Decision No. PH 825/2004

IN THE MATTER	of the Sale of Liquor Act 1989
AND	
IN THE MATTER	of an application pursuant to s.132 of the Act for the variation of of on-licence number 069/ON/28/2002 issued to **CLARY 2002 LIMITED** in respect of premises situated at 28 MacLaggan Street, Dunedin, known as "The Clarendon Hotel".
BETWEEN	**MARTIN CLAUD HEPBURN** (Police Officer of Dunedin) Applicant
AND	**CLARY 2002 LIMITED** Respondent

BEFORE THE LIQUOR LICENSING AUTHORITY

Chairman: District Court Judge E W Unwin
Member: Mr J C Crookston

HEARING at DUNEDIN on 18 November 2004

APPEARANCES

Sergeant M C Hepburn – NZ Police – applicant
Mr G J De Courcy – for respondent
Mr A S Mole – Dunedin District Licensing Agency Inspector – to assist

RESERVED DECISION OF THE AUTHORITY

Introduction

[1] This is an application to vary the conditions of a tavern style on-licence issued in respect of licensed premises situated at 28 MacLaggan Street, Dunedin, known as "The Clarendon Hotel" (hereafter called the hotel). The licence is held by Clary 2002 Limited which is a private family company. The Police sought to change the trading hours from a 24-hour seven days a week regime, to an opening hour of 7.00 am and

a closing hour of 3.00 am the following day. The application was filed by the Police on or about 14 September 2004

[2] The grounds for the application to vary the on-licence were:

> *That the licensed premises had been conducted in breach of s.166 (Sale or supply of liquor to intoxicated person), and s.167 (Allowing person to become intoxicated).*

[3] The particulars relied upon to support the application, referred to Last Drink Survey data recorded since June 2002. The Police identified the hotel as being among the worst performing premises in Dunedin in respect of drivers apprehended with excess breath or blood alcohol levels. The thrust of the application was that the hotel had featured 31 times on the Last Drink Survey since June 2002. It was claimed that at least 15 of the drivers were detected driving during daylight hours between 7.00 am and midday. On the other hand, the application recorded that the hotel had worked very hard to rectify the problem.

[4] In responding to the allegations, counsel for the hotel, Mr G J De Courcy, submitted that the Police evidence of Last Drink Survey data was insufficient to establish that the hotel had served the patrons knowing that they were intoxicated. Alternatively, he argued that there was no link in the evidence chain to show that the hotel had allowed the patrons to become intoxicated on the premises.

[5] In addition, Mr De Courcy submitted that since the filing of the application, the hotel had voluntarily reduced its trading hours, and had therefore satisfied the Police concerns. Finally, he argued that because the factual basis for the allegations was based on what had been reported by allegedly intoxicated patrons, there was room for doubt about the accuracy of the information which had been supplied in this way.

The Applicant's Evidence

[6] Recognising the low probative value placed on Last Drink Survey data in isolation, the Police briefed 11 Constables to give evidence linking certain drivers more directly to the hotel. Mr De Courcy indicated that he had no wish to cross-examine the witnesses, and their briefs were accordingly accepted without the witnesses being called. Their evidence may be summarised as follows.

[7] On 21 March 2003 at 2.30 am, a female was observed stumbling out of the hotel. She then drove off. She was subsequently convicted for driving with an excess breath alcohol content of 1165 micrograms of alcohol per litre of breath. She told the Police that the last place she had been drinking was "The Clarendon Hotel".

[8] On 19 June 2003 at 1.00 am a car was seen pulling away from the front of the hotel. The driver was duly processed. His reading was 790 micrograms of alcohol per litre of breath. He chose to have a blood sample taken. His blood alcohol level was 199 milligrams of alcohol per 100 millilitres of blood. He told the Constable that the last place he had been drinking was "The Clarendon Hotel".

[9] On 29 August 2003 at 8.30 am, a female was seen leaving the hotel and driving off. She was stopped and processed, and subsequently convicted of driving with an excess breath alcohol content of 664 micrograms of alcohol per litre of breath. She

advised the Police that the last place she had been drinking was “The Clarendon Hotel”. She said that she had drunk at least a dozen bottles.

[10] On 30 November 2003, at 2.45 am a vehicle was seen to pull away from the front of the hotel. The male driver was stopped and processed. He was convicted for driving with an excess breath alcohol content of 1042 micrograms of alcohol per litre of breath. He was also convicted of assaulting the Police, and resisting arrest, and refusing to accompany. He was sentenced to six months imprisonment. He told the Police that the last place he had drunk was “The Clarendon Hotel”

[11] On 20 December 2003 at 3.12 am, the lights of a car parked outside the hotel were seen to turn on and the car pull away. The driver was stopped and produced a level of 677 micrograms of alcohol per litre of breath. Once again the driver acknowledged that he had had his last drink at “The Clarendon Hotel”.

[12] On 24 December 2003 at about 4.00 am, a car was seen to pull away from the hotel. The driver told the Constable that she had not been drinking and had called at the hotel to pick up a friend. She subsequently produced an alcohol level of 618 micrograms of alcohol per litre of breath. She subsequently admitted to drinking rum at “The Clarendon Hotel”.

[13] On 7 February 2004 at about 8.00 am a male was seen leaving the hotel and getting into a car. He was subsequently stopped and processed. He was convicted of driving with a breath alcohol level of 704 micrograms of alcohol per litre of breath. He told the Constable that his last place of drink was “The Clarendon Hotel”.

[14] On 27 March 2004 at 8.15 am, a male was seen leaving the hotel and getting into a car and driving off. He was stopped and processed. As a consequence he was convicted of driving with an excess breath alcohol content of 731 micrograms of alcohol per litre of breath. He told the Police that his last place of drink was “The Clarendon Hotel” and that he had drunk “heaps”.

[15] On 18 April 2004 at 5.32 am a male was seen to leave the hotel and get into a car and drive off. After he was stopped he produced a breath alcohol level of 601 micrograms of alcohol per litre of breath. He was subsequently convicted. He told the Constable that his last drink was consumed at “The Clarendon Hotel”.

[16] On 1 May 2004 at 7.30 am a male driver was seen driving in MacLaggan Street. He was stopped and processed. He was convicted for driving with an excess breath alcohol content of 637 micrograms of alcohol per litre of breath. He said that his last place of drink was “The Clarendon Hotel”.

[17] On 6 June 2004 at 7.13 am two persons were seen to leave the hotel. The vehicle which one of them was driving, was stopped. The female driver was breath tested and produced a level of 499 micrograms of alcohol per litre of breath. She said that her last place for drinking was “The Clarendon Hotel”.

[18] On 11 July 2004 at about 8.00 am, a female was seen leaving the hotel and getting into a motor car. The car was stopped and the driver was subsequently convicted of driving with an excess breath alcohol content of 586 micrograms of alcohol per litre of breath as well as driving while disqualified. She advised the Police that her last drink was at “The Clarendon Hotel”.

[19] On 8 August 2004 at about 8.00 am, a vehicle was seen stopped at the lights about 150 metres from the hotel. According to the Constable, the driver could only have come from the hotel. He was subsequently processed and convicted of driving with a level of 751 micrograms of alcohol per litre of breath. He advised the Police that the last place he had been drinking was "The Clarendon Hotel" and that he had consumed about four "stubbies" of beer.

[20] On 15 August 2004 at 7.35 am, a female was seen leaving the hotel and getting into a car. She was stopped and breath tested. Subsequently she was convicted of driving with an excessive breath alcohol content of 625 micrograms of alcohol per litre of breath. She acknowledged that she had consumed two jugs of beer at "The Clarendon Hotel".

[21] Sergeant Martin Claud Hepburn has the responsibility for liquor licensing matters in the Dunedin area. He gave evidence that one of the methods of monitoring licensed premises performance in Dunedin was the Last Drink Survey. He produced an analysis of the survey data. The survey showed that 31 persons had been apprehended between 13 June 2002 and 15 August 2004. 15 of those persons had been apprehended between 7.00 am and midday, a percentage of almost 50%. He stated that from a Police perspective, the greatest concern was the preponderance of drinking drivers after 7.00 am.

[22] The Sergeant said that by comparison with other hotels in the area, the hotel was well ahead in terms of driving after drinking during daylight hours. Compared with its 15 apprehensions between 7.00 am and midday, the next worst performer during those daytime hours had recorded five prosecutions over the same period. On the other hand, the graphs showed that there were three other licensed premises with total prosecutions of between 28 and 32. In other words, in terms of total prosecutions over the two-year period, the hotel was in the top four bracket.

[23] Sergeant Hepburn gave evidence of the first meeting on 26 June 2003 between representatives of the hotel and the Dunedin Alcohol Partnership consisting of the Police, Public Health, City Council and the District Licensing Agency. The people at the meeting discussed the Last Drink Survey data over the previous 12 months. On that occasion it was noted that of the 12 prosecutions, three had breath/alcohol levels of over 800, and five had breath/alcohol levels of over 1000.

[24] The Sergeant reported that the licensee had acknowledged the Police concerns and in addition to installing security videos, they intended to put the bar staff through the QSM Controllers course. At each meeting he raised the issue of the 24-hour licence. Effectively, the hotel was placed on notice which was to continue for nearly 18 months.

[25] The evidence was that a further regulatory meeting was held on 15 December 2003. The meeting was advised of the eight prosecutions during the previous six months. Of these, five were over 600, three were over 800, and one was over 1000. The Sergeant gave evidence that the licensee had reported that the bar staff had attended the course aimed at better recognising intoxicated patrons. A lockout system was suggested. At the meeting a warning was given that an application to vary the hours could be filed as a means of reducing liquor abuse.

[26] The third such meeting was held on 8 September 2004, a week or so before the application was filed. The licensee was advised that the agencies would be seeking

a variation to the hours of trading to reduce the incidence of highly intoxicated drivers mixing with unsuspecting members of the public between 7.00 am and midday.

[27] On 15 September 2004 the licensee advised the Sergeant that the hotel had voluntarily agreed to close at 6.00 am to assess the effect earlier closing would have on the Last Drink Survey data. Since that time no drivers have been apprehended who have given the hotel as their last place of consumption. The Sergeant acknowledged that the management of the hotel had taken the issue very seriously, and tried very hard to get things right. He described the licensee as a good operator.

[28] On the other hand, the Sergeant had observed a male in the Police cells at 8.00 am on 5 November 2004. In his opinion the person was affected by alcohol. He had forced entry into his ex-partner's home at about 7.00 am that morning and assaulted her. He acknowledged to the Sergeant that he had been drinking at "The Clarendon Hotel" all night, and had left when the hotel closed.

[29] In cross-examination, Sergeant Hepburn gave his opinion that any person with a breath/alcohol level of over 800 micrograms of alcohol per litre of breath would show signs of intoxication and would be considered to be intoxicated. He noted that any level over 400 micrograms of alcohol per litre of breath was by law, considered to impair the person from driving safely. He took the view that any person with a level of over 600 micrograms of alcohol per litre of breath, was intoxicated. On the other hand he also accepted that personal tolerance level would vary, and that it was not possible to say with absolute certainty, whether a patron seen leaving the hotel had not been refused service.

[30] In summary, the Police argument is that the link between the impaired drivers and the hotel as evidenced from the data in the Last Drinks Survey, had been confirmed by the eye witness accounts referred to above. In particular, the Police were concerned about the danger time between 7.00 am and midday when members of the public would not expect to be confronted by a drunk driver. It was the applicant's belief that a reduction in trading hours was necessary to remove intoxicated drivers from the danger time period, and also reduce the time period that patrons can become intoxicated.

The Respondent's Evidence

[31] The evidence on the respondent's behalf was given by Ms Tonia Marie Waugh who up until recently has been the bar manager for the hotel. She confirmed that members of her family had purchased the hotel in 2000. In 2002 the company had moved to operate 23 hours a day between 10.00 am and 9.00 am the following day. She stated that this decision had been taken to satisfy a clear market for shift workers who finished work between 3.00 am and 7.00 am. She supplied a list of nearly 30 businesses and vocations from which such late morning patrons were drawn.

[32] From late 2002, the evidence was that the bar had been closed at 5.00 am. This experiment was met with mixed success in that a number of shift workers kept arriving later than 5.00 am and patrons from other licensed premises continued to seek liquor after the premises had closed. The experiment was abandoned in early 2004. During that period of about 12 months, only one person was convicted for breaching the drink driving laws between the hours of 7.00 am and midday. On that basis it seems clear that limiting the hours of trade can have an impact on the

incidence of drinking and driving, in the period of time following the time when the premises have been closed.

[33] Ms Waugh advised that in March 2004, she and members of the family had made a decision that the hotel was to be sold. She confirmed that the licensee had tried to address the Police concerns. It was the hotel's view that the problem of excess drinking and then driving was not caused by the shift workers, but by those who had stayed for a sustained period, or who had come from other licensed venues.

[34] Ms Waugh detailed the initiatives undertaken by the hotel following the regulatory meetings. They provide taxi chits for patrons who seem intent on driving home. They ask for car keys, and if these are not surrendered then service is stopped. They ban patrons for two months if they have been caught drinking and driving. Since September signs have been erected to this effect.

[35] Ms Waugh gave evidence that in mid-September 2004, the company had decided to voluntarily close the premises at 6.00 am. She believed that this action had addressed the main concerns of the Police. Ms Waugh stated that whatever the outcome of the present application, they would not be returning to the previous closing hour of 9.00 am.

[36] She indicated that the hotel's preferred position was to close the doors at 6.00 am, but to allow shift workers and special patrons access until 8.00 am. She said that such patrons would be able to gain admittance by the use of a form of club card. Ms Waugh contended that the hotel's turnover (including revenue from gaming machines) had dropped following the change in hours. This had been especially difficult for the owners as it happened when the hotel was being marketed for sale. On the other hand, it was argued that this showed that the owners were genuinely co-operating.

[37] The evidence was that during the later trading morning hours the main part of the hotel was shut, and management utilised a small upstairs bar with access to gaming machines. This was part of the process of controlling sales to intoxicated persons. The evidence was that this process is supplemented by a manager's discretion to control the sales of jugs, large bottles and shots from 2.00 am or 3.00 am. Ms Waugh stated that in an effort to address Police concerns, security staff were employed throughout the night until the hotel closed. Once members of the staff had completed the Quality Service Management training, the decision was made to put the security people through the course as well.

[38] Ms Waugh also confirmed that on two occasions, patrons who were obviously intoxicated were refused service. The staff then attempted to discourage each of them from driving away from the hotel, and when they ignored such advice, the Police had been called. Subsequently they found that the persons involved had been included in the Last Drinks Survey.

[39] Ms Waugh made the point that alcohol catches up with people quite quickly. When patrons arrive from other hotels, they may show no obvious signs of intoxication, and it is therefore difficult to assess how much they have had to drink. She noted that patrons could buy drinks for others. Patrons can also be in the gaming room area where they are less likely to be noticed, although the majority of the gambling patrons drink coffee only.

[40] In summary, the respondent's case was that the hotel had taken its responsibilities seriously and co-operated with the concerns raised by Dunedin Alcohol Partnership by voluntarily reducing the hours of trading. In this regard it was noted that there have been no prosecutions in the last three months. Mr G De Courcy also argued that there had been no proof of any specific breach of the Act thereby giving rise to a variation order being made. He submitted that no inference could reasonably be drawn from the proven facts. He argued that the survey results were inherently unreliable.

The Authority's Decision and Reasons

[41] There are two main issues to be determined. One, whether the Police have proved that the licensed premises have been conducted in beach of ss.166 and 167 of the Act. Two, if so, whether it is desirable to vary the hours of trading.

[42] In assessing the weight of the evidence, we are conscious that the allegations must be proved on the balance of probabilities. In respect of allegations of serving intoxicated patrons or allowing them to remain, the standard of proof required can be elusive. Not only is the assessment of intoxication a subjective test, but there are elements of 'mens rea' in each offence.

[43] In other decisions we have referred to a 'best practice' procedure whereby any patron who is found to be intoxicated in the bar is spoken to. Evidence is given of any of the normal characteristics of intoxication such as the loss of physical or mental faculties. The person is then taken outside where his or her state of intoxication can then be confirmed or otherwise by the duty manager, and a second Police Officer. There will be other cases such as the present application, where intoxicated patrons are found away from the premises. In such a scenario, the allegation that the person was allowed to become intoxicated is often met by the claim that the patron has been turned away from the premises for being intoxicated.

[44] The two breaches of the Act which the Police must prove are as follows:

> S.166. Every person commits an offence who sells or supplies liquor to any person who is already intoxicated.
>
> S.167 Every person commits an offence who being the licensee or a manager of any licensed premises, allows any person to become intoxicated on the licensed premises

[45] It is of more than passing interest that the Police have not chosen to allege a breach of s.168 of the Act which creates the offence of allowing an intoxicated person to be or remain on licensed premises. Although this offence also contains elements of 'mens rea', in terms of drawing an inference, it is often an easier matter to establish.

[46] As stated, in this particular case, the method of proof was almost totally reliant on information gleaned from the data from Last Drink Surveys, supplemented by the observations made by the Police. On only one or two occasions was there any evidence about the demeanour of the patron. As a method of establishing the unsuitability of a licensee, the data from Last Drink Surveys has received limited approval. In *Howard Philip Clement v Nga Taonga Ao Aotearoa Limited* LLA PH

163-164/2003 the premises were said to be the worst performing premises in the whole of Northland. In that decision we made the following comments:

> *"Even if 20% of the last drink survey reports were unreliable, the business would still lead the list of "problem-premises". To achieve that form of notoriety throughout the whole of Northland before the first renewal cannot have happened in a vacuum.*
>
> *It is our view that the respondent company's conduct has been such as to show that it is not a suitable entity to hold the licence. We accept the argument that the allegations in such a survey are very hard to disprove. In our view a person who is arrested has no reason to lie about where he has been, but we accept that it may happen. For those reasons we believe that a period of suspension rather than cancellation should be the proper outcome."*

[47] One issue is whether a breath alcohol finding not only creates a presumption of intoxication, but to such a degree that the symptoms should have been apparent to the licensee or manager. Another issue is whether the Authority can draw an inference from the breath/alcohol level that the intoxicated person must have been sold liquor in that condition, or that the licensee or manager allowed that person to become intoxicated.

[48] There have been a number of calls for a definition of intoxication. In terms of administering the Act, we take the view that the greater problem is the way that intoxication may be established. The textbook 'Sale of Liquor' makes reference to a decision of the High Court in *Brown v Bowden* (Police) [1900] 19 NZLR 98. In that case a licensee was convicted by a Magistrate of selling liquor to a patron who was already intoxicated. Mr Brown was convicted and appealed. Stout CJ gave his opinion that a state of intoxication was:

> *That state in which, through intoxicating liquors, a person has lost the normal control of his bodily and mental faculties.*

[49] It was accepted by the High Court that it was difficult to determine when a man ceases to be sober, and becomes intoxicated. The Judge thought that the decision in such a case should rest on the evidence of impartial men of common sense who are themselves sober.

[50] Rather more assistance can be obtained from the decision of the Court of Appeal in *Parsons and Others v Farmers Mutual Insurance Association* [1972] NZLR 966. In that case, the insured had been killed when his car hit a bridge. He was held to have been driving under the influence of intoxicating liquor. The insurance policy provided for an exception in the event of anything happening to the insured while he was intoxicated.

[51] The arbitrator (as he then was), Mr P T Mahon found that the insured was not intoxicated. He found that there was no outward or visible signs of intoxication shortly before his death and also that he was not so affected by liquor that his ability to walk along or across the street with due regard to his own safety would be materially impaired. Mr Justice Wilson in the High Court reversed that decision, and the issue was appealed to the Court of Appeal.

[52] In the course of the decision reversing the High Court, the Court of Appeal made some interesting observations about intoxication. For example Richmond J made these comments at p. 972:

> *To what extent then need a person be affected by liquor before he would, in the ordinary use of the language, be described as intoxicated? Dealing with the ordinary case of a person who is active and awake, I believe that such a person would not be described as intoxicated unless he had at least reached the stage where, either in his movements or speech or behaviour, he demonstrated an obvious disturbance of his mental or bodily faculties.* ***A person may be materially affected by alcohol for certain purposes, such as driving a car, and yet may not have reached the stage where the ordinary person would describe him as intoxicated.*** (Our emphasis).

[53] The Court of Appeal took the view that no particular assistance could be derived from other decided cases where the word "intoxicated" had been used in the context of some specific activity such as motor vehicle cases. The comments by Beattie J in *Abraham v Norwich Union Fire Insurance Society Ltd* [1970] NZLR 968 were cited with approval.

> *I consider it has a different meaning from 'under the influence'; the word intoxication carries with it to my mind a reasonably advanced degree of drunkenness. The word has a stigma of more finality about it, and a greater definiteness and certainty than the other expression. It is therefore, in my view, a more difficult test for an insurer to fulfil.*

[54] We turn to the evidence, and apply the above principles. There is no direct evidence that when any particular intoxicated patron was sold or supplied liquor, that the person who sold or supplied the liquor knew that the patron was intoxicated. There is no direct evidence that the licensee or manager allowed any of the drivers to become intoxicated on the premises. The only way in such a claim can be established is by inference on the basis of proved facts. An inference cannot be a guess. It must be a logical, reasonable and fair deduction from the facts. If the evidence supports two conclusions of similar weight, then to choose between them would only be guessing.

[55] We are unable to draw such a conclusion in this case. Apart from the evidence from the Last Drink Surveys, there is very little independent material that any of the patrons were in fact intoxicated, particularly when we take into account the comments from the Court of Appeal that a person may be driving impaired without being intoxicated. The survey results amount to intelligence data. They form a very useful guide as to whether a particular premises is being properly managed. The results are unlikely to lead to a finding that a provision of the Act has been breached.

[56] For the purposes of this case, we would be prepared to accept that a patron who exceeded a breath/alcohol limit of 1000 micrograms per litre of breath, or a blood/alcohol limit of 200 milligrams of alcohol per 100 millilitres of blood, was probably intoxicated. Furthermore, that such a person probably displayed signs of being in that state. However, there is no evidence when the person was served his or her last drink in relation to the time that he or she was apprehended. Nor is there any evidence of the state of the driver when he or she left the premises.

[57] There are two exceptions. The first is the incident on 21 March 2003 at 2.45 am. Not only was a female observed stumbling, but also her level was 1165 micrograms of alcohol per litre of breath. She had consumed her last drink at the hotel. The facts lead to an inference (or presumption) that she had been allowed to become intoxicated on the premises, or even that she had been supplied with liquor while intoxicated. We are reasonably confident about reaching such a conclusion even though there is no evidence about her demeanour on the premises. Nor however, was there any rebuttal of such evidence.

[58] The second exception is the incident on 30 November 2003 at 2.45 am. In this case the patron had a level of 1042 micrograms of alcohol, and was sent to prison for his behaviour. However, even if we were to find breaches of the Act, the times such breaches occurred are not within the times nominated by the Police in order to bring about a reduction in trading hours. In other words both drivers were apprehended prior to 3.00 am. Further, the issue about whether it is desirable to make suspension orders on such inferences being drawn has not been considered.

[59] Allowing a patron to become intoxicated is a licensee or manager offence only. The law provides that once a patron exhibits signs of intoxication, there is a duty to take reasonable steps to remove the person either from the licensed premises, or to a place of safety. There is no direct evidence that the licensee or manager on duty knew that one or more of the drivers had reached that stage. There were four cases where the breath/alcohol level was above 1000 and the driving took place in the "dangerous" period between 7.00 am and midday. However, all these cases occurred in 2002, and accordingly, there was no supporting 'viva voce' evidence.

[60] It follows therefore, that there is no jurisdictional basis upon which the Authority can exercise its discretion and reduce the trading hours of the hotel. The data from Last Drink Surveys is a very useful tool in determining suitability, but is an insufficient evidential base on which to establish breaches of the Act. We considered whether the Police had established that the premises had been conducted in an improper manner, or that the evidence raised the issue of licensee unsuitability. As Mr De Courcy pointed out, the Police Sergeant had raised no issues about the suitability of the licensee or the manner of operation, and conversely, had acknowledged the licensee's co-operation.

[61] Pursuant to s.4(2) of the Act, the Authority is required to exercise its jurisdiction, powers and discretions in the manner that is most likely to promote the object of the Act. On the other hand, we must have a legal basis on which to exercise a power or discretion. The result may be disappointing to the Dunedin Alcohol Partnership which brought the application for the best of reasons. A lot of work and thought has been involved.

[62] It seems to us that what has happened here is an illustration of the workings and impact of the Dunedin Alcohol Partnership which has become something of benchmark for other districts. The issues have been debated over a period, and as a consequence of the filing of the application, the hotel has voluntarily reduced its trading hours in the ultimate public interest.

[63] There is no formula at present as to what will happen in the future, other than the statement that there will be no return to the 23-hour trading. We regard that statement as a solemn undertaking made on behalf of the hotel. We share the Sergeant's belief that any attempt at a 6.00 am lockout, other than regular patrons

who hold a particular card, is unlikely to succeed. In the meantime the hotel is entitled to credit for its initiative (albeit delayed), together with the opportunity to see whether the current proposal continues to reduce the number of recordings in the Last Drink Survey.

[64] For the reasons we have attempted to articulate, the application to vary the trading hours of the on-licence is refused.

DATED at WELLINGTON this 30th day of November 2004

Judge E W Unwin
Chairman

Mr J C Crookston
Member