

Scenario Two: Human Rights and Liquor Licensing

[The full text of the relevant statutory provisions is on pp. 3-5]

Yolanda Parker is the President and sole shareholder of Legally Drunk Ontario Inc., which has applied for a liquor license for a new establishment called “The Crown and Defence” in a Toronto neighbourhood. The Registrar of Alcohol and Gaming has issued a proposal to refuse the licence under ss. 6(2) (a), (d) and (g.1) of the *Liquor Licence Act* (LLA) which read as follows:

(a) having regard to the applicant’s financial position, the applicant cannot reasonably be expected to be financially responsible in the conduct of the applicant’s business;

(d) the past or present conduct of the persons referred to in subsection (3) affords reasonable grounds for belief that the applicant will not carry on business in accordance with the law and with integrity and honesty;

(g.1) the applicant is not able to demonstrate to the satisfaction of the Registrar that he, she or it will exercise sufficient control, either directly or indirectly, over the business, including the premises, accommodation, equipment and facilities in respect of which the licence is to be issued;

Its proposal cites the following facts:

- Ms. Parker’s previous company declared bankruptcy after it was closed when its license was ordered suspended the third time.
- Ms. Parker, through a different company, previously held a liquor license for a different bar in the same neighbourhood, Topsy Judges, three years ago. During the one year period it was open, its licence was suspended three times for violations of the act, and there were 42 police reports about loud or disorderly conduct at the bar.
- The manager of the Crown and Defence, Bob Smith, was previously arrested twice for possession of narcotics and is known to be involved in illegal drugs.

Ms. Parker and Mr. Smith identify as Black. They and the corporation allege that the proposal, and the denial of the liquor license would be a violation of their right to equality with respect to services without discrimination because of race contrary to s. 1 of the Ontario *Human Rights Code*. Legally Drunk and Ms. Parker also assert s. 15 *Charter* rights, although they did not serve a Notice of Constitutional Question.

They proceed to a hearing at the Licence Appeal Tribunal (“LAT”), and ask that LAT order that the licence be granted. They also ask that they be awarded general damages for the inherent violation of their rights, and that the LAT order the Registrar and its staff to undergo training regarding human rights. They make this argument under the *Code* and, in the alternative, ask for a remedy under s. 24(1) of the *Charter*.

The LAT has the explicit jurisdiction to determine all questions of fact or law that arise in matters before it. It has the power to order the Registrar not to carry out the proposal or to carry out the proposal, in whole or in part, and with any changes that the Tribunal considers appropriate, to direct the Registrar to approve an application to which the proposal relate, and to attach to a licence or permit any condition that the Tribunal considers proper to give effect to the purposes of the *LLA*. There is no explicit statement of purposes in the *LLA*, but it is aimed at the responsible use and sale of alcohol in Ontario.

The claim of racial discrimination is based on the following:

- The Crown and Defence is in a predominantly Black neighbourhood. It is alleged that the Registrar has a pattern of suspending and denying licenses to businesses in such neighbourhoods, and that race was a factor in the decision to propose to deny the licence.
- They allege that the issues regarding Topsy Judges stem from over policing and racial profiling by the police and liquor inspectors. They state that police and liquor inspectors target businesses in the neighbourhood, particularly those with Black owners.
- They allege that Mr. Smith's arrests stem from racial profiling. One of the charges was dismissed in criminal court on the basis that it resulted from a traffic stop that was found to constitute racial profiling. The other charge was dropped.
- Ms. Parker and Mr. Smith state that when they attended to file the application, the clerk working for the Registrar of Alcohol and Gaming made a racially biased comment to them.

Questions for discussion:

- 1) Which of the allegations are properly before the LAT?
- 2) Which remedies could the LAT grant?
- 3) Assume the LAT orders that the licence be granted.
 - a. Can Ms. Parker and/or Mr. Smith proceed with an Application to the Human Rights Tribunal of Ontario on the basis of some or all of the facts?
 - b. Can they seek any of the other remedies at the HRTTO?
 - c. Does it matter whether the LAT considered the human rights issues?
- 4) How should the LAT consider case management of this file and how should it prepare for the possibility of a hearing like this one?

The following statutory provisions are relevant to this scenario:

Licence Appeal Tribunal Act, 1999, S.O. 1999, c. 12, Sched. G, s. 5.1:

3. (1) The Tribunal shall hold the hearings and perform the other duties that are assigned to it by or under any Act or regulation.

(2) Except as limited by this Act, the Tribunal has all the powers that are necessary or expedient for carrying out its duties.

5.1 (1) This section applies to hearings held by the Tribunal under ... the *Liquor Licence Act*...

(4) The Tribunal has jurisdiction to determine all questions of fact or law that arise in matters before it.

Liquor Licence Act, R.S.O. 1990, c. L.19

5. (1) No person shall keep for sale, offer for sale or sell liquor except under the authority of a licence or permit to sell liquor or under the authority of a manufacturer's licence.

6. (1) A person may apply to the Registrar for a licence to sell liquor.

(2) Subject to subsection (4) or (4.1), an applicant is entitled to be issued a licence to sell liquor except if,

...

(a) having regard to the applicant's financial position, the applicant cannot reasonably be expected to be financially responsible in the conduct of the applicant's business;

(d) the past or present conduct of the persons referred to in subsection (3) affords reasonable grounds for belief that the applicant will not carry on business in accordance with the law and with integrity and honesty;

...

(g.1) the applicant is not able to demonstrate to the satisfaction of the Registrar that he, she or it will exercise sufficient control, either directly or indirectly, over the business, including the premises, accommodation, equipment and facilities in respect of which the licence is to be issued;

(3) Clause (2) (d) applies to the following persons:

1. The applicant.

2. An officer or director of the applicant.

...

4. A person having responsibility for the management or operation of the business of the applicant.

6.1 (1) The Registrar may make such inquiries and conduct such investigations into the character, financial history and competence of an applicant for any licence under this Act, or a renewal of a licence, the holder of a licence, or persons interested in the holder of the licence or interested in the premises to which the licence relates, or a director, officer or shareholder of any such person, as are necessary to determine whether the applicant or licensee meets the requirements of this Act and the regulations.

8. (1) The Registrar shall consider an application for a licence to sell liquor.

(2) If, after giving notice of an application under subsection 7 (1), the Registrar receives no written objections to the application from the residents of the municipality within the time for making submissions, the Registrar may,

(a) approve the application if the applicant is not disentitled under subsection 6 (2), (4) or (4.1);

(b) issue a proposal to review the application; or

(c) issue a proposal to refuse the application.

21. (1) If the Registrar issues a proposal with respect to any of the following matters, the Registrar shall serve notice of the proposal together with written reasons on the applicant or licensee:

...

1.1 Refuse an application for a licence to sell liquor.

(4) A notice of a proposal shall inform the applicant, licensee, permit holder or owner that the person is entitled to a hearing by the [Licence Appeal] Tribunal if the person mails or delivers to the Tribunal and the Registrar, within 15 days after the notice is served on the person, notice in writing requiring a hearing by the Tribunal, and the person may so require such a hearing.

23 (11) Following a hearing... the [Licence Appeal] Tribunal may direct the Registrar not to carry out the proposal or to carry out the proposal, in whole or in part, and with any changes that the Tribunal considers appropriate, and the Tribunal may direct the Registrar to approve an application to which the proposal relates.

(12) Following a hearing, the [Licence Appeal] Tribunal may attach to a licence or permit any condition that the Tribunal considers proper to give effect to the purposes of this Act.

Human Rights Code, R.S.O. 1990, c. H.19

1. Every person has a right to equal treatment with respect to services, goods and facilities, without discrimination because of race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status or disability.

45.1 The [Human Rights] Tribunal may dismiss an application, in whole or in part, in accordance with its rules if the Tribunal is of the opinion that another proceeding has appropriately dealt with the substance of the application.

45.2 (1) On an application under section 34, the Tribunal may make one or more of the following orders if the Tribunal determines that a party to the application has infringed a right under Part I of another party to the application:

1. An order directing the party who infringed the right to pay monetary compensation to the party whose right was infringed for loss arising out of the infringement, including compensation for injury to dignity, feelings and self-respect.

2. An order directing the party who infringed the right to make restitution to the party whose right was infringed, other than through monetary compensation, for loss arising out of the infringement, including restitution for injury to dignity, feelings and self-respect.

3. An order directing any party to the application to do anything that, in the opinion of the Tribunal, the party ought to do to promote compliance with this Act.

(2) For greater certainty, an order under paragraph 3 of subsection (1),

(a) may direct a person to do anything with respect to future practices; and

(b) may be made even if no order under that paragraph was requested.