into the information-gathering stage. The example of the hotel premises licence provides a useful illustration of the degree of active involvement which may be required from the Commission in granting a licence:

- the Commission, as a result of a periodic area review, or on the recommendation of a Licensing Committee, or for some other reason, becomes of the opinion that it is necessary or desirable to issue a licence and decides to hold a public inquiry and gives notice of this : s. 74 (1) and (3);
- the Commission then holds the public inquiry with opportunity for interested persons to give evidence or make representations : s. 74 (2);
- in coming to its decision as to whether the issue of a licence is necessary or desirable the Commission must have regard to certain factors, including the requirements in the proposed area for accommodation and liquor facilities, and the effect on any other hotel in the area, etc : s. 75;

- the Commission then defines the locality and standards required of the premises : ss. 78 and 79;

- the Commission then gives notice of its intention to invite applications for the licence, subject to the prior right of a suburban trust to apply for any licence authorised in its area : ss. 80 and 79A;

- objections may be lodged against the inviting of applications for the new licence. The relevant local authority, or any 50 local residents, can apply to the Commission for the taking of a poll of local electors to determine whether a majority in the area desire that the licence be granted (s. 81). Also at this stage an application can be made for a poll to be held for local trust purposes (s. 82). The Commission then decides whether or not a poll should be taken (s. 83), and if it is to be taken then the Commission may give directions as to how the poll is to be taken (s. 84);

- if the poll is against the granting of a licence the Commission may still consider whether the poll provides a sufficient indication of attitude in the district against the licence and disregard the adverse vote[114] : ss. 85 and 91 (5);

- the Commission then invites applications for the licence, specifying locality and standards : s. 86;

- a public sitting is held to hear all applications received and the licence may be granted : ss. 91 and 92.

Once the decision to grant a licence has been so made the statute takes over by prescribing the hours and major conditions attendant automatically on that class of licence.

The general ancillary licence legislation takes the role of the Commission much further. Applicants for ancillary licences come to the Commission in the first instance rather than the Commission taking any kind of initiatory role as it may do for the other major licences. Once the application is made then the decision to grant a licence is made by the Commission with little outside informative input and with few external safeguards. The paucity of the objection provisions has been noted earlier,[115] and mades a sharp contrast to those detailed in relation to a hotel premises licence, and the apparent absence of any national or regional plan specifying optimum or maximum limits on the numbers or concentrations of such licences removes another check. So this initial decision to grant an ancillary licence, assuming all of the statutory requirements have been met by the applicant, can be said to be made by the Commission acting very much on its own.

This near-autonomy of the Commission is then taken a step further with the general ancillary licence's reposing in the Commission of the innovatory two-pronged discretion as to the fixing of hours and conditions of the licence.

At this second stage, once the decision has been made to grant the licence, the Commission must then exercise this special discretion which involves tailoring the licence to fit the acceptable needs of the individual applicant. This discretion, which is a major aspect distinguishing the ancillary licence from other licences where hours and conditions are specified by statute, comprises two aspects: firstly, the imposition of such other conditions, apart from the mandatory conditions stated in s. 65E (7)(a) to (e), as the Commission feels appropriate; and secondly, the fixing of hours of sale in respect of each individual licence under the terms of s. 112o.

Despite the potential width of these powers the Commission by its interpretation of the legislation and by the exercise of

its discretion soon determined its own broad precedents as regards the conditions and hours appropriate for certain types of clubs. In view of the large numbers of applications being made to the Commission these precedents represented what was probably the only administratively feasible way of exercising the discretion, although the Commission was at the same time careful to hear each case fully on its own merits, and allowed the occasional 'rogue' application hours beyond the norm where the need was established, so as not to be seen as fettering the broad power by binding itself to its own precedents. As the Commission was quick to point out in its 1978 report:[116]

> We see much merit in a degree of uniformity in the terms of general ancillary licences granted but we have an open mind to the particular situation.

The Commission's discretion as to further conditions for licences has been crystallised in a set of precedents known as the 'standard additional conditions'. These conditions were largely derived from the statute itself or from administrative requirements and deal with such necessary miscellany as minimum standards, the lodgment of plans, necessity for consent to alterations, maximum numbers permitted on the premises, and so on. In addition to the nine standard additional conditions which are incorporated into every licence there are also sets of further conditions, relevant to different classes of clubs, which provide for certain controlled and limited extensions of hours for special events, daylight saving or on Sundays. So it can be seen that administrative realities have led to the Commission largely abdicating its discretion as to additional conditions by formulating standard conditions at the outset and then merely nominating which of these standard conditions will apply, in the Commission's discretion, to each licence.

As to the fixing of hours, consistency was achieved within the exercise of the discretion by having model hours to be applied to clubs with the same principal activity and which provided similar facilities, while still professing the freedom

and willingness to award hours outside of the normal scheme where the case required. For example, the standard scheme for winter sports clubs took the form as in the licence for the Tawa Rugby Football Club (Inc):[117]

Period: 15 February to 30 September

(i) Principal Activity: Rugby, including training, lectures on rugby and coaching sessions
Hours: Mondays to Thursdays (both inclusive) 7.30 pm - 9.30 pm

(ii) Principal Activity: Holding social gatherings following a rugby match, in which the club has actively participated, of persons sharing a common interest in rugby football
Hours: Saturdays and public holidays 4.00 pm - 7.30 pm

But occasionally, as in the case of the Porirua R.F.C.,[118] the hours granted for Saturdays and public holidays would be from 4.00 pm to 8.30 pm which appeared to be the upper limit to which the Commission was prepared to go for such clubs.

The flexibility of the Commission's hour-fixing procedure always remained to be occasionally exercised by such anomalous organisations as the Auckland Yugoslav Society.

The role assumed by the Commission under the general ancillary licence regime raises a number of constitutional questions. Is the case, as the 1974 Royal Commission feared,[119] that the Licensing Control Commission is exercising a legislative function properly left to Parliament, or can it be said that Parliament has properly delegated a problem with multifarious variations to a trust-worthy and experienced body which can devote the necessary time and energy to provide a workable answer. The question is compounded by the fact that the Commission is a non-politically-responsible body exercising what is basically a social decision involving the availability of a noxious substance and affecting a large number of people. Or is it that the role of the Commission under the general ancillary licence regime is a

manifestation of the indisputable change in popular attitudes to the availability and consumption of alcohol?

It is suggested that if the powers and discretions conferred upon the Commission under the ancillary licence concept were seen as being odious or unconstitutional then greater public resistance and more Parliamentary reluctance would have been discernible when the Sale of Liquor Amendment Act 1980 essentially repeated the general ancillary licence formula in the club licence and adopted it in the food and entertainment licence.

C. The Administrative Impact of the Licence

The active role required of the Licensing Control Commission in the whole scheme of the general ancillary licence, and the vast number of applications requiring consideration meant that the general ancillary licence soon monopolised the Commission's time and energies.

The licence became available as from the 1st of April 1977 but the Commission had spent much of the previous four months preparing for the onslaught of applications. The Commission commenced its sittings to consider the applications in late May 1977 and completed the programme of hearings around September 1978 having held hearings in all the major centres and in many smaller towns throughout the country. The Commission noted in its report for the year ending 31st March 1979 that:[120]

> During the year we held sittings in some centres every second week, and in the latter half of the year we were able to turn our attention to matters other than general ancillary licences.

Figures taken from the Commission's annual reports relating to the number of public sittings testify to the preponderance of general ancillary licence matters over other licensing matters, and also, when compared with the pre-1977 total sitting figures,

to the increased public activity of the Commission:

Public Sittings of the L.C.C.

Year Ending 31 March	G.A.L.-related matters	Total Sittings
1976	-	130
1977	-	169
1978	530	718
1979	588	771
1980	319	546
1981	205	399

****

Other figures taken from the reports for the years ending 31st March 1980 and 1981 provide useful comparisons. As at 30th June 1979 there were 777 general ancillary licences in force, which is to be compared for instance with the 690 hotelkeeper's licences, 379 tavernkeeper's licences, 226 restaurant licences, and 360 club charters. And by 30th June 1980 the corresponding figures were: 1,009 general ancillary licences; 683 hotelkeeper's licences; 373 tavernkeeper's licences; 259 restaurant licences; and 372 club charters.

VII DISSATISFACTION WITH THE OPERATION OF THE GENERAL ANCILLARY LICENCE

A. Introduction

The Licensing Control Commission appears to have had a premonition of the troubled times to follow, for even before the general ancillary licence provisions of the 1976 Amendment Act came into force the Commission had detected that all was not well with the new legislation, and prophesised that:[121]

> From the discussions the Commission has had and from detailed study of the legislation, it may be that there will be some difficulties in the interpretation and application of the provisions, but

> until the various questions are argued before us we cannot make any particular recommendation or comment. The result might be, however, that further amendment to an already battered statute will be needed to place the ancillary licence on its intended footing.

The licence was initially well received with organisations anticipating that the licence would fulfil their needs as described to the 1974 Royal Commission, however, as applications for licences began to be dealt with by the Commission the first murmurings of discontent could be detected. Clubs received far shorter hours than they had applied for, and the hours which were granted would result in a substantial curtailment of their former practice. Applications, particularly by non-sporting organisations, were unexpectedly declined, the most notable example is that, to be discussed, of the Ohariu Valley Country Club (Winton Holdings) who were held unable to obtain a licence even though the legislation was specifically altered in the Bill stages to facilitate their obtaining a licence, and reference to that fact had been made by the then Minister of Justice in introducing the second reading debate in 1976.[122]

Other unexpected results and inequities came to be noticed, in respect of who was entitled to drink under the licence, and in what circumstances, and the flat rate licence fee was seen as an unfair impost, particularly by the smaller clubs.

Most of the dissatisfaction aroused, and the problems caused, had roots in the central term "principal activity". The difficulties stemmed either from the definition of the all-determining principal activity or from the fact that the licence for its existence draws its life-blood from the principal activity. The licence, its hours, and its incidents were tied inexorably to the necessary subsistence of the nominated principal activity, and once it could be said, at a particular time on any day, that the principal activity had ceased to be viable then the licence, by

definition, also expired.

B. Establishing a 'Principal Activity' - the Problem of 'Social Gatherings' and 'Recreational Activities'

The first hurdle in obtaining a general ancillary licence involved establishing regular use of the premises to be licensed for one of the authorised uses in s. 65E (2), the key to the licence lies in the principal activity.

Sports clubs had no difficulty in fitting the dominant activity undertaken on the club premises into the relevant purposes of s. 65E (2)(a) and (c):

> Taking part in any sporting ... activity
>
> or
>
> Holding social gatherings of persons sharing a common ... sporting, recreational ... interest

But non-sporting organisations encountered problems when trying to bring their activities within the rubric of "principal activity" in the terms of s. 65E (2).

The Christchurch Media Club was formed with its main object to provide a professional and occupational club for working members of the news media. The activities of the club would have brought it clearly within the definition for the purposes of a club charter but because of the unusual hours that its members often worked the rigid hours of a charter rendered that form of licensing inappropriate. The club applied for an ancillary licence based on s. 65E (2)(c), that is, on the grounds that the premises were used regularly for the holding of social gatherings of persons sharing a common occupational interest. The Licensing Control Commission refused the application on the grounds that there was no principal activity established sufficient to bring the club within the scope of s. 65E. The Commission saw the club as a meeting place for persons sharing a common occupational and technical interest but that this did not amount to "holding social gatherings" for the purposes of s. 65E (2)(c):[123]

> we are not persuaded that this club is "holding social gatherings". There is, as a general rule, no particular function held ... There is normally merely a series of unorganised gatherings or congregation of members whom arrive individually or as unorganised groups and who use the premises for a social drink, perhaps play a game of pool etc and general conversation of professional and, doubtless, other topics. It is, in fact, a club with a particular flavour. It can be said that these are casual gatherings which just happen. We cannot, in general, find any social gatherings that are held. [We considered that there must be some defineable or discernible purpose to which the supply of liquor can become an added amenity.] For that reason we are compelled to the conclusion that the requirement of a principal activity has not been established. Some limited analogy can be seen if we postulate a group of members of, say, the evening newspaper who regularly together visit a quiet bar in a particular tavern every day after work to talk shop and have a quiet drink and perhaps play pool. We would not consider that as holding a social gathering.

A similar fate befell the application by Winton Holdings in respect of the Ohariu Valley Country Club.[124] The Commission saw the main purpose of the overall activities of the club as providing opportunities and superior facilities for the social intercourse, convenience and comfort of its members and as part

of those purposes providing opportunities and facilities on its premises for certain sporting and recreational activities. The dominant purpose being seen to be social intercourse of a club-like nature. The applicant sought to pray in aid of its case the various statements made in Hansard, previously adverted to, and the changes made to the Bill during its passage through the House but the Commission chartered the safe course by stating that it could not have regard to statements made in the House during the passage of the Bill[125] and that it could only have regard to the report of the 1974 Royal Commission as providing evidence of the mischief to be remedied. The Commission then proceeded to follow its Christchurch Media Club line holding that a mere coming together of two or more persons with a common interest could not constitute a "social gathering" and that "holding social gatherings" imports a notion of organisation along with the notion of regularity as required by s. 65E (2), in contrast to casual socialising.

Winton Holdings also attempted to bring their application under the terms of s. 65E (2)(a) - "taking part in any sporting or recreational activity", but the Commission found that the recreational activities of the applicant were merely ancillary to its principal activity of social intercourse and that to provide a limited licence to the scope of such recreational activities alone would not meet the general purpose of the club. The Commission did not define "recreational activities" but was satisfied that it did not cover the principal activity of the club, being "casual social intercourse including dining out":[126]

> Our firm impression is that this is essentially a social and dining club which makes additional recreational activities available to its members. For the basic function we do not see that we can provide a licence. This application is therefore, and with reluctance, refused.

Winton Holdings subsequently appealed to the Supreme Court (as it then was) and Beattie J. upheld[127] the decision of the Commission, agreeing that mere socialising lacks the defineable

and discernible purpose that the legislation contemplates and that the words "recreational activity" were not wide enough to include informal social gatherings or dining out as a basis on their own to amount to an authorised principal activity.

The term "recreational activity" exercised McMullin J. in Eastern (Auckland) R.F.C. v L.C.C.:128

> Recreation ... is not limited to physical or sporting activities to the exclusion of the cultivation of the mind and the satisfaction of man's desire for knowledge. Although recreational activities may often be sporting activities, they may be much wider than these. From the reference to both sporting and recreational activities in s. 65E, it is plain that the draftsman intended to include as principal activities, to which the grant of a licence was ancillary, recreational as well as sporting activities.

Although it is submitted that this analysis would not have furthered Winton Holding's case in any way.

The practical effect of these decisions was that a non-sporting club could not obtain a general ancillary licence unless it could show that its members gather together for some form of organised social activity - consequently all but a few non-sporting organisations were prevented from obtaining a licence.

This result aroused widespread surprise and dissatisfaction as it was not only for the benefit of sports clubs that the licence was introduced, the concept behind the licence being that it should be available in such situations where the consumption of liquor would be ancillary to the undertaking of a main activity on the premises. When the licence was introduced it was envisaged that a wide range of non-sporting organisations with diverse social activities would be able to obtain a licence within the terms of

s. 65E (2)(c), "holding social gatherings". Parliament clearly intended the licence to provide for such situations but, perhaps as a result of the Commission, and the courts, taking an overly conservative approach to its new-found power, effect was not given to this intention.

C. The Tie of Hours Granted to the Principal Activity

The second major grievance to arise in relation to the operation of the licence was as to the actual hours which were granted to clubs by the Commission. Clubs believed that the licence would simply legalise what had gone on in the past but as the first decisions came through it became apparent that many of the larger clubs would face a considerable reduction in their established drinking times. This posed a serious threat to the many clubs which had come to rely on a certain level of bar takings so as to finance their activities. Again the problem was caused by the tying of the licence to the principal activity.

Section 112o, as we have seen, conferred on the Commission a discretion to fix hours which appeared to be drawn in the widest terms. However, subss. (5) and (6) of that section required that the hours so fixed be contiguous in time to the principal activity in respect of which the licence is granted. Section 65E (1) reinforces this link by stating that the sale of liquor is authorised "at any time during the time specified in the licence on any day when the premises are being used for ... the principal activity." This means that, for example in the case of a sports club which obtained its licence in respect of the playing of a particular sport, the hours granted are related closely to hours when the sport is actually played, or at least trained for. In other words, hours could not be obtained for general social or "club" activities.

The Commission stated its policy in its report for the year ending 31st March 1978:[129]

> Our approach has been to authorise trading hours for the regular use of clubs' facilities related reasonably directly to the sport or sports

> (principal activity) held in or associated with the club's premises. In doing so we have authorised separate hours for the various activities where the seasons are not concurrent, eg, rugby and softball .... It is apparent that some of our decisions, particularly relating to some winter sports, have not satisfied the clubs concerned and our views are being tested in the Supreme Court. We indicated in statements made on our behalf before the law came into force, that our view was that the sale of liquor pursuant to a general ancillary licence was intended to be related to the particular club's principal activity, sporting or otherwise, in terms of s. 65E, and that a club could not expect to be granted trading hours equivalent to or greater than those for taverns and chartered clubs without showing that they had appropriate activities to match. We have carried this philosophy into our decisions.

Clubs attempted to cajole extra hours, particularly in respect of Saturdays, by applying under the terms of s. 65E (2)(c) and having their after-match function seen as a principal activity in itself, being the "holding of a social gathering of persons (being members of the club) sharing a common sporting and recreational interest". But this approach was also scuttled by the Commission. The issue was dealt with in Re an Application by Porirua R.F.C.[130] where the applicant claimed that it was entitled to Saturday hours in excess of the 4 pm to 7.30 pm granted. Again the problem was related to the phrase "social gatherings" in s. 65E (2)(c), for it was the view of the Commission that what may start as a social gathering within the terms of the Act may in the course of time develop into something different, of a nature which is not contemplated by the Act. An initial problem

faced by the Commission lay in distinguishing the interpretation of "social gathering", as appears in the present s. 219, proferred in the old case of Police v Merivale[131] which would have the effect of denying after-match functions the characterisation of "social gatherings". The Commission found ample grounds to distinguish the case and proceeded to the main question:[132]

> we do not consider that the term "social gatherings" is a wide and unrestricted term. The supply of liquor must still be an ancillary item only ... We consider that there must be some definable or discernible purpose to which the supply of liquor can become an added amenity. We perceive that some gatherings which may commence with such a purpose may, if licensed hours are long, actually develop into a function in which liquor is the dominant and not the added amenity ... Applying these views to the present application, we consider that an after-match function is a social gathering within the scope of s. 65E (2)(c). There is a sufficient element of purpose for such a gathering. The Saturday functions of the applicant therefore qualify in general for a licence but not, we think, for the full scope of hours here sought.

The club was granted an extra hour on Saturday nights, permitting the bar to remain open until 8.30 pm, whereas the club had sought 10 pm closing. The Commission clearly regretted the constraint under which it felt it was forced to operate, for it noted that the club provided a controlled, desirable facility for its members and that the alternative meeting place was a very large local tavern which sometimes had its "problems".

The decision was upheld by Davison C.J. in the Supreme Court,[133] generally confirming the Commission's stated approach to the legislation as a whole: namely, that the 1976 Amendment Act was designed to regularise, at least to some degree, the number of activities previously pursued illegally; it was not designed to authorise licences of a type likely to result in private taverns; and it was not designed to authorise licensing hours longer than the reasonable and regular needs of any applicant having regard to its overall purpose and activities, and then specifically approving the Commission's handling of the Porirua case.

Although the question is now rendered moot by the 1980 Amendment removing the principal activity tie and the term 'social gathering', there are questions which must be asked in relation to the reasoning of both the Commission and the court as regards their interpretation of s. 65E (2)(c).

The decision suggests that the 'purpose' apparent in such an after-match function is strong enough to distinguish it from a Winton Holdings-type purpose, being the mere coming together of members as persons sharing some common interest, yet the purpose is not specific enough or strong enough to last any more than 4½ hours. The Commission's determination carries the difficulty of saying that at some point the character of the gathering has changed to something completely different. The report of the Commission does not go to any great length in explaining its reasoning on this point, but it appears from the passage quoted above that its fear is of the initial element of purpose to the gathering becoming fragmented over time and permitting the forbidden occurrence of liquor becoming the dominant amenity.

His Honour, the Chief Justice, appears to take a different tack. His Honour poses the question:[134]

> Is it enough for the purposes of s. 65E (2)(c) that the members attending the social gathering "share a common ... sporting ... interest" or must they at some time be engaged in activities directly related to such sporting interest

> such as were stated to occur during the early part of the evening in this case, namely, making club and team announcements; making arrangements for transport; ... discussions on matters relating to the club; club games and rugby generally?

His Honour superadds this requirement by means of a rather novel reading of the word "sharing" in s. 65E (2)(c):[135]

> In the circumstances of this case they must be gatherings of persons sharing a common sporting interest. It is not enough for the persons attending the gathering merely <u>to have</u> a common interest in, for example, rugby football. They must <u>share</u> that interest by activities at the gathering. This involves participating in activities which reflect that common interest: If a "social gathering" could be a gathering of persons who merely <u>have</u> a common interest but do not participate in it then it is hard to see how the sale or consumption of liquor could be incidental to a principal activity. The sale or consumption of liquor would then be itself the principal activity ...

With the utmost respect, this appears to be begging the question. The premise to be established is that "share" in this sense means more than "have", by requiring some external, communal, reference to the common interest, this cannot be supported by assuming "share" carries that meaning and then pointing back to the consequently inconsistent "have". The Chief Justice would have us close the bar to a team which had lost its game on that day and once back at the clubrooms understandably took no part in the award-making or post-mortems but rather preferred to head directly to the pool tables or gather round a guitar to sing the traditional rugby folk ballads, as such a group, although clearly <u>having</u> a common interest in the principal activity, were not at that time disposed to <u>sharing</u> that common interest in the terms of the Chief Justice's dichotomy.

Section 65E (2)(c) provides that the holding of social gatherings of persons sharing a common sporting interest would constitute an acceptable principal activity. The Commission saw after-match functions as constituting such a social gathering but only for a limited period of time until it could be expected to degenerate to the stage where drinking was the main activity, which was the Commission's perceived evil. The Chief Justice saw such a social gathering exist until it lost contact with the original sport, which was His Honour's perceived evil, despite the lack of explicit reference in para. (c) to the need for such contact (which is surely a factor in para. (a) of s. 65E (2) rather than para (c) anyway). Either way the clubs lost and the hours remained unacceptable.

Another cause of grievance with seasonal codes is their disentitlement to hours for the off-season. The argument put forward is that there is considerably more to club life than the club's main sporting activity. During the off-season, members still tend to gather at the clubrooms to take part in other activities, to perform administrative tasks, to maintain and upgrade the club premises and grounds, and in general to preserve club spirit. But as the licence can only inure with the existence of the principal activity the club's drinking facilities cannot be used.

Further difficulties arose during the playing season itself if no club games had been scheduled, or all games had been cancelled, on a particular day. Naturally players and other members still tended to gravitate towards the clubrooms to discuss and arrange club matters and to generally share their common interest in the sport. However s. 65E (7)(c) provided that liquor could only be sold on days when the premises were being used for the purpose of the principal activity, so that if the club had its licence in terms of s. 65E (2)(a) "taking part in any sporting ... activity" then clearly the bar should have remained closed. This was stressed in Re an Application by Weedons Country Club:136

> It must, however, be emphasised most strongly that in any event liquor can only be sold or supplied on those days

> on which the premises are used in good faith for the purposes of the principal activity. This is a statutory requirement. Whatever days or hours are authorised, the bar cannot be opened when, for example, in the case of golf clubs, the premises are not being used for the playing of golf on that day.

Even if the club had its principal activity for that day defined in terms of the disparaged s. 65E (2)(c), the Chief Justice's interpretation in Porirua R.F.C. linking the social gathering to the sport itself would also necessitate an abstemious evening.

The necessary link to the principal activity also resulted in a total denial of Friday hours to clubs whose principal sporting activity was conducted on a Saturday. As practices were not conducted on Friday evenings s. 65E (2)(a) could not be relied upon, and s. 65E (2)(c) was ruled out on the grounds of remoteness of purpose and on the premise that no good sportsman would wish to imbibe on the night before a game. This is yet another example of the focus being forced to be placed on the principal sporting activity rather than on the club's activity as a whole, the requirement that the sale of liquor be ancillary to a particular sporting activity means that a club is unable to sell liquor to its members at times when there is no discernible connection between their social activity and the club's major sporting activity.

D. Miscellaneous Grievances

A number of other problems in the operation of the licence also became apparant. First, the s. 65E (7)(d) condition, noted earlier in this paper,[137] that liquor be consumed only "by those participating in the principal activity and their invited[138] guests" means that no right to the supply of liquor is given by reason of membership alone, so that a long-standing club member may have to be excluded from the bar of his own club. Then the cost involved in obtaining a licence was often crippling, especially for small clubs, as the annual licence fee was fixed

at a flat rate of $150, and the cost, in some cases, of upgrading premises to the often rigorous standards required by health or fire authorities was prohibitive.

The inflexibility of the "principal activity" — oriented licence was threatened to be exposed by the comparatively recent development of the trend for the larger sports clubs in particular to diversify their activities and interests. The presupposition of the existence of a specific principal activity posed grave difficulties in prescribing hours suitable for such multi-purpose clubs. The requirement in s. 65E (4) that the organisation has existed for the purpose of the principal activity for a period of two years also suggested problems for such new principal activities.

VIII REFORM OF THE GENERAL ANCILLARY LICENCE - THE ELWORTHY COMMITTEE

As a result of the increasing discontent with the operation of the general ancillary licence Mr F L Rogers MP introduced a Private Member's Bill which proposed a number of amendments to the licence. However, it was felt that whatever problems existed could be better dealt with if the whole ambit of the licence was first subjected to close scrutiny by a special select committee. Consequently the Ancillary Licences and Other Matters Committee was constituted in 1979 under the chairmanship of Mr J H Elworthy MP.

The Committee's terms of reference were phrased both generally, to consider the circumstances in which clubs should be authorised to sell liquor and the adequacy of the law, and specifically, to consider the numerous problems, as previously discussed in this paper, upon which clubs had voiced concern.

The Committee met on twenty-four occasions, held two meetings with the Licensing Control Commission, heard forty-eight submissions made in person, and received and tabled forty-seven other

submissions.[139] As is clear from the Committee's highly lucid and well-informed report, the Committee made itself fully acquainted with the existing law, the needs of those to whom the law was addressed, and the shortcomings of the law in catering to those needs.

The Committee concluded that[140]

> overall, the actual intent of Parliament in 1976 is probably reflected in the current law, so far as it was intended to allow sports clubs limited liquor sales

but that, nevertheless[141]

> the general ancillary licence in its present form is not meeting the legitimate needs of sports clubs

The Committee noted at some length the problems caused by the linking of the licence, its hours and incidents, to a principal activity, and recommended[142]

> that the sale of liquor should not be ancillary to a particular sporting activity. Instead, we believe that a licence should enable a club to allow its members to drink on club premises on a social basis in circumstances arising out of their interest in a particular sport - but not necessarily related temporally to the playing of it. That is not to say that sports clubs should be granted, as of right, hours akin to those available to chartered clubs. The hours available to a sports club should be determined by the range and duration of the club activities pursued by its members.

The Committee ultimately recommended the fundamental change to which all of the indicia pointed : it recommended that the general ancillary licence be replaced by a club licence which, rather than stressing the principal activity of a club, would centre on the general activities of the club itself. And that the club licence be drafted in sufficiently wide terms to ensure its availability to meet the needs of organisations other than sports clubs.

Because it was essentially the club itself being authorised the Committee recommended that various extra safeguards against abuse be added into the legislation. The recommendations included provisions that an applicant club would have to prove it came within the proposed definition of "club" and that its activities came within the list of legitimate club activities, which list expanded upon the general scheme of the existing s. 65E (2). Further safeguards recommended were that the Commission be authorised to prescribe the maximum number of adult members that a club may have having regard to the club facilities and premises; that the club rules relating to membership be approved by the Commission; that all guests to the club be signed in by their host member and that an accurate visitor's book be kept; except in special circumstances no application for a club licence should be granted unless the Commission is satisfied that the club has existed for a period of at least two years; and that while a club licence should be readily available to an applicant club whose members engage in the requisite activities, the licence should be just as readily suspended or cancelled if the licensee offends against the Act.

The Committee stressed[143] that strict enforcement of the law as to club membership would be essential to prevent the undermining of the basic characteristic distinguishing a club from other establishments, that is club members' ability to associate privately with other persons whose company they have, by and large, chosen for themselves. It is often claimed that club members prefer to drink in the club, rather than in a hotel or tavern bar, because they both know their fellow members, and know that social restraints

and club discipline are operating to control their behaviour. Such control would be lost if a club were able to actively solicit members with a view to increasing their bar sales or were able to open the bar to all-comers and operate as a de facto tavern.

As regards the persons to whom liquor could be served, it was recommended that for the ordinary hours of its licence a sports club should be able to sell liquor to all its members and their guests irrespective of whether those persons have actively participated in a sporting activity. The Committee tackled the problem of under-age members by recommending that eighteen- and nineteen-year-olds may be supplied with liquor provided that they are being supervised by the manager of the club or by a nominated adult official of the club. It was recognised that this could be open to the criticism that young members of clubs are being afforded preferential treatment over other minors who are unable to drink in a hotel or tavern bar without a parent, but that perhaps this was not unreasonable in view of the group controls and element of responsible supervision present in the club situation. Although, this recommendation must be considered in light of the Committee's call to Parliament to reconsider the question of lowering the general drinking age to eighteen.

As to the hours which could be granted, the Committee affirmed the nature of the Commission's discretion to fix the hours for each licence but recommended that, except in special circumstances, the commencement time should not be fixed at a time earlier than 11 am, as compared with 9 am in the 1976 legislation, as 11 am is the normal hour of opening for hotels and taverns and there was not seen to be sufficient justification for making a general exemption in favour of all sports clubs. While acknowledging that, in light of the recommended considerable broadening of the categories in respect of which licensed hours could be sought, and the severing of the requirement that social activity is linked temporally with sporting activity, the Commission would grant hours, in appropriate cases, which were somewhat more extensive than those previously granted, the Committee was anxious to prevent the bar from becoming too important an aspect of club life. The

Committee therefore recommended that the Commission, in fixing hours, be required to have regard to the proportion of total club membership that is likely to take part in the club activities.

The tie to a principal activity was recommended to be retained in respect of Sunday hours, the Commission to be authorised to fix a time for the sale of liquor on a Sunday but that such time should only be in respect of some particular activity or activities as approved by the Commission, and that in no cases should the Commission fix a time for the commencement of Sunday sales earlier than thirty minutes before the commencement of the approved activity. The Committee, in light of the admitted "widespread acceptance throughout the community that Sunday is a day on which sporting and other recreational activity can properly be carried on", found to difficult to rationalise its different attitude to Sunday sales:[144]

> We recognise however that, for the time being at least, further liberalisation of Sunday trading would not find favour with the majority of people. Their objections may not spring from religious belief, but simply from a deeply held feeling that Sunday should be preserved as a day of quieter relaxation. Their views should be respected. Our other recommendations broaden the present ambit of the general ancillary licence. It is therefore necessary to impose special restrictions on the fixing of Sunday sales hours if the status quo in respect of Sundays is to be preserved.

Other relevant recommendations were:[145] that the initial fee payable for the first year of a club licence remain at $150 but that every subsequent renewal be calculated as a sum equal to 15% of purchases of liquor made for the club during the previous year, provided that in no case should the sum be less than $50 nor more than $300; that a separate proprietary club licence be

introduced, the incidents of which would be largely the same as the incidents of the club licence except that the acquisition of gain by the licensee not be prohibited; and that where the holder of a club licence seeks a minor variation of the hours fixed under its licence the Commission not be required to hold a public sitting.

Finally, the Committee, no doubt recognising the sensitivity of the whole liquor question, and perhaps feeling that recent change had been too rapid or that some kind of mandate should be obtained precedent to any further changes beyond those proposed, recommended that:[146]

> foremost consideration should be given to the needs and wishes of the community at large in determining whether any extension to the law permitting the sale of liquor by sports clubs is necessary or desirable.

IX THE CLUB LICENCE

A. The Legislative History

Again progress was remarkably swift, considering the usual legislative delays, with the Sale of Liquor Amendment Bill 1980 being introduced and having its first reading on 25th September of that year. The Hon. J K McLay, Minister of Justice, when introducing the club licence clauses in the Bill reiterated many of the shortcomings found with the operation of the general ancillary licence, and proceeded to outline the intended remedies to be included in the club licence legislation:[147]

> Essentially the select committee recommended that the general ancillary licence be replaced by a club licence to be available to both sporting and non-sporting organisations. The Commission would have the broad discretion to grant hours in respect of club activities, including purely social activities and general club

> club management, and all members would be able to use the bar during licensed hours .... The proposed club licence emphasises the purpose of the club, which, for example, may be both the sporting activity in which club members participate, and the private social intercourse, convenience and comfort of persons having a common sporting interest. However, before granting a club licence, the Commission must be satisfied that the club is a bona fide club that has existed for two or more years, that its club rules are appropriate, and that, if the licence is granted, the consumption of liquor will not be the principal attraction on the premises.

It became clear that Parliament was not prepared to merely rubber-stamp the Elworthy Committee's recommendations. Mr McLay spoke of the "general unease in the community about liberalisation of the law in favour of sports clubs to the extent that has been proposed by the select committee",[148] and in an effort to have the relevant issues properly aired before the Statutes Revision Committee he proposed the moving of a Supplementary Order Paper to the Bill. The intended effect of this Supplementary Order Paper was to provide an alternative whereby a sports club could not obtain more hours under a club licence, other than hours for the new purpose in respect of the administration and maintenance of the club, that it could at that time under a general ancillary licence. While at the same time, the club charter provisions of the principal Act would be amended to enable large sports clubs to obtain a charter if it could satisfy the statutory criteria and meet the standards that the Commission may impose. Mr McLay reiterated that the "purpose of the exercise is largely to ensure that an alternative is available to the select committee, and that the whole of the issue relating to sports club licences, and club licences in general is properly aired and discussed by the select committee."[149]

Clause 6 of the Bill proposed the introduction of the proprietary club licence in the terms proposed by the Elworthy Committee.[150] This clause was ultimately doomed to failure.

The Bill and the Supplementary Order Paper were referred to the Statutes Revision Committee, which reported back to the House recommending the Bill to proceed as amended and recommending that the Supplementary Order Paper not proceed.[151] The failure of Mr McLay's Supplementary Order Paper seems attributable at least in part to the campaign launched against it by sports clubs and by their various national associations. Apparently, prior to the second reading of the Bill, many Members of Parliament received telegrams urging them to oppose the Supplementary Order Paper.

The Statutes Revision Committee made a number of important modifications to the club licence proposal.[152] Firstly, the definition of "club" was extended to include persons sharing a common philanthropic interest, thus enabling service clubs to apply for a club licence if they operate on their own premises. Secondly, it was made clear that a club could have more than one purpose, and in particular, that the purpose of a sports club may include not only the sporting activity in which its members participate, but also the social intercourse, convenience, and comfort of its members, being persons who have a common sporting interest, and that both such purposes are to be taken into account by the Commission in fixing hours other than Sunday. With regard to Sunday hours, the formula in the Bill as introduced was deleted and replaced by a new subsection following more closely the wording applicable to general ancillary licences. This change was to bring the Bill back into line with the Elworthy Committee recommendation as to the preservation of the status quo in respect of Sunday hours.

The clauses relating to the proprietary club licence were recommended to be deleted, the Committee, by majority, being opposed to the creation of a new category of licence simply to meet the situation of one particular operation.

The Statutes Revision Committee was unable to agree upon any formula whereby eighteen- and nineteen-year-olds could drink in club bars under defined supervision. Although even if such a formula had been found it possibly would have met the same fate as did the proposed Part II of the Bill which related to lowering the general drinking age to eighteen.

The club licence provisions of the Bill attracted little or no discussion during the second reading; the Honourable Members being preoccupied with the other more contentious clauses in the Bill relating to the lowering of the drinking age, proprietary club licences, cafe licences, and Irish Coffees in unlicensed restaurants.[153]

The Sale of Liquor Amendment Act 1980 received the royal assent on the 15th January 1981, and as provided in s. 1(2) came into effect on the 1st April that year.

B. The Legislation

The club licence legislation follows closely the general scheme of the ancillary licence legislation and many of the provisions of the law relating to the general ancillary licence have been repeated in the club licence, so that much of the discussion as to the 1976 legislation is still pertinent to the club licence.

The 1980 Amendment substitutes a s. 67B for the old s. 65E; and enacts new ss. 117A, 117B and 117C in place of the old ss. 112M, 112N and 112o respectively, but apparently without repealing these three old sections.[154]

The club licence sections are annexed in full as the second appendix to this paper.

The basic point about the new club licence is that the emphasis is placed on the fact that the licensee is a club, and on the club's purposes. This is to be contrasted with the old general ancillary licence which focused on the use of the premises

for a specified "principal activity". As a general rule-of-thumb the new licence can be understood as substituting "purposes of the club" for "principal activity" wherever that phrase occurs.

1. Section 67B - the substance of the licence

Section 67B begins in subs. (1) by defining the word 'club' to mean

> any voluntary association of persons (whether incorporated or not) combined for promoting, otherwise than for gain, any one or more of the following purposes:
>
> (a) Any sporting or recreational activity in which club members participate:
>
> (b) The private social intercourse, convenience, and comfort of persons having -
> (i) A common occupational, educational, technical, sporting, recreational, philanthropic, or cultural interest; or
> (ii) A common cultural, ethnic, national, or regional background.

So a club, to be a 'club' for the purposes of the Act, must have one or more of these purposes. The sale of liquor is then authorised by subs. (2) during the time specified in the licence on any day when the premises are being used in good faith for any of the purposes of the club, as above, or for the maintaining, upgrading, managing, and administering of the club's premises and facilities. The fundamental differences from the old s. 65E are readily apparent; the club is automatically the licensee itself, sporting activities and the social side of club life both rate as authorised purposes of the club, the troublesome phrase "social gatherings" has been deleted in favour of the phrase "private social intercourse, convenience, and comfort of persons having a common X interest". This phrase has its

origins in the chartered club definition in s. 162 of the principal Act, and was used by the Commission in its decision in describing the activities of the Ohariu Valley Country Club.[155] The use of the word 'having' also pre-empts any argument along the lines of that by Davison C.J. in the Porirua case[156] based on the word "sharing".

Section 67B (3) is broadly equivalent to the old s. 65E (3) in placing additional constraints on the granting of the licence, although the old s. 65E (3)(a) as to satisfying the Commission that no other licence is available has not been re-enacted. The new wording of s. 67B (3)(a), formerly s. 65E (3)(b), is important as providing a major check on the granting of a licence.

> The consumption of liquor is not and will not become the predominant purpose for which persons attend or will attend the premises.

And the change in s. 67B (3)(c) is symptomatic of the differences in emphasis in the two licences. Section 65E (3)(d) used to begin, "During the times at which the principal activity will be carried on ...", whereas its equivalent, s. 67B (3)(c) now provides, "During the times at which the premises are open for the sale and supply of liquor ...". This is a pattern which recurs throughout the legislation. Subsections (4), (5) and (6) represent consequential changes to their equivalents in the old legislation, with subs. (4) requiring the club to have existed for at least two years, as compared with its predecessor which had required a club to have existed for the purposes of its principal activity for at least two years and which had caused problems with clubs adopting new or additional principal activities.

Subsection (7) contains the list of conditions to which the licence is subject. Paragraphs (a), (c), (f), (i) and (j) remain unchanged from their predeccessors and paras. (d) and (e) exemplify the new club licence concept by providing, respectively, that liquor shall be sold only on days on

which the premises are being used in good faith for any of the purposes of the club or for the ancillary purpose of maintaining, upgrading, managing and administering the club's premises and facilities, and that liquor shall be consumed on the premises only by members and their invited guests,[157] as opposed to the previous provision allowing sale to those persons participating in the principal activity and their invited guests.

Subsection (7) then adds new conditions, not present in the ancillary licence, but which provide for the safeguards recommended by the Elworthy Committee. Paragraph (b) makes it a condition that the consumption of liquor will not become the predominant purpose, para. (g) requires that the club continue to be conducted in good faith in accordance with rules approved by the Commission, and para. (h) requires that the number of members be within the limits as may be set by the Commission.

2. Section 117A - application, objections, hearings, etc

Section 117A relating to application for, reports, objections, hearing and issue of club licences remains the same, mutatis mutandis, as its predecessor s. 112M.

3. Section 117B - circumstances to be taken into account

Section 117B details the circumstances to be taken into account by the Commission in determining whether or not to grant an application. The section closely follows its antecedent, s. 112N. There is no equivalent to the old subs. (1)(a) requiring examination of the support to be given to the now defunct principal activity, and the rest of subs. (1) of the new section duplicates the old paras. (b), (c), (e), (f), (g) and the old subs. (2) merely substituting "purposes of the club" wherever "principal activity" formerly appeared. Section 117B (1)(c) represents a subtle change. The former para. (d) required the Commission to have regard to any prejudicial effect that the licensing of the premises

might have on residents in the immediate neighbourhood of the premises, whereas the new para. (c) requires regard to be had to any prejudicial effect on residents in the immediate neighbourhood that is likely to arise by reason only of the licensing of the premises.

4. Section 117C - the discretion as to hours

Section 117C relates to the Commission's discretion to fix the hours of sale. Subsection (1) repeats the broad discretion originally conferred by s. 112o (1). Subsection (2) contains the consequential changes relating club purposes and also effects the Elworthy Committee recommendation that the usual commencement time should not be earlier than 11 am. Subsections (3) and (4) remain as before. Subsection (3) contains the principal guideline for the Commission:

> in fixing times in respect of any day, the Commission shall have regard to the times at which the premises are or will be used on that day for the purposes of the club, or the maintaining, upgrading, managing, and administering of the clubs premises and facilities.

Subsection (6) deals with the problem of Sunday sales, and in doing so draws an important distinction between sports clubs and other clubs and also follows the Elworthy Committee's recommendation to perpetuate the principal activity link as a means of limiting Sunday sales. Subsection (6) provides:

> In the case of any club whose principal purpose is the promotion of any sporting or recreational activity in which club members participate, the Commission shall, in fixing a time in respect of any Sunday, -
>
> (a) Fix a time at which the sale and supply of liquor may commence not earlier than 30 minutes before the commencement of any such activity:
>
> (b) Fix a time at which the sale and supply of liquor shall cease, having

> regard to the time at which any such activity is likely to be concluded.

Initially, it seems unfair that only sports clubs should attract this restraint but when it is remembered that non-sports clubs generally do not have a principal activity as such, beyond mere social intercourse, and that sports clubs make up the vast bulk of licence holders and would provide the greatest potential for abuse of Sunday hour privileges, then the differentiation becomes understandable.

5. Sections 216, 217 (1B), and 218 - permits

The two permits remain available to clubs with the consequential amendments as contained in s. 40 of the 1980 Amendment Act. An interesting point must be noted in relation to the s. 216B extended hours permit as it now stands. Through an incomplete substitution,[158] as perpetrated by s. 40 (2) of the 1980 amendment, s. 216 B (1) now authorises

> ... the sale of liquor on the day specified in the permit, to members who are actively participating in any sporting, recreational, or other activity (within any of the purposes of the club) held on that day, and their invited guests and their invited guests.

Thus invited guests of invited guests may be sold liquor under a s. 216B permit with impunity.

6. Miscellaneous provisions

The law regarding club members who are minors remains basically unchanged, as before, minors of any age are entitled to be on club premises during the hours of the licence, but may only be supplied with and consume liquor if accompanied by an adult spouse, parent or guardian.

Section 58 (3) of the 1980 Amendment Act approves in principle the recommendation for a variable licence renewal fee. The initial fee remains at $150 but then a graduated scale, as opposed to the recommended percentage, based on

the club's liquor purchases fixes the annual renewal fee at a sum between $50 and $300. A formula for the calculation of the club's purchases is provided.

C. The Club Licence in Operation

The transitional provisions contained in the 1980 Amendment Act provided that all existing general ancillary licences would convert automatically to club licences on the 1st April 1981. After such conversion, the times during which liquor could be sold under the former licence will continue to apply to the new licence until the Commission has reviewed the particular licence. Section 60 (4) of the 1980 Amendment Act charges the Commission with the onerous task of reviewing, as soon as practicable, every newly converted club licence. So for the second time within two and a half years the Commission must assume its alternate personality of travelling road show in order to hear applications for increased hours. This review is taking some considerable time to complete as a significant number of clubs seek substantial changes to their present hours. Section 60 (6) mercifully provides that where clubs seek no substantial change in their hours or minimum standards and there are no objections, then the review may be determined on the papers without any party being required to attend.

The Commission commenced the review in Auckland and its first decision was eagerly awaited.

The main Auckland review decision was Re An Application by East Tamaki R.F.C. and others[159] involving applications by twenty-six seasonal clubs, that is, the clubs most dissatisfied with the hours granted under the general ancillary licence, for review pursuant to s. 60 (4) of the hours at which liquor could be sold. The Commission, fully realising that this decision would set the pattern for the future applications, heard extensive submissions from counsel for the clubs concerned and from counsel on behalf of the Hotel Association. The Commission then enunciated the principles upon which the applications would be considered:[160]

1. The Elworthy Report (on which the 1980 Amendment Act was based) could not be referred to for the purposes of interpreting the Act, except to the extent of keeping in mind the mischief which the 1980 Amendment was designed to remedy, so far as that was relevant.[161]

2. Nevertheless, looking only at the words of the Act, the Commission was "now faced with a liberalising enactment which was designed by Parliament to enable the Commission to be more liberal in its approach to the fixing of hours for club licences."

3. The liberalising approach did not justify fixing hours which would permit any breach of the vital constraint contained in s. 67B (3) (c), relating to access by non-members , and the existing distinction between a tavern licence and a club licence must be maintained.

4. Although it was clear that extending the hours at which liquor could be served under club licences would tend to harm in some degree the economic interests of hotels and taverns, such potential harm was not a matter which Parliament had directed the Commission to take account of, and therefore it must be ignored for the purpose of determining these applications.

The Commission discussed the formerly vexed question of Friday hours for such clubs and noted that under the general ancillary licence legislation such hours were refused as the Commission

could not relate the various Friday evening activities to an authorised principal activity and so regarded them as social activities,[162] despite some evidence that administrative activities brought persons to the premises at such times. But as the "principal activity" tie no longer exists in respect of Friday evenings (but still exists in respect of Sunday hours for sports clubs) the Commission felt bound to reconsider Friday hours, where sought, and where evidence established a proper basis for them, as such social activities can now be a legitimate club purpose in their own right. The emphasis in the Committee's decision in explaining the basis of the power to grant Friday hours was necessary to answer the vigorous opposition by the Trade on the grounds of the financial repercussions for hotels and taverns; Friday evening now being their most important trading period. The resultant three hours generally authorised for Friday evenings in respect of club members' purely social activity represents a nice balancing of conflicting interests, and in accord with the Elworthy Committee's recommendation that more extensive hours should be granted in appropriate cases, but not so as the bar becomes too important an aspect of club life.

The Commission again forestalled any allegations of it fettering its discretion in order to achieve consistency:[163]

> We have endeavoured to tailor hours to use of the premises for the purposes of the club as, of course, we are required to do by the legislation, but bearing in mind that the consumption of alcohol must not be or become the predominant purpose for persons being on the premises.

The final part of the East Tamaki decision was used by the Commission to explain its policies on a number of matters. For instance, it was stated that off-season hours have not been allowed where the only justification is socialising, as the Commission were of the view that the evidence suggested that the bond of common interest, as required by s. 67B (1)(b)(i), is then too tenuous.[164] Despite this attitude it is notable that a

number of the larger clubs reviewed in the East Tamaki decision received three hours once a week during the off-season, which presumably were seen as being for club purposes as opposed to mere socialising.

The standard scheme for the generally larger and better equipped winter sports clubs took the following form:

Period: 1 February to 31 October

(i) Purpose: The promotion of the game of rugby (including training and coaching) in which members participate, and the private social intercourse, convenience, and comfort of persons having a common interest in the game of rugby.
Hours: Monday to Friday (inclusive) 7 pm - 10 pm
Saturday and Public Holidays 3pm - 10 pm

(ii) Purpose: The promotion of the game of rugby in which club members participate.
Hours: A period of three hours from the termination of the game, training session, or seminar, but not later than 7 pm.

In addition to the change in hours, the Commission also changed aspects of the standard additional conditions[165] to fit in with the club licence concept. The principal changes involved: a new condition 7 placing the responsibility on the licensee or manager to ensure that the premises not be readily accessible to persons other than members of the club and their invited guests, and that a Visitors Book be kept and signed by all guests; an extension to condition 8 requiring that in the case of a club having more than one activity different membership cards for each activity be issued and carried by members; a new condition 9(b) providing for a period of one hour on occasions when the premises

are being used for the maintaining, upgrading, managing, or administering of the club's premises or facilities, other than on a Sunday; and a restatement in condition 11(a) of the terms of Sunday hours for rugby and similar clubs.

As to the matter of minimum and maximum membership for clubs, as provided for in s. 67B (7)(h), the Commission in the East Tamaki case[166] stated that the issue was yet to receive the consideration of the Commission.

The club licence seems to have finally put the general ancillary licence concept into a workable and acceptable form. The sports clubs are happy with what they have received, the safeguards within the licence must go a fair way to allay the fears of those concerned to see that the availability of liquor is kept under stringent control, and it appears that the Hotel Association will probably not be appealing against the effect of the East Tamaki and later decisions, although the Association will be campaigning to have the law strictly enforced in respect of clubs.

The club licence has only been in existence for a very short time, indeed the Commission is still fully involved with the licence review, but in that time few shortcomings or problem areas have been detected. One such shortcoming relates to the inclusion in s. 67B (1)(b)(i) of organisations of persons having a common philanthropic purpose. This provision was intended to make the club licence available to service clubs such as Rotary, Lions and Jaycee, but in practice the licence cannot be obtained by such organisations due to the fact that their constitutions preclude them from owning property and so they have no permanent premises of their own.

One prospective problem as to interpretation was raised, but not answered by the Commission in the East Tamaki decision.[167] It arises in respect of clubs which have developed various club activities besides the primary sporting activity of the club. The situation is well illustrated by football clubs where squash is played as an additional activity, particularly in the off-season.

As only a limited number of people can play or watch squash at any one time the question arises as to whether any club member can have access to liquor facilities licensed because of the requirements of squash adherents. It is clear that a club with a licence may only sell and dispose of liquor when the premises are being used in good faith for any purpose of the club. It is arguable as to whether the club is acting within its licence if it sells liquor during hours justified because of squash activity to members present on the premises for a purpose other than participation in squash, or for the private social intercourse, convenience, and comfort of persons having a common interest in squash. The answer to the problem may well lie in the contention that the purpose of such members may be no more than the consumption of liquor and thus contrary to the Act. But the question may be more apparent than real especially considering how difficult it would be to establish that such members were not in fact engaging in private intercourse, convenience and comfort associated with a common interest in squash, and enforcement would be practically impossible.

The importance of the constraint that the consumption of liquor shall not be the predominant purpose for which persons attend the premises was stressed, and employed, by the Commission in its decision in the first review of club licences in the Wellington region:[168]

> In this review we again have declined to grant licensed hours for activities, whether they be in the club's active season or in the off-period, which are of so casual a nature that the only justification put forward in evidence is socialising. In such circumstances we retain the view that the bond of common interest in the purposes of the club is too insubstantial. We encountered a bowling club which ... asked for licensed hours in the winter season to cater for members casually resorting to the club for no purpose other than a chat over a few

> drinks. It is apparent that some applicants act in the belief that such get-togethers are proper bases for applications for licensed hours but the plain fact is that the legislation dictates a contrary view. There may be a fine line between private social intercourse convenience and comfort of persons having a common interest in a sport or recreation, which is a legitimate purpose in terms of s. 67B (1) for persons attending premises, and the consumption of liquor which is not, at least as the predominant purpose for attending. Nonetheless it is a line which must be drawn and in our view the kind of socialising described does not qualify for licensed hours.

Thus forestalling any allegations or fears that the removal of the principal activity tie, and its replacement with the linking of the licence to club activities, would in effect render the club licence rootless.

X EPILOGUE

This paper commenced with an exposition of the development of a social need which was not being satisfied by the machinery and philosophy of the existing licensing system. The call for change became clear.

The social need was that of the multifarious legitimate and socially desirable clubs and organisations which wanted to complement their members' enjoyment of club activities by being able to provide for the sale and consumption of liquor by members and their guests on the club premises.

The legislature had been loath to acknowledge this need despite the recognition of the reality, and the general acceptability of the need, by Royal Commissions, Parliamentary Committees,

individual politicians, and judges.

Not only was the legislature disinclined to remedy the situation, but also the licensing legislation contained no form of licence which would have the flexibility needed to meet the wide-ranging needs of the diverse groups which would be seeking a licence. It had been suggested that the existing club charter could be expanded to cater for the new types of applicants, but it soon became clear that a new form of licence would have to be formulated as these prospective licensees shared a common feature which was fundamentally different from the principle behind the main body of liquor licences, and from the club charter as it had come to work in practice. That difference was that these organisations and clubs were not places to which people resorted for the principal purpose of drinking, these organisations and clubs existed primarily for other purposes and the consumption of alcohol was only to be ancillary to these purposes. This was a concept with which the licensing system had not long been familiar.

The pressures on the legislature to acknowledge this special need came to a head at a time when there were also pressures for a major reform and rationalisation of the whole licensing system. Liquor licensing had always been based on the concept of forestalling potential abuse by defining the types of licences as narrowly and rigidly as possible, with conditions and hours of each licence being strictly decreed by statute. This attitude led to a proliferation of narrow individual licences, many of which were very similar, and large gaps between the different licences leaving areas where basically similar activities could not be licensed.

The Justice Department had long decried this system of 'point-specific' licences and advocated a continuous spectrum of licensing based on the classification of the purpose for the licence - so that a limited number of broad category licences would be constituted each being based on the main purpose of the licence, for example; the general licence where consumption of alcohol is the main purpose for people attending the premises, the ancillary licence where drinking was only an adjunct to other activities, the off-sales licence, and a 'one-off' special functions licence. It was envisaged that within each broad licence the Licensing Control

Commission be empowered to tailor the terms and hours of the licence to the individual application. This form of licensing would represent a radical innovation and would involve the Commission in the exercise of a discretion quite different to any it had previously known.

These two themes; the need for a flexible licence to cover the sports club predicament, and the push for a new approach to licensing, came together in the 1976 enactment of the general ancillary licence.

The general ancillary licence solved the problem as to flexibility by adopting the concept propounded by the Justice Department of having a relatively broadly stated licence, for activities to which drinking could be accepted as being reasonably concomitant, and relying on the Commission in the exercise of its discretion to fashion hours and conditions of the licence to suit the activity and acceptable needs of each applicant.

This discretion, described as the heart of the licence, was executed cautiously by the Commission, basing their approach on conservative interpretations of central provisions of the statute. This caution in interpretation, and in the consequent granting of hours, can possibly be explained as a recoiling from the potential width of the discretion and the awareness by the Commission that it was exercising a function which had previously been the exclusive prerogative of Parliament.

Caution has also proved to be the byword in the Commission's reaction to the club licence legislation. For example, the purposes for which a licence can be granted include the now familiar "private social intercourse, convenience and comfort of persons having a common ... interest ..." - words which have been lifted directly from the definition for a club charter, and the principal Act allows up to eleven hours a day for such purposes in respect of chartered clubs, yet the Commission, pointing to the prohibition on drinking becoming the principal attraction, has granted considerably shorter hours for this same purpose in respect of club licences.

The general ancillary licence was experimental, and the Commission has clearly passed the test by its sensible and responsible, if somewhat cautious, use of its discretion, and the legislature by its enactment of the club licence in 1980, which removed some of the unanticipated constraints and inconsistencies in relation to the operation of the licence yet left the basic discretion of the Commission intact, must be seen to have condoned in principle the operation of the licence and the performance of the Commission.

The concept embodied in the ancillary licence, that of the broad licence coupled with the discretion, has been further entrenched by its adoption as the basis of the new comprehensive food and entertainment licence as enacted in 1980 along with the club licence.

The club licence and the food and entertainment licence represent the 'foot in the door' for the Justice Department's suggested licensing rationalisation model, but these licences are also about as far as the concept can go within the existing licensing structure. But that we may be on the threshold of the anticipated revolution in liquor licensing has been hinted at by the Minister of Justice, the Hon. J K McLay, who, in introducing the 1980 Amendment Act made mention of the proposed consolidation and reprint of the Sale of Liquor Act, and stated:[169]

> It will also be of considerable assistance to members when the House undertakes a fundamental review of the Sale of Liquor Act, which is a task that cannot be postponed much longer.

When this fundamental review finally comes, all of the indicia point to the conclusion that the Justice Department's broad-licence proposal will be vindicated and that the general ancillary licence will indeed prove to have been a portent heralding the coming-of-age of the liquor licensing system.

FOOTNOTES

1 See the quote from the Commission's 1981 report quoted in the text at n. 76.

2 The Ancillary Licences and Other Matters Select Committee 1979 Mr Elworthy - Chairman. House of Representatives. Appendix to the journals, vol. 9, 1979, I 15:5.

3 NZPD vol. 400, 1975, p. 3653

4 NZPD vol. 407, 1976, p. 3559

5 Unfortunately confidentiality prevents disclosure of the source.

6 Licensing Committee of the House of Representatives 1960. Mr R A Keeling - Chairman. House of Representatives. Appendix to the journals, vol. 4, 1960, I17:73.

7 Report of the Royal Commission of Inquiry into the Sale of Liquor in New Zealand 1974. Government Printer, Wellington, p. 157, para. 440 (a)

8 Op. cit. p. 5

9 (1977) 1 NZAR 363, 365-366.

10 Currently embodied in ss. 262, 263 Sale of Liquor Act 1962.

11 [1920] NZLR 837.

12 Ibid., see particularly Chapman J. at 864 and Sim J. at 865.

13 [1943] NZLR 246.

14 Ibid. p. 253.

15 (1943-44) 3 MCD 353.

16 [1943] NZLR 246, 251-252.

17 (1882) 8 QBD 373.

18 (1903) 23 NZLR 82.

19 [1943] NZLR 246, 252.

20 [1946] NZLR 468.

21 Ibid., p. 473.

22 [1930] GLR 87.

23 [1958] NZLR 388.

24 Ibid., p. 391.

25 Ibid., p. 394.

26 Section 65E (2)(c) Sale of Liquor Act 1962.

27 [1979] 2 NZLR 673; see text accompanying n. 130.

28 Unreported, Wellington, M. 403/78, Beattie J.

29 Section 4(1) Sale of Liquor Amendment Act 1980.

30 Section 267 of the 1908 Act; see text following n. 20.

31 [1930] GLR 87; see also Hungaria A.F.C. v Police [1970] NZLR 548.

32 Op. cit., p. 157, para. 440 (d).

33 L.C.C. Decision, 29 May 1963.

34 13 M.C.D. 473.

35 L.C.C. Decision, 12 July 1976.

36 Unreported, Auckland, M. 338/79, McMullin J., 10 December 1979.

37 Ibid., p. 12.

38 Ibid., p. 15.

39 Ibid., p. 9.

40 By s. 166 (2)(a) S.o.L. Act a chartered club must have not less than fifty members.

41 See generally Part V S.o.L. Act especially ss. 164, 165, 166, 168.

42 Op. cit., p. 75.

43 Op. cit., pp. 156-157, paras. 438-440.

44 Ibid., p. 153, para. 432.

45 See also text accompanying n. 84.

46 See the report of the Royal Commission, op. cit., p. 28.

47 Parliamentary Licensing Committee Dec 1921 Report
House of Representatives. Appendix to the journals, vol. 2, 1922, I 14.

48 Op. cit., pp. 236-237, paras. 1270-1274.

49 Ibid., p. 237, para. 1276.

50 Ibid., p. 237, para. 1281.

51 Ibid., pp. 344-345.

52 Ibid., p. 239, para. 1286.

53 Ibid., p. 421 (emphasis added).

54 See text between nn. 47 and 48.

55 Op. cit., p. 73.

56 Ibid., p. 74.

57 Idem.

58 See text accompanying n. 42.

59 Op. cit., p. 75.

60 Ibid., p. 74.

61 Op. cit., pp. 42-45.

62 Ibid., pp. 156-159.

63 Ibid., p. 156.

64 Ibid., p. 158.

65 Idem.; and Appendix IV to the report, condition (j).

66 Ibid., p. 118.

67 Idem.

68 Ibid., p. 119.

69 Ibid., pp. 120-121.

70 Unfortunately, again sources require confidentiality.

71 Op. cit., p. 38.

72 Idem.

73 Ibid., p. 39.

74 Idem., consideration (f).

75 Quoted and discussed in text at n. 74.

76 Annual Report of the Licensing Control Commission for the year ending 31 March 1981. House of Representatives. Appendix to the journals, 1981, E.8:2.

77 Licensing Act 1976 (Tas.) s. 9.

78 Op. cit., p. 42.

79 Idem.

80 Ibid., pp. 44-45.

81 This figure of 66 hours per week derives from a concession to hotels and taverns which are themselves normally only permitted to be open for eleven hours a day, six days a week.

82 See the discussion as to s. 65E (2)(c) in Part VII.

83 See the text at n. 70.

84 See the text following n. 43.

85 See Re Porirua R.F.C. [1979] 2 NZLR 673; and the text accompanying n. 133.

86 Again confidentially is required to protect sources.

87 NZPD vol. 400, pp. 3652-3653.

88 Ibid., p. 3656.

89 NZPD vol. 406, pp. 2895-2896.

90 This provision, now s. 67B (7)(c), formerly s. 65E (7)(b), has been criticised by many clubs as not allowing them to purchase beer direct from a brewery but forces them to buy it through a middleman hotel, wholesaler, etc. who then makes a considerable margin for merely writing out

an invoice. This has been justified as constituting the club licence holder's contribution to the traditional accommodation/liquor link.

91 NZPD vol. 407, p. 3559 (emphasis added).

92 Ibid., p. 3558.

93 Discussed in the text at n. 80.

94 See text between nn. 84 and 85.

95 See text preceding n. 86.

96 See generally Part VII.

97 Section 248 deals with unlawful games or lotteries, and gambling and betting on licensed premises.

98 The effect of the deletion being upheld by Beattie J. in Winton Holdings v L.C.C., op. cit., holding that the Commission had not erred in law in concluding as a matter of law that a club charter is neither a licence nor a permit for the purposes of s. 65E (3)(a).

99 See Part VII, D; and the remedy in Part IX, B, 1.

100 See the discussion of the fate of certain proprietary clubs under Part VII, B.

101 See supra n. 90.

102 Reproduced in (1977) 1 NZAR 198-200.

103 See text accompanying n. 106.

104 Decision no. 74/77; reported in 1 NZAR 193.

105 See the Tamaki decision, point 4, in the text following n. 136.

106 (1977) 1 NZAR 363, 364.

107 (1977) 1 NZAR 198.

108 See text accompanying n. 86.

109 See text accompanying n. 105.

110 See text accompanying n. 103.

111 Section 109 (1) of the S.o.L. Act.

112 For the Commission's stated policy as to the granting of these permits see the Annual Report of the Licensing Control Commission for the year ending 31 March 1978. House of Representatives. Appendix to the journals, 1978, E. 8:6.

113 Idem.

114 An occurrence which is not unknown, for example recently in Auckland's Eastern Suburbs.

115 See text accompanying n. 103.

116 Op. cit., p. 5.

117 See generally for typical hours granted for different types of clubs (1977) 1 NZAR 193, 194-198.

118 See in [1979] 2 NZLR 673; (1977) 1 NZAR 203, 206

119 Supra at n. 74.

120 Annual Report of the Licensing Control Commission for the year ending 31 March 1979, House of Representatives. Appendix to the journals, 1979, E. 8:3.

121 Annual Report of the Licensing Control Commission for the year ending 31 March 1977, House of Representatives. Appendix to the journals, 1977, E.8:3.

122 See text at n. 91.

123 Decision 119/77; reported in (1977) 1 NZAR 369.

124 Decision 75/77; reported in (1977) 1 NZAR 363.

125 For recent developments in the Hansard rule see Keith (1982) 12 VUWLR 299, 315 at n. 88.

126 (1977) 1 NZAR 363, 368.

127 Op. cit.; the Gordian knot was finally cut by means of the Winton Holdings Licensing Act 1981 no. 121.

128 Unreported, Auckland, M 1673/77, 30 October 1979, at pp. 23-24.

129 Op. cit., p. 5.

130 Decision no. 88/77; reported in (1977) 1 NZAR 203.

131 Discussed in the text at n. 23.

132 Op. cit., p. 206.

133 [1979] 2 NZLR 673.

134 Ibid., p. 683.

135 Ibid., p. 686-687.

136 Decision no. 138/77; reported in (1977) 1 NZAR 335, 336.

137 Discussed in the text between nn. 101 and 102.

138 As to observations as to the meaning and scope of the term "invited guests" see the Weedons decision op. cit., at p. 335.

139 Elworthy report, op. cit., p. 6.

140 Ibid., p. 9.

141 Idem.

142 Idem.

143 Ibid., p. 17.

144 Ibid., pp. 13-14.

145 For the summary of recommendations see ibid., pp. 47-50.

146 Ibid., p. 16.

147 NZPD, vol. 433, 1980, p. 3696 (emphasis added)

148 Idem.

149 Ibid., p. 3697.

150 Refer to text following n. 102.

151 NZPD, vol. 436, 1980, p. 5486.

152 Ibid., pp. 5772-5773.

153 Messrs McLay and Prebble seeing the deletion of the Irish Coffee clause as another anti-Irish move: ibid., pp. 5774-5775.

154 Section 7 of the 1980 Amendment, cif. s. 5 (12)(d) of the same Act.

155 (1977) 1 NZAR 363, 364 at para. 6.

156 Discussed in the text at n. 135.

157 Note that this applies to invited guests of members, not to visitors of the club itself, eg green fee players at a golf club.

158 This drafting error is one of the many existing in the 1980 Amendment Act. The 1981 Amendment Act, by s. 7, sought to correct several, but still a number remain eg. s. 10(1) which purports to omit the words "restaurant licence" when the words appearing in the Act are "restaurant licences"; s. 21 professing to deal with the renewal of ship licences in fact repeats a paragraph ten lines above it dealing with airport licences; and presumably the failure anywhere in the Act to repeal the redundant ss. 112M, 112N and 112o, as discussed in the text accompanying n. 154.

159 Decision no. 175/81; reported in 3 NZAR 45.

160 Ibid., p. 46.

161 But see n. 125 supra.

162 Op. cit., p. 55.

163 Refer to the discussion as to Friday hours in Part VII, C.

164 Op. cit., p. 55.

165 For discussion as to the standard additional conditions under the general ancillary licence see the text following n. 116.

166 Op. cit., p. 55.

167 Ibid., p. 53.

168 Decision no. 184/82, dated 20 Sept. 1982.

169 NZPD, vol. 433, 1980, p. 3697 (emphasis added).

"65E General ancillary licence—(1) Subject to the provisions of this section, a general ancillary licence shall authorise the licensee to sell and dispose of liquor for consumption on the premises described in the licence at any time during the time specified in the licence on any day when the premises are being used for any purpose (hereinafter referred to as the principal activity) specified in subsection (2) of this section.

(2) A general ancillary licence shall not be granted in respect of any premises unless those premises are used or are to be used regularly for any of the following purposes:

(a) Taking part in any sporting or recreational activity:

(b) Taking part in any live entertainment of a lawful character, other than the game commonly known as housie or any other activity the carrying on of which on any licensed premises is prohibited by section 248 of this Act:

(c) Holding social gatherings of persons sharing a common occupational, educational, technical, sporting, recreational, or cultural interest:

(d) Holding gatherings of cultural, ethnic, national, or regional associations.

(3) A general ancillary licence shall not be granted in respect of any premises unless, in the opinion of the Commission,—

(a) Because of the nature of the principal activity to be undertaken on the premises, or the days on which or the times at which the principal activity is to be undertaken on the premises, or any other relevant circumstances, the prospective licensee is not entitled under this Act to any other licence or to a permit that would authorise the sale and supply of liquor on the premises on the days on which and during the times at which the premises are or will be used for the purposes of the principal activity; and

(b) The supply and consumption of liquor on the premises will be incidental to the undertaking of the principal activity; and

(c) Proper facilities for the sale, disposal, and consumption of liquor are or will be available on the premises; and

(d) During the times at which the principal activity will be carried on the premises will not be readily accessible to persons other than those who are attending for the purpose of the principal activity.

(4) The Commission shall not grant an application for a general ancillary licence made by or on behalf of any club or association unless it is satisfied that the club or association has existed for the purposes of the principal activity for a period of at least 2 years: Provided that in any particular case the Commission may dispense with this requirement if it is satisfied that there are special circumstances that would justify such a dispensation.

(5) Where an application for a general ancillary licence is made by or on behalf of an unincorporated association of persons the Commission may, at its discretion, require the association, as a condition of the granting of the application, to become incorporated.

(6) The Commission shall not refuse to grant an application for a general ancillary licence by reason only of the fact that, if the application were granted, any person or persons might gain financially from the sale of liquor pursuant to the licence.

(7) A general ancillary licence shall be deemed to be issued subject to the following conditions:

(a) That the premises shall at all times conform to the minimum standards (if any) prescribed by the Commission in respect of premises of that class and to such minimum standards (if any) prescribed by the Commission in respect of those particular premises:

(b) That no liquor intended for sale or supply pursuant to the licence shall be purchased or acquired from any person who is not the holder of a hotelkeeper's or tavernkeeper's or wholesale or wine maker's or wine reseller's licence or a licensing Trust:

(c) That liquor shall be sold and supplied pursuant to the licence only on the days on which the premises are being used in good faith for the purpose of the principal activity:

(d) That liquor shall be consumed on the premises only by those persons who are participating in the principal activity and their invited guests:

(e) That every bottle or other container in which liquor is supplied in the premises, and every drinking vessel used for the

consumption of liquor, shall be cleared away immediately after the expiration of 30 minutes after the time at which the premises are to be closed for the sale of liquor—and to such other conditions as the Commission may in its discretion impose.

(8) Without limiting subsection (7) of this section, the Commission may, on granting any application for a general ancillary licence, impose as a condition of the licence that the holder shall keep such records, and file with the Commission such returns, relating to the purchase and sale of liquor pursuant to the licence as the Commission may specify.

"112M. Application for general ancillary licence, reports, objections, hearing, and issue of licence—The provisions of sections 107, 108, 109, 111, and 112 of this Act, so far as they are applicable and with the necessary modifications, shall apply with respect to every application for a general ancillary licence as if—

(a) References to a restaurant licence or to a restaurant were references to a general ancillary licence or to the premises to which the application relates:

(b) For the words 'carry on the restaurant business' in section 107(1) there were substituted the words 'sell and supply liquor'.

"112N. Circumstances to be taken into account—(1) In determining whether to grant any application for a general ancillary licence the Commission shall have regard to—

(a) The support given or likely to be given to the principal activity undertaken by the members of the club or association in whose name or on whose behalf the application is made, or, as the case may require, by the public in the area or areas from which persons resort or might reasonably be expected to resort to the premises or proposed premises for the purpose of the principal activity:

(b) The nature of the principal activity conducted or to be conducted on the premises, and the class or classes (including the age groups) of persons who participate or are likely to participate in that activity on the premises:

(c) The suitability of the premises or proposed premises and the facilities and services provided or to be provided on the premises for the purpose of the principal activity:

(d) Any prejudicial effect that the licensing of the premises might have on residents in the immediate neighbourhood of the premises:

(e) The character and reputation of the applicants and any convictions of the applicant for offences against this Act or the Licensing Act 1908:

(f) The public interest generally:

(g) Such other considerations as the Commission thinks fit to take into account.

(2) The Commission shall not be obliged to grant any application.

"112O. Commission to fix hours of sale—(1) Wherever the Commission grants any application for a general ancillary licence it shall fix the time or times at which the sale and supply of liquor under the licence may commence and the time or times at which it shall cease.

(2) The Commission shall not in any case fix a time earlier than 9 o'clock in the morning nor a time later than 10 o'clock in the evening of any day, unless it is satisfied in a particular case that, because of the nature of the employment in which the persons who use or are likely to use the premises are engaged, or because of the time or times at which the principal activity is usually conducted on the premises, or for any other special reasons, it should authorise the sale and supply of liquor under the licence at any other time or times on any day.

(3) Different times may be so fixed in respect of different periods of the year, or different days of every week or of any such period.

(4) Nothing in this section shall prevent the Commission from requiring the premises to be closed for the sale and supply of liquor on any day, or during any period or periods of the year.

(5) The Commission shall not, in any case to which subsection (1) of this section applies, fix the time at which the sale and supply of liquor may commence on any day earlier than 30 minutes before the commencement of the principal activity on that day.

(6) In fixing a time at which the sale and supply of liquor shall cease on any day the Commission shall have regard to the time at which the principal activity is to be concluded on that day.

(7) In any case to which this section applies, the Commission shall notify the Licensing Committee of the times fixed by it in accordance with this section, and the Chairman of the Licensing Committee shall ensure that the times so fixed are specified in the licence before it is issued."

"216B. Extended hours permit for holder of general ancillary licence—(1) Notwithstanding anything in this Act, any Magistrate may from time to time, in his discretion, on application made to him in the prescribed manner, grant to the holder of a general ancillary licence a permit authorising the holder thereof to sell and supply liquor, for consumption on the premises to which the general ancillary licence relates, at any time when the premises would otherwise be required to be closed for the sale of liquor on the day specified in the permit, to persons actively participating in the principal activity being conducted on the premises and their invited guests.

(2) A Magistrate shall not grant a permit under this section in respect of a particular day unless he is satisfied that, because of some special event, occasion or reason, the principal activity to be conducted on the premises on that day is likely to continue beyond the time at which it usually concludes.

(3) Every such permit shall be in the prescribed form, and shall be deemed to be issued subject to the condition that liquor shall not be sold or supplied or consumed after such an hour (whether before or after midnight) as the Magistrate may determine."

"217. Special permit for social gatherings—(1B)—Notwithstanding anything in this Act, the Commission may at any time, in its discretion, grant to the holder of a general ancillary licence a special permit authorising the holder thereof from time to time to sell and supply liquor, for consumption on the premises to which the general ancillary licence relates, after such time on any day as may be specified in the permit, to persons attending social gatherings of any kind or kinds specified in the permit. Any such permit may at any time be revoked by the Commission".

"218B(1)". AMDD by s. 18(2) of 1979 No. 125 and s. 44(a) and (b) of 1980 No. 168 to read:—

"(1) Notwithstanding anything in this Act, any District Court Judge may from time to time, in his discretion, on application made to him in the prescribed manner, grant to any person (not being the holder of the club licence), or to the secretary or other authorised officer or representative of any body of persons (whether incorporated or not), a permit authorising the supply and consumption of liquor in any premises in respect of which a club licence is in force, at any time on any day when the premises are required to be closed for the sale of liquor, by persons attending any social gathering, being a gathering to be held on a day specified in the permit, held or promoted by such person or body of persons as aforesaid."

"218B(4)". AMDD by s. 44(c) of 1980 No. 168 to read:—

"(4) Nothing in this section shall be deemed to authorise the holder of the club licence to sell or supply liquor for consumption pursuant to the permit."

"67B. (1) In this section the term 'club' means any voluntary association of persons (whether incorporated or not) combined for promoting, otherwise than for gain, any one or more of the following purposes:

"(a) Any sporting or recreational activity in which club members participate:

"(b) The private social intercourse, convenience, and comfort of persons having—

"(i) A common occupational, educational, technical, sporting, recreational, philanthropic, or cultural interest; or

"(ii) A common cultural, ethnic, national, or regional background.

"(2) Subject to the provisions of this section, a club licence shall authorise the club to sell and dispose of liquor for consumption on the premises described in the licence during the time specified in the licence on any day when the premises are being used in good faith for any of the purposes of the club, or the maintaining, upgrading, managing, and administering of the club's premises and facilities.

"(3) A club licence shall not be granted in respect of any premises unless, in the opinion of the Commission,—

"(a) The consumption of liquor is not and will not become the predominant purpose for which persons attend or will attend the premises:

"(b) Proper facilities for the sale, disposal, and consumption of liquor are or will be available on the premises:

"(c) During the times at which the premises are open for the sale and supply of liquor, the premises will not be readily accessible to persons other than members of the club and their invited guests.

"(4) Except as provided in subsection (5) of this section, the Commission shall not grant an application for a club licence unless it is satisfied that the application is made by or on behalf of a bona fide club that has existed for at least 2 years, and that the rules of the club are appropriate for the holder of a licence.

"(5) The Commission may, in any particular case, dispense with the requirement of subsection (4) of this section relating to the duration of the club's existence if it is satisfied that there are special circumstances that would justify such a dispensation.

"(6) Where an application for a club licence is made by or on behalf of an unincorporated association of persons, the Commission may in its discretion require the association, as a condition of the granting of the application, to become incorporated.

"(7) A club licence shall be deemed to be issued subject to the following conditions:

"(a) That the premises shall at all times conform to the minimum standards (if any) prescribed by the Commission in respect of premises of that class, and to such minimum standards (if any) prescribed by the Commission in respect of those particular premises:

"(b) That the consumption of liquor shall not become the predominant purpose for which persons attend the premises:

"(c) That no liquor intended for sale or supply pursuant to the licence shall be purchased or acquired from any person who is not the holder of a hotelkeeper's or tavernkeeper's or wholesale or wine maker's or wine reseller's licence or a licensing Trust:

"(d) That liquor shall be sold and supplied pursuant to the licence only on the days on which the premises are being used in good faith for any of the purposes of the club, or the maintaining, upgrading, managing, and administering of the club's premises and facilities:

"(e) That liquor shall be consumed on the premises only by members and their invited guests:

"(f) That every bottle or other container in which liquor is supplied on the premises, and every drinking vessel used for the consumption of liquor, shall be cleared away immediately after the expiration of 30 minutes after the time at which the premises are required to be closed for the sale of liquor:

"(g) That the club shall continue to be conducted in good faith as a club in accordance with rules for the time being approved by the Commission:

"(h) That the number of members shall be not less than the minimum, nor more than the maximum, for the time being approved by the Commission:

"(i) That the club shall keep such records, and file with the Commission such returns, relating to the purchase and sale of liquor pursuant to the licence as the Commission may specify:

"(j) Such other conditions as the Commission may in its discretion impose."

"117A. **Application for club licence, reports, objections, hearing, and issue of licence**—The provisions of sections 107, 108, 109, 111, and 112 of this Act, so far as they are applicable and with the necessary modifications, shall apply with respect to every application for a club licence as if references to an ancillary licence were references to a club licence.

"117B. **Circumstances to be taken into account**—(1) In determining whether or not to grant any application for a club licence, the Commission shall have regard to—

"(a) The nature of the purposes of the club, and the class or classes (including the age groups) of persons who are or are likely to become members of the club:

"(b) The suitability of the premises or proposed premises and the facilities and services provided or to be provided on the premises for the purposes of the club:

"(c) Any prejudicial effect on the residents in the immediate neighbourhood of the premises that is likely to arise by reason only of the licensing of the premises:

"(d) The character and reputation of the applicant, and any convictions of the applicant for offences against this Act or the Licensing Act 1908:

"(e) The public interest generally:

"(f) Such other considerations as the Commission thinks fit to take into account.

"(2) The Commission shall not be obliged to grant any application.

"117c. Commission to fix hours of sale—(1) Whenever the Commission grants any application for a club licence, it shall fix the time or times at which the sale and supply of liquor under the licence may commence and the time or times at which it shall cease.

"(2) The Commission shall not in any case fix a time for the commencement of the sale of liquor earlier than 11 o'clock in the morning nor a time for the cessation of the sale of liquor later than 10 o'clock in the evening of any day, unless it is satisfied in a particular case that, because of the nature of the employment in which members are engaged, or because of the time or times at which the premises of the club are normally used for the purposes of the club, or for any other special reasons, it should authorise the sale and supply of liquor under the licence at any other time or times on any day.

"(3) Different times may be so fixed in respect of different periods of the year, or different days of every week or of any such period.

"(4) Nothing in this section shall prevent the Commission from requiring the premises to be closed for the sale and supply of liquor on any day, or during any period or periods of the year.

"(5) Subject to subsection (6) of this section, in fixing times in respect of any day, the Commission shall have regard to the times at which the premises are or will be used on that day for the purposes of the club, or the maintaining, upgrading, managing, and administering of the club's premises and facilities.

"(6) In the case of any club whose principal purpose is the promotion of any sporting or recreational activity in which club members participate, the Commission shall, in fixing a time in respect of any Sunday,—

"(a) Fix a time at which the sale and supply of liquor may commence not earlier than 30 minutes before the commencement of any such activity:

"(b) Fix a time at which the sale and supply of liquor shall cease, having regard to the time at which any such activity is likely to be concluded.

"(7) In any case to which this section applies, the Commission shall notify the Licensing Committee of the times fixed by it in accordance with this section, and the Chairman of the Licensing Committee shall ensure that the times so fixed are specified in the licence before it is issued."