

Decision No. 60B [2014] 137

IN THE MATTER

of the Sale of Liquor Act 1989

AND

IN THE MATTER

of the Sale and Supply of Alcohol Act
2012

IN THE MATTER

of applications by **St Patrick's School Parents, Friends The Friends' Association of The Cathedral Grammar School and Cashmere Primary School** for a special licence pursuant to s.73 of the Sale of Liquor Act and s.142 of the Sale of Alcohol for the premises situated at, 57 Plylimon Road Christchurch, 26 Park Terrace Christchurch and 135 Hackthorne Road Christchurch respectively.

RESERVED DECISION OF THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Chairperson: P R Rogers

Members: Mr A Lawn and Mr R Wilson

HEARING

at Christchurch on the 4 February 2014

PRESENT:

Caroline Morrison and **Carolyn Moffat** – St Patrick's Friends & Family Association
Donna Sharpe and Karen Botting - Friends' Association of The Cathedral Grammar School
Ross Gilray - Cashmere Primary School
Jacquie Duncan - Principal Cashmere Primary School

Martin Ferguson - Senior Licensing Inspector
Constable Joy - NZ Police
Peter Shaw and Dr A Humphries – Canterbury District Health Board
Aimee Bryant - Committee Adviser
Vivienne Wilson - Christchurch City Council legal adviser

PROCEDURAL MATTERS

The parties to the proceeding were identified and advised that the applications would be heard together. Each applicant would be able to give evidence in support of their applications. This would be carried out in date order of when these applications were received.

INTRODUCTION

An explanation was given that the applicants would make their submission followed then by cross examination by the Reporting Agencies and that members of the Committee could ask questions at any time and that applicants would have the opportunity to sum up at the end of the hearing. The Criteria of the Act, section 142 was read to the hearing as to the matter we would consider in our decision.

THE HEARING

SUBMISSION on behalf of St Patrick's School

Caroline Morrison appeared as the applicant and on behalf of St Patrick's Parents' and Friends' Association. She presented a well prepared and thorough submission and the school principal was present. A fair organiser from the school would present her own submission and a letter of support from the chair of their Board of Trustees.

Ms Morrison went on to say she had four children attending St Patrick's School and is a practicing general practitioner, practicing under the name Doctor Caroline Ryan. She stated she had worked in hospitals in New Zealand and overseas and was fully aware of the detrimental medical and societal consequences of alcohol abuse.

It was stated that the St Patrick's Fair is held every two years and the event has been held since 1997 with never any cause for concern about inappropriate consumption of alcohol or instances of intoxication. The bar at this event which is to be called The Pimm's Tent and Bar, is not to be the focus of the event, but at the same time it is not hidden away out of sight. As a result children will be exposed to responsible adults partaking of a drink with their food in a convivial community setting in an appropriate manner.

The witness went on to say that is what she would call positive modelling. She said they are fully aware of the Object of the Sale and Supply of Alcohol Act and that the sale and supply of alcohol is to be undertaken safely and responsibly. She said they were aware that the second clause of the section relates to the minimization of harm caused by the excessive or inappropriate consumption of alcohol. It had been Ms Morrison's experience over the years with the St Patrick's School Fair that excessive and inappropriate consumption had never been an issue.

She pointed out that the Act does permit "the reasonable, moderate, social use of alcohol – otherwise it would be illegal....." She said that what they are proposing is entirely consistent with the intent of the Act, which is to allow the appropriate safe use of alcohol. She said in our school's Host Responsibility Policy they have followed the intent of the law and she then detailed a number of points in particular, that only beer and wine will be sold in plastic cups. The presence of the bar will not be advertised to avoid people turning up with the express interest of obtaining alcohol. The bar will be managed by the holder of a Manager's Certificate.

The Committee was asked by Peter Shaw if we were aware of the Dunedin Decision, this concerned the Medical Officer of Health's opposition to a Special Licence being granted for a school fair. The Committee replied that it was aware of the decision.

The Medical Officer of Health's opposition relates to the inappropriate consumption of alcohol in front of children and this contributes to the harms described in the Act. Ms Morrison stated that it was their view that there was no proven causal relationship between the responsible, appropriate consumption of alcohol in a safe community setting and the harms described in the Act..

She went on to say that as alcohol is part of our society, is it better to hide alcohol away and let children and adolescence discover it in inappropriate settings, or do we model it to younger people as responsible appropriate consumption?

She made the point that she considered it inappropriate for children to learn about alcohol through images widely available in the media. Such as, seeing drunken teenagers at "Christmas in the Park", or at the Rugby. She considered these examples need to be balanced by the type of responsible modelling shown at St Patrick's School Fair.

She believed it would be difficult to find a more fitting example of responsible, safe consumption of alcohol that fits within the framework of the law and its intention.

Permission was then given for Ms Morrison to read a letter from Andrew Devlin, Chair of the Board of Trustees. In brief the letter said St Patrick's is a small Catholic School year 1 – 8. In a recent review by the Education Review Office, the school received the highest rating available and the report noted that the Parent Family Association takes a leading role in fundraising in support of the school, and contributes to the provision of strong pastoral care for families requiring extra support. He went on to say he had no hesitation in supporting the application for a Special Licence.

CROSS EXAMINATION

Licensing Inspector

He enquired as to whom the applicant had discussed the application with and she replied individual police officers and the inspector.

Constable Joy - NZ Police

In cross examination by the police, the applicant said they would raise about \$1000 from alcohol sales out of a total of about \$20,000. Asked about what area would be licensed the reply was the fair takes over the whole school as it is a very small school. When asked if they could wander to other stalls with alcohol he replied potentially but in reality they don't, they stay near the food, the band and table. During the cross examination she was asked what would the applicant think if parents bought alcohol and then gave it to the children? She would not agree with that but said it was within the law, but that they could take control if that occurred. Finally the Police asked what is the school policy relating to alcohol other than events like this and she said it can be brought onto the premises for fundraising.

Peter Shaw – Canterbury District Health Board

He asked did the applicant accept that children's alcohol use is a learned behaviour and replied "it can be", asked where are they most likely to learn that from, the applicant replied their family if negative role modelling.

Asked if children with alcohol issues at home see school as a sanctuary, the applicant replied "I guess so". Put to the witness, that it may dent the sanctuary she replied yes. Mr Shaw asked if she was aware that 6 states and territories of Australia had policies restricting alcohol in schools. The applicant replied no, but if the lawmakers intended that when they changed the law they would have included it.

The Medical Officer of Health was then permitted to ask some questions of the applicant in response to a question from Dr Humphries about normalization of alcohol and could she guarantee that it would not reverse a lot of the good work done by the school? The applicant replied of course not but children seeing responsible adults who they respect acting appropriately around alcohol may balance this view.

Dr Humphries asked, was that showing that adults can have a good time without alcohol would that not be very positive role modelling? The applicants reply was that it occurred many times "that within our families they can have a good time without alcohol" and not everybody at the Fair will have a drink.

SUBMISSION in support of St Patrick's School:

Carolyn Moffat read a submission in support of the application; she is a member of the Board of Trustees.

She made the point that while children will be present they are not the sole focus of the event; it was incorrect to say that the event was aimed solely at children. It was in fact the adults they wished to attract, as they are more likely to have the money to spend.

She said to claim that the Pimms Tent and Bar was “likely to lead to the creation or reinforcement of an association in the minds of children attending that the provision of alcohol and parental drinking as being both inevitable and necessary behaviours” is a very difficult claim to prove. Her point was that it could be argued that educating people about the dangers of alcohol and role modelling behaviours could have a positive impact. She pointed out that you cannot deny that alcohol is a part of our community. We need to make individuals responsible for their behaviours. If we ban alcohol from events that children are attending does this mean we ban it from rugby and A&P Shows she believed it would be a unreasonable interpretation of the Act to deny St Patrick’s School a Special Licence.

SUBMISSION on behalf of Cathedral Grammar School:

The applicant, Donna Sharp spoke on behalf of the Friends’ Association of The Cathedral Grammar School. She is a nursing manager, married to a doctor.

She said the event was held at the beginning of every year for many years to bring together parents to meet and enjoy an evening outside with a variety of entertainment. The witness said the money raised was just to cover the cost of the event. Until a few years ago, it was a ‘bring your own’ (BYO) event.

Ms Sharp believed the event was an opportunity for a glass of wine or beer in a social manner showing children that alcohol consumed safely and responsibly is acceptable. She said they support the first applicant and by having a licence they felt they could take control of the event and ensure that there was no harm.

She said this is an event that is not about alcohol and there is entertainment for children. There had been many meetings at the school discussing the issues around alcohol.

CROSS EXAMINATION

Licensing Inspector

The inspector asked who had she spoken to about the application, she replied we met with the Inspector but had not gone to the Medical Officer of Health and had no formal contact with the Police. The inspector clarified that none of the other reporting agencies had spoken to her.

Police

The Police asked as to the attitude if a parent bought alcohol and gave it to a child. The witness replied that it would be poor parenting and if it did happen they would be approached.

The Police queried why you cannot ban alcohol from the event and the witness said if the application was declined then parents would bring alcohol anyway. The event is not for fundraising merely to cover the cost.

Asked who would be the Manager and it was replied that they did not have one and that she would be in charge. Asked if the school had a policy about alcohol and she replied that it was permissible with a licence and at appropriate times.

Peter Shaw – Canterbury District Health Board

Peter Shaw asked was the applicant aware of the changes to the law, and Object of the Act. And she replied she was. In cross examination it was adduced that while they hoped for 500 people last year they only had 380 attend, of those about 300 parents and 200 children.

Mr Shaw asked if the witness had read the Medical Officer of Health's Position Paper on alcohol. The witness replied that her husband had read it and that her feeling was that it was about the sensible use of alcohol and that the law did not say that you could not sell alcohol in the presence of children.

Asked if she accepted that this event is focused on children and the witness replied, no this event is focused on the community.

The witness was asked where were the tickets sold for the event? Ms Sharp replied, from the school office.

Dr Humphries then asked a question, and stated that alcohol is generally not considered a normal commodity, did the witness considered it to be a normal commodity, the witness replied no. The witness was asked do you understand why it is kept separate in supermarkets and she replied that there is abuse of alcohol in certain groups and it should not be in children's faces all the time.

The witness was asked did she not think that by not having alcohol at the event would be something worth role modelling to children and you can only have a good time if alcohol is drunk. She replied I think there are many young people who don't think that.

SUBMISSION on behalf of Cashmere Primary School

Ross Gilray spoke on behalf of the Cashmere Primary School, at short notice as the applicant who he explained was a Doctor, and had been called away.

Their submission is that this is twilight fair running from 4 – 7pm. He stated it was first and foremost to encourage the school community to come along, it was a fund raising event but they encourage other members of the community to come along and help them raise funds.

It was stated that there are a number of events and there is a lot of entertainment for children the main purpose was to raise funds and so they are really targeting the parents. They were to have an alcohol tent to serve wine and low alcohol beer, with no full strength beer. He described it as an artisan fair selling lots of fresh produce, homemade jams and the like.

Mr Gilray considered that he had been called in by the applicant Susan Dyson as he was an ex-police officer with experience within the liquor licensing section of the police and was well aware of the signs of intoxication. He said he was unaware that a holder of a manager's certificate was required and commented that may have been because their application was under the old Act. He said they would work with that and were more than willing to employ someone with those skills.

Mr Gilray stated the alcohol was not the major focus of the fair, that it was the coming together of the school community, its fellowship and about the raising of funds.

CROSS EXAMINATION

Licensing Inspector

He confirmed with the submitter that he did in fact mean low alcohol beer.

He pointed out that they could seek a waiver so that a manager does not need to be appointed. Mr Gilray indicated that he was seeking a waiver.

Inspector asked if he had been contacted by the Ministry of Health and he said no.

Police

The Constable queried the fact that on the application form "No" had been written alongside low alcohol beer. Witness replied that he was not aware of that but said categorically that only low alcohol beer would be available.

Replying to a question the witness said they expected about a 100 to attend with about half of them being children.

The witness was asked what area of the school ground would be supervised and was told the entire area. The police asked so they could buy and drink and wander round. Mr Gilray replied yes, that is what had happened previously.

Peter Shaw – Canterbury District Health Board

Mr Shaw queried the start time of the event as 4 pm had been mentioned and was told that they are seeking from 3pm but the official start time is 4pm.

Mr Shaw again canvassed the fact that a relatively small number of schools were seeking licenses to sell alcohol and why was Cashmere Primary different by having alcohol at the school fair. Mr Gilray suggested that the number of licenses did not reflect the actual number of schools who were selling alcohol at their fairs.

The witness was asked to comment on the Australian Council of Drugs Report which had been previously read to the hearing. He disagreed with it and said we should become positive role-models for our children.

Asked if the liberalisation of alcohol under the 1989 Act had any bearing on the increase in alcohol-related problem of the same period the witness replied, No, I'm talking about selling wine and low-alcohol beer at a short evening event.

Dr Humphries asked the question, would it not be valuable if your school could demonstrate positive role-modelling where your community could enjoy themselves without the presence of alcohol. The witness replied that the majority of events his children attend have no alcohol and he saw no need to detract from the school fair so they can see just another event without alcohol.

REPORTING AGENCIES

Licensing Inspector

The Inspector's Report and other documentation had been previously been supplied to the Committee. Mr Ferguson asked if you wished to address the committee and he replied he had nothing further he wished to add.

Police

The Police Report on the application was in the bundle of documents already in the possession of the Committee and Constable Joy advised there was nothing further he wished to add.

Peter Shaw – Canterbury District Health Board

The report in Opposition was in the bundle of documents already in the possession of the Committee together with a copy of the letter from the Medical Officer of Health to all schools.

Mr Shaw called Dr Humphries to the stand.

The Doctor read from his prepared submission advising he was the Medical Offices of Health for Canterbury. In December 2013 all the South Island Medical Officers of Health had issued a position statement regarding alcohol at child focused events which was promulgated to schools. This statement made it clear any applications for licenses to sell alcohol at schools would be opposed.

The Doctor then spoke about each application and concluded that his concern was that these events are clearly focused on children and being held on schools grounds.

The Doctor quoted section 4 of the Sale and Supply of Alcohol Act 2012 and said in the context of the current applications the provision of alcohol at these events would consist of "inappropriate consumption" and would contribute indirectly to the harms as set out in section 4 of the Act.

He said that he had taken the view that the provision of alcohol at the event is "inappropriate" and as such the nature of the event is likely to create or reinforce an association in the minds of children attending between the provision of alcohol and parental drinking as being ostensibly "normal". He was also of the view that the association would be reinforced by the drinking taking place on school premises at an event focused on children and families.

The Doctor commented that the three applications before the Committee are the first to proceed since the new legislation came into force. He focused on the key differences between the previous licensing regime and the new regime. In particular the substantially

revised Object of the new Act and that had the express intention of the Act that the legislation would be more restrictive.

He drew the Committee's attention to the changes in the legal status of school grounds in relation to consumption of alcohol in that they are now areas in which liquor bans can be applied by the local government. He stated that this was in recognition of concerns expressed over the "inappropriate" use of such grounds for drinking by young people.

Likewise he highlighted section 112 of the new act which limits how and where alcohol can be displayed in supermarkets as a desire by Parliament to limit exposure of alcohol to shoppers in general but in particular children.

The doctor touched on parts of the Law Commission report "Alcohol In Our Lives, Curbing the Harm". The doctor highlighted an evidentially based approach promoting safer drinking in young people developed in Australia by the National Health and Medical Research Council and the advice that the safest option is to delay the initiation of the drinking of alcohol as long as possible in young persons.

He stated that several Australian States and Territories had policies regarding alcohol consumption on school sites, in most instances there were restrictions or bans on alcohol consumption at schools, in circumstances similar to the ones being determined at this Hearing.

A review published by the Australian and New Zealand Journal of Psychiatry drew on the findings of a number of studies, their review sought to examine the effectiveness of parenting approaches in reducing the harm from drinking in young people. The authors concluded that a study showed "that parental modelling" (copying drinking behaviours by observing them in parents) was associated with starting drinking at a younger age.

The doctor stated that the evidence he had cited in his submission demonstrates a linkage between early and hazardous drinking and parental modelling drinking behaviours which he asserted qualified as indirect harm as described in the Act.

In closing the doctor said that avoiding the tragedies of alcohol abuse demanded a concerted and consistent approach to tackling behaviours which lead to such harm and that the new legislation supports such an approach.

He then spoke of the individual events with the following comments under each school :

Cathedral Grammar – a "back to school picnic" where the focus is on children and family fun on school premises – that does not fit easily with the provision of alcohol.

St Patrick's - where the focus is on children and family fun on school premises – does not sit easily with the provision of alcohol.

Cashmere Primary School – Twilight Fair, where the focus is on children and family fun on school premises – does not sit easily with the provision of alcohol.

Taken together I feel that there are sufficient grounds to draw the conclusion that the licensing of these events would lead to a measure of alcohol related harm through an

indirect mechanism. We believe a more precautionary approach to the provision of alcohol around young people is required and we request the applications be declined.

CROSS EXAMINATION

Mr Wilson - Committee member, asked Dr Humphries how the Medical Officer of Health's Position Paper came about. The doctor stated that at a regular meeting of the South Island Medical Officers of Health it was an agenda item that came up and as a result the position statement was drawn up, circulated and adopted.

In reply to a question that did you agree to present a united front, the reply was the meetings were to tease out different approaches but we feel it is important to have a consistent approach.

Mr Lawn - Committee Member, have you approached the Ministry of Education as a group, the reply was no we alerted all the schools of our position. The doctor was asked given the points you have raised wouldn't that have been a good idea and the doctor replied yes it would.

At paragraph 8 in your report you have quoted the Act, can you tell me where you can safely and responsibly consume alcohol? The doctor replied where supervised, generally in public where people can be controlled.

Mr Rogers – Chairperson, asked that if the words “inappropriate consumption” were not in the Act would that be something that would weaken your case, are you hanging your case on it being inappropriate consumption on school grounds. The doctor replied no, our submission is that it is inappropriate to normalise the consumption of alcohol in front of children.

Licensing Inspector

The inspector asked, was the intention of the Policy Statement sent to schools to ensure that schools who would apply for Special Licenses be aware of Medical Officer of Health's opposition. The doctor thought it was fair to give notice with not a lot of time between the Act coming into force and schools determining events for the year.

The doctor was asked what his role was under the Act in relation to Special Licenses, he replied that it was his view that they were there to minimise harm. The inspector asked that surely making an inquiry into an application would involve contacting the applicants and this was a blanket stance on Special Licenses involving schools and the doctor agreed this was correct.

There was cross examination concerning the changes in the new Act and the fact that many provisions of the old Act had been brought into the new Act. It was the doctor's view that the new Act was more restrictive because of the harm of alcohol abuse in the community. He went on to say that a mechanism had been provided in which the community could be involved and that is why they were having this hearing.

The inspector made the point that these were responsible parents and that in his view there was nothing illegal at what they were doing and it was their choice. The doctor replied that it was legal for them to apply.

The inspector asked the doctor what would inappropriate mean in relationship to the consumption of alcohol and the witness replied consumption that would lead to harm or indirect harm to members of our community including the children. The inspector then detailed a number of inappropriate forms of consuming alcohol such as 'yard glasses' etc. The doctor agreed that it was inappropriate in most circumstances. The inspector referred to the Joban decision (Otara-Papatoetoe Local Board v Joban Enterprises Ltd [2012] NZHC 1406: [2012] NZAR 717 (20 June 2012) which seeks a linkage (causal nexus) between harm and the particular event. The doctor disagreed and that certain types of events in themselves could cause indirect harm. The Committee noted the Joban decision was under the Sale of Liquor Act 1989 so the question is whether it continues to be good law under the Sale and Supply of Alcohol Act 2012, however no submission were received on this point.

The doctor when asked if he had produced any evidence that these applications were going to cause harm he replied, that the best modelling is to demonstrate to young people that an event can take place where alcohol is not consumed.

Constable Joy – Police

The constable asked the doctor did he believe that it would be inappropriate for parents to drink alcohol in front of children in a public place where most other parents were not consuming alcohol? He replied yes. The constable put to the doctor that the key issue is parental modelling, not the consumption of alcohol per se the doctor replied yes it is the normalisation of alcohol at a social family event.

Peter Shaw – Canterbury District Health Board

Mr Shaw asked his witness what the substantial difference was between the Object of the 2012 Act and the previous Act and the doctor replied harm minimisation is the key.

Mr Shaw sought leave to have the inspector called to the stand to formally present his Inspector's Report. Mr Shaw confirmed with the witness that his report on Cashmere Primary Schools and St Patrick's was substantially similar. Mr Ferguson replied that is correct. Mr Shaw then referred to an email sent by the witness to Mr Shaw when he called the Medical Officer of Health's opposition vexatious in relation to Cathedral Grammar. Asked what makes the opposition vexatious the inspector replied that section 141 of the Act requires the Medical Officer of Health to inquire into an application, the applicants have not been contacted, and you should have gone through the application but have just adopted a mandatory opposition. There was then further cross examination of Mr Ferguson approach to previous Special Licence applications.

SUMMING UP by applicants

St Patrick's Primary School

With the Chairperson's consent Carolyn Moffat summed up for the school as the applicant Caroline Morrison had to get back to her surgery. Ms Moffat disputed that the event was a child orientated event and it was very much adult orientated. She went onto say that the policies applying to Australian schools were irrelevant in New Zealand and there was no mention of the position in the United Kingdom where she had worked in schools who had bars in school. It was her belief to ban alcohol in circumstances where it could be positively modelled could be more harmful.

Cathedral Grammar

Donna Sharp the applicant said that the event was incredibly important to the school their event would not be inappropriate and excessive and she questioned what harm the event would cause.

Cashmere Primary School

Jacque Duncan School Principal was allowed by the chairperson to sum up for the school and she claimed they take their duty of care to the students as being very important and that she was struggling to think of an unintended harm that this event would cause to families and children. She subscribed to the view held by St Patrick's that positive modelling would bring about good.

That ended the hearing.

DECISION

All the evidence presented to the Committee was considered, and in particular the Committee had regard to the criteria listed in section 142 of the Sale and Supply of Alcohol Act 2012. (See extract below) We noted that as the application was lodged prior to the 18 December 2013 it was therefore an application under the Sale of Liquor Act 1989 but as a result of section 407 of the new Act the Medical Officer of Health may now report on Special Licenses.

Section 142 Criteria for issue of special licences:

In deciding whether to issue a special licence, the licensing committee concerned must have regard to the following matters:

- (a) the object of this Act:
- (b) the nature of the particular event for which the licence is sought and, in particular,—
 - (i) whether the applicant is engaged in, or proposes at the event to engage in, the sale of goods other than alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which goods; and
 - (ii) whether the applicant is engaged in, or proposes at the event to engage in, the provision of services other than those directly related to the sale of alcohol, low-alcohol refreshments, non-alcoholic refreshments, and food, and if so, which services:
- (c) the suitability of the applicant:

- (d) any relevant local alcohol policy:
- (e) whether (in its opinion) the amenity and good order of the locality would be likely to be reduced, by more than a minor extent, by the effects of the issue of the licence:
- (f) the days on which and the hours during which the applicant proposes to sell alcohol:
- (g) the design and layout of the premises concerned:
- (h) whether the applicant has appropriate systems, staff and training to comply with the law:
- (i) any areas of the premises that the applicant proposes should be designated as restricted areas or supervised areas:
- (j) any steps the applicant proposes to take to ensure that the requirements of this Act in relation to the sale and supply of alcohol to prohibited persons are observed:
- (k) the applicant's proposals relating to—
 - (i) the sale and supply of non-alcoholic drinks and food; and
 - (ii) the sale and supply of low-alcohol drinks; and
 - (iii) the provision of help with or information about alternative forms of transport from the premises:
- (l) any matters dealt with in any report from the Police, the Medical Officer of Health, or an inspector made under section s.141.

The Committee has considered the provision of section 142 and do not have any concerns about the other matters listed apart from the possibility of children being supplied with alcohol by a parent or guardian at these events. The Committee has no concerns over the suitability of each of the applicants.

The only issue to arise in evidence before the Committee concerned subsection (1) (a) – the Object of the Act as below:

The object of this Act is that—

- (a) the sale, supply, and consumption of alcohol should be undertaken safely and responsibly; and
 - (b) the harm caused by the excessive or inappropriate consumption of alcohol should be minimised.
- (2) For the purposes of subsection (1), the harm caused by the excessive or inappropriate consumption of alcohol includes—
- (a) any crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly or indirectly contributed to, by the excessive or inappropriate consumption of alcohol; and
 - (b) any harm to society generally or the community, directly or indirectly caused, or directly or indirectly contributed to, by any crime, damage, death, disease, disorderly behaviour, illness, or injury of a kind described in paragraph (a).

In particular the evidence from the Medical Officer of Health focused on the wording in subsection (2) (a) of section 4, “inappropriate consumption”, his contention was that as these events were focused on children, (para 7 of his submission) that under the

legislation there is an additional requirement to fulfil the Object of the Act in relation to the minimisation of harm associated with the inappropriate consumption of alcohol. It was his assertion that the provision of alcohol at these types of events would consist of “inappropriate consumption” and would contribute indirectly to the harms described in section 4.

The Medical Officer of Health pointed to two provisions of the new Act; restrictions around where alcohol can be displayed in supermarkets to limit the exposure particularly to children and the change in status of school grounds in relation to alcohol bans as recognition of concerns expressed by the community as the inappropriate use of such grounds for drinking by young people.

It was the Medical Officer of Health view was that the exposure to children at a school which the children may consider to be a sought of sanctuary was the incorrect “parental modelling” (copying drinking behaviours by observing them in parents) and this was associated with the start of drinking at a younger age. (Paragraph 25 of his submission.)

At Paragraph 29 of his submission the Medical Officer of Health stated that the evidence he had cited in his submission demonstrated a linkage between early and hazardous drinks and parental modelling behaviour which he asserted qualifies as indirect harm as described in the Sale and Supply of Alcohol Act. The Medical Officer of Health stated avoiding the tragedies of alcohol related harm demanded a concerted and consistent approach to tackling behaviours which lead to such harms and the new legislation supports such an approach.

The Medical Officer of Health proposed that “parental modelling” could lead to harmful behaviour in young people at a later date. The submission of St Patrick’s School and Cathedral Grammar disagreed with this approach and thought that positive parental modelling in a safe and caring environment was important to the development of young people and this modelling could include the exposure of young people to alcohol consumption in a responsible manner.

The Committee did not take this view and felt that the Medical Officer of Health had failed to “join the dots” and while he had referenced an Australian study he produced little evidence to convince the Committee of the link.

Given the submissions by the applicants the Medical Officer of Health did not convince the Committee of the linkage between parental modelling and alcohol harm, as set out in section 4 of the Act.

The Committee took the view that the intention of the section was not to have the words “inappropriate consumption” taken out of the section and used in isolation and that the words should be read in context. Section 5(1) of the Interpretation Act 1999 sets out that the meaning of an enactment must be ascertained from its text and in the light of its purpose.

The Liquor Inspector Mr Ferguson alluded to examples of inappropriate consumption when he cross examined the Medical Officer of Health asking did he know such terms as “laybacks” and ‘yard glasses”.

It is the Committee’s view that this was the intent of the section to connect the types of behaviours in section 4 (2) (a) and the harm to society generally to those behaviours caused by the excessive or inappropriate consumption of alcohol and that the harms should be of a type listed in subsection 4 (2) (a) namely; crime, damage, death, disease, disorderly behaviour, illness, or injury, directly or indirectly caused, or directly caused or indirectly contributed to, by the excessive or inappropriate consumption of alcohol. The Committee does not believe that incorrect or inappropriate “parental modelling” can be considered one of these harms.

The Committee turned their mind to the form letter that was sent by the Medical Officer of Health to all schools. There was evidence produced that this was a blanket letter and that section 114 (4) (a) of the Act that requires the Medical Officer of Health to inquire into the application was not complied with. The Committee considers that “inquire into” does not require the Medical Officer of Health to contact the applicant and it confirms that in its view the application was duly “inquired into”. The Medical Officer of Health produced a number copies of Australian policies concerning the controlling alcohol on school premises but admitted when asked by the Committee that he had not approached the Ministry of Education. It also appeared to the Committee there was no such policy in New Zealand. It is the Committee’s view that the concerns of the Medical Officer of Health would have been better to have been placed before the Ministry of Education as these are really policy issues for schools, as shown by the amount of documents the Medical Officer of Health produced from Australian states and territories.

It was noted by the Committee that the inspector did not oppose any of the applications and the Police did not opposed the applications as long as low-alcohol beer was supplied by Cashmere Primary School and it transpired in evidence that they would only be supplying low-alcohol beer and wine so effectively this opposition was withdrawn.

One of the concerns raised by the Police was the designation of the school grounds and the possibility of children being supplied with alcohol by their parent or guardian, which would be lawful under an undesignated or supervised designation. The applicants thought that this was inappropriate and if this was to happen the parents would be approached.

CONCLUSION

The Committee has given these matters considerable thought as a result of the issues raised. As a result, it is the decision of the Committee to grant these applications with two additional conditions. The first condition is as a result of the concerns of the Police that alcohol may be supplied or consumed by persons under the age of 18 years in the school grounds.

1. That no person under the age of 18 years can be supplied or allowed to consume alcohol within the school grounds and;
2. That all drinking containers are to be of plastic.

A Waiver is issued pursuant to section 208 of the Act in respect of The Friends' Association of The Cathedral Grammar and Cashmere Primary School In that they are not required to have a holder of a Manager's Certificate on-site.

DATED at Christchurch this 10th day of February 2014.

A handwritten signature in blue ink, appearing to read 'P R Rogers', is written over a light blue horizontal line.

P R Rogers

Chairperson

CHRISTCHURCH DISTRICT LICENSING COMMITTEE

