SUPREME COURT OF QUEENSLAND

CITATION:	*Australian Leisure & Hospitality Group Ltd & Ors v Chief Executive, Department of Employment, Economic Development and Innovation & Anor* [2009] QSC 354
PARTIES:	**AUSTRALIAN LEISURE & HOSPITALITY GROUP LIMITED ACN 067 391 511** (first applicant) and **MGW HOTELS PTY LTD ACN 098 214 129** (second applicant) and **THE GLEN HOTEL PTY LTD ACN 009 743 702** (third applicant) and **VEGAS LIQUOR PTY LTD ACN 104 738 169** (fourth applicant) and **NLG OPERATIONS PTY LTD ACN 113 400 025** (fifth applicant) and **AN BURNETT INVESTMENTS PTY LTD ACN 056 642 693, COLIN WILLIAM MACLEOD AND LINDA ELIZABETH MACLEOD** (sixth applicant) and **PP INVESTMENTS PTY LTD ACN 088 342 223** (seventh applicant) and **BROOKPORT HOLDINGS PTY LTD ACN 101 524 841** (eighth applicant) and **O'DOWDS IRISH PUB ROCKHAMPTON PTY LTD ACN 125 644 162** (ninth applicant) **v** **CHIEF EXECUTIVE, DEPARTMENT OF EMPLOYMENT, ECONOMIC DEVELOPMENT AND INNOVATION** (first respondent) and **ACTING EXECUTIVE DIRECTOR, OFFICE OF LIQUOR AND GAMING REGULATION** (second respondent)
FILE NO:	12274 of 2009
DIVISION:	Trial Division
PROCEEDING:	Application for Review

ORIGINATING COURT:	Supreme Court of Queensland
DELIVERED ON:	6 November 2009
DELIVERED AT:	Brisbane
HEARING DATE:	5 November 2009
JUDGE:	Applegarth J
ORDER:	**The application for interlocutory relief is adjourned to a date to be fixed.**
CATCHWORDS:	ADMINISTRATIVE LAW – JUDICIAL REVIEW – POWERS OF COURTS UNDER JUDICIAL REVIEW LEGISLATION – STAY OF PROCEEDINGS AND INTERLOCUTORY RELIEF – where applicants received notices stating that the respondent considered their licensed premises should be classified 'high risk' because a 'glassing' had happened there – where the decision-maker seemingly only knew that there was a glassing incident and knew nothing more about its circumstances at the time the notice was given – whether notices invalid – whether an interlocutory injunction should be granted – whether the applicants have made out a 'prima facie case' – whether the balance of convenience favours the grant of an interlocutory injunction *Liquor Act* 1992 (Qld), s96, s 97, s 98, s 99A, s 99B, s 99C(2), s 99D, s 99E *American Cyanamid Co v Ethicon Ltd* [1975] AC 396, cited *Australian Broadcasting Corporation v O'Neill* (2006) 227 CLR 57, considered/applied *Beecham Group Ltd v Bristol Laboratories Pty Ltd* (1968) 118 CLR 618, applied *Castlemaine Tooheys Ltd v South Australia* (1986) 161 CLR 148, cited *Concord Data Solutions Pty Ltd v Director-General of Education* [1994] 1 Qd R 343, cited *Films Rover International Ltd v Cannon Film Sales Ltd* [1986] 3 All ER 772, cited *Habib v Director-General of Security* (2009) 175 FCR 411, cited *Murdaca v Australian Securities and Investment Commission* (2009) 258 ALR 223, cited
COUNSEL:	P J Flanagan SC with M F Johnston for the applicants M O Plunkett for the respondents
SOLICITORS:	Mullins Lawyers for the applicants Crown Law for the respondents

[1] On 16 October 2009, the applicants, which operate licensed premises, were issued with notices purportedly given pursuant to s 98 of the *Liquor Act* 1992 (Qld) ("the Act"). The notices were in identical terms. After referring to the power of the chief executive to classify all or part of a licensed premises as "high risk" if the chief executive is satisfied that one or more "glassings" have happened at the premises, and the definition of "glassing", the notice simply stated:

> "Our records show that on [a specified date] **a glassing occurred** at [a specified licensed premises] at which you are the licensee.
>
> **As a consequence of that glassing incident, the chief executive considers all of that part of your licensed premises where liquor is consumed should be classified as high risk**." (emphasis added)

[2] In these proceedings under the *Judicial Review Act* 1991 (Qld), the applicants seek by way of final relief:

(a) a declaration that each notice is invalid because it fails to comply with s 98(2)(b) of the Act;

(b) a declaration that each notice is invalid because it fails to comply with s 98(2)(a) of the Act;

(c) a declaration that each notice is invalid because it fails to comply with the rules of natural justice;

(d) an order in the nature of mandamus;

(e) an order in the nature of prohibition.

By way of interlocutory relief they seek an order that the respondents be restrained from exercising the discretion pursuant to s 97 of the Act to classify all or part of the licensed premises of any of the applicants until the validity of the notices is determined.

[3] The first respondent is the chief executive for the purposes of the Act. The second respondent is the Acting Executive Director, Office of Liquor and Gaming Regulation, who gave the notices and apparently did so as the chief executive's delegate.

The statutory scheme

[4] Division 9 of Part 4 of the Act, headed "Banning use of regular glass in certain licensed premises" came into force on 15 October 2009. It defines "regular glass" as glass other than tempered or toughened glass.[1] It defines "glassing" as an act of violence by a person that involves the use of regular glass and causes injury to any person.[2]

---

1 *Liquor Act* 1992 (Qld) s 96.

2 Ibid.

[5] Section 97 provides:

"**97 When all or part of licensed premises must be classified as high risk**

(1) The chief executive may classify all or part of licensed premises as high risk if the chief executive is satisfied -

(a) one or more glassings have happened at the premises during the relevant period; or

(b) there has been a level of violence at the premises during the relevant period that is unacceptable having regard to this Act's object to regulate the liquor industry in a way compatible with minimising harm caused by alcohol abuse and misuse.

(2) However, before classifying the premises or part of the premises as high risk the chief executive must –

(a) give the licensee of the premises a written notice under s 98; and

(b) have regard to the licensee's response, if any, to the notice.

Note—
A guideline may be made by the chief executive under section 42A informing persons about the attitude the chief executive is to adopt on a particular matter or how the chief executive administers this Act. "

[6] Section 98 provides:

"**98 Notice to licensee of licensed premises considered high risk**

(1) If the chief executive considers that all or part of licensed premises are high risk, the chief executive must give the licensee of the premises a notice under this section.

(2) The notice must state the following –

(a) that the chief executive considers all or a stated part of the premises to be high risk;

(b) the reasons the chief executive considers the premises or part to be high risk;

(c) an invitation to the licensee to show within a stated period, not less than 14 days after the notice is given to the licensee, why the premises or part should not be classified as high risk.

> *Examples of parts of licensed premises that the chief executive may decide not to classify as high risk*— accommodation rooms, restaurants, bottle shops"

[7] Section 99 enables the licensee to make written representations about the notice, and to request that all or part of the licensed premises not be classified as high risk. The chief executive must consider all such representations. If after doing so, the chief executive no longer considers the ground exists to classify the licensed premises or part as proposed, he or she must not take further action about the classification of the premises.[3] If, however, after considering the representations, the chief executive still considers all or part of the licensed premises should be classified as proposed, then under s 99B he or she must give the licensee a written notice:

(a) classifying all or a stated part of the premises as high risk; and

(b) stating the day from which the classification starts.[4]

[8] A licensee who receives a notice under s 99B must not at any time during the trading hours for the premises or stated part:

(a) serve liquid to a patron in a regular glass container; or

(b) leave or place a regular glass container in an area to which a patron has access.[5]

[9] After a year has elapsed since all or part of licensed premises were classified as high risk, the licensee may make written representations to the chief executive to revoke the classification. The chief executive may revoke the classification only if the chief executive is satisfied that the licensee has put measures in place at the licensed premises that sufficiently minimise the risk of harm caused by alcohol abuse and misuse.[6]

[10] In summary, the scheme creates a process that begins with a s 98 notice if "the chief executive considers that all or part of licensed premises are high risk". The expression "high risk" is not defined. However, in its context it seems to contemplate as assessment that there is a high risk that a glassing will occur at the premises in the future. The notice must state, amongst other things, "the reasons the chief executive considers the premises or part to be high risk". Before the chief executive may classify all or part of licensed premises as high risk, a s 98 notice must be given and regard had to the licensee's response to the notice, and the chief executive must be satisfied of the matters in s 97(1).

The facts

[11] The respondents threaten to exercise the power to classify in s 97 because an alleged glassing has happened at each applicant's premises during the period of one year before the s 98 notice was given.

[12] The evidence before me indicates that the second respondent issued the notices after receiving a schedule headed "Venues – 1 or more reported offences where glass has been used as weapon and injury has resulted". The schedule is in a very simple form, and merely records the premises in question and the date of the incident.

---

3 *Liquor Act* 1992 (Qld) s 99A.
4 *Liquor Act* 1992 (Qld) s 99B(2).
5 *Liquor Act* 1992 (Qld) s 99C(2).
6 *Liquor Act* 1992 (Qld) s 99D.

This basic information was said to have been verified from the records of the Queensland Police Service, and the second respondent received oral briefings confirming that in each instance the Queensland Police Services' records recorded a glassing incident at each of the subject premises.

[13] Remarkably, there is no evidence that the second respondent or anyone else in the Office of Liquor and Gaming Regulation received any information beyond this basic information concerning the circumstances of each alleged glassing incident, or what had been done by the licensee to minimise the risk of a further incident occurring. It appears that apart from some basic data taken from a database about the date and place of each alleged glassing incident, "no other information, reports or data" were reviewed prior to the notices issuing.[7] It was only after the notices were issued that the Office of Liquor Gaming and Regulation received a written summary of each incident.

[14] The notices apparently were based on the simple fact that, according to the data, an incident happened in which glass had been used as a weapon and injury resulted. The notices were given without regard to the circumstances of the incident. It seems that the second respondent had no information about the circumstances other than the licensed premises and the date it occurred. For all he knew, the incident may have occurred despite the highest possible precautions. He did not know where the incident occurred, what had been done to prevent it and what has been done since to prevent a repetition. To take a hypothetical example, for all the second respondent knew at the time the notice was given, the glassing incident may have occurred after a sober person carried a glass concealed in a bag onto the premises as part of a premeditated attack. I mention that hypothetical example to illustrate the point that the evidence indicates that the second respondent knew next to nothing about each incident before he issued the notices.

[15] To take an actual example, as it transpired, the summary of the incidents that was received after the notices were sent, reports that one of the incidents occurred in the following circumstances:

> "A male patron was seated outside the Tavern on a brick wall after being ejected for intoxication. A group of 10 males were walking past and an argument has occurred resulting in one of the group smashing a glass bottle into the back of the male patron's head causing small laceration (sic) to the back of the skull."

[16] On the basis of the summary, it seems that the incident was outside the premises and involved an attack by a person walking past the premises, rather than a glassing incident inside premises by a hotel patron using a glass object on the premises.

[17] The paucity of information known to the Office of Liquor and Gaming Regulation at the time each notice was sent on 16 October explains the remarkable brevity of the stated reason for issuing it. I infer on the basis of the material before me at this interlocutory hearing that the simple and short reference in each notice to the date of the glassing incident was not because the department knew more about the incident and held back on disclosing the information. It probably was because all the department knew was the date of the incident.

---

[7] See Affidavit C A Hargreaves filed 4 November 2009 (Court File Index 3) para 7.3.

[18] It was the simple fact of the incident, and nothing more, that led the chief executive's delegate to consider that all of that part of the licensed premises where liquor is consumed should be classified as high risk. This is apparent from the terms of each notice, which, after simply stating that records showed a glassing occurred on a specified date, continued as I have previously noted:

> "As a consequence of that glassing incident, the chief executive considers all of that part of your licensed premises where liquor is consumed should be classified as high risk."

[19] Apart from the date of the incident, and the name of the premises, each notice was the same. This further indicates that each notice was given because of the fact of a glassing incident, and without regard to its circumstances.

The matter for determination

[20] This is an application for judicial review. The *Judicial Review Act* does not permit merit review.[8] This is a Court, not the Ombudsman's Office. The issue is the legality of the notices, not whether proceeding in this fashion is a sound approach in terms of public administration. Incidentally, s 99E of the Act rules out merit review by a tribunal or another entity.

[21] The applicant's legal challenge to the validity of the notices is essentially in three parts. First, it is submitted that the notices do not comply with s 98(2)(b) because each did not state "the reasons" the chief executive considered the premises to be high risk. Second, it is submitted that the reference in the notices to "that part of your licensed premises where liquor is consumed" is uncertain such that the notices fail to comply with s 98(2)(a) of the Act. Thirdly, it is submitted that the respondents failed to afford natural justice by failing to:

(a) provide adequate particulars of the allegations in the notices to allow the applicants the opportunity to respond;

(b) identify the material to be relied upon in making a decision whether to classify the premises or part as high risk; or

(c) in the alternative, disclose all the relevant facts and circumstances contained in the material.

[22] The present application is for interlocutory relief, not a final determination. The parties submit that the issues for my consideration are whether there is a serious question to be tried, and whether the balance of convenience favours such an interlocutory restraint. I express my reservation about whether it is sufficient for an applicant to show simply that there is a serious question to be tried in the sense that expression was used in *American Cyanamid Co v Ethicon Ltd*[9] and cases that followed it. There is also a question of the approach that is required in public law litigation of the present kind.

[23] The High Court in *Australian Broadcasting Corporation v O'Neill*[10] restated the principles that govern the awarding of interlocutory injunctions. It adopted the principles explained in *Beecham Group Ltd v Bristol Laboratories Pty Ltd*[11] and

---

8 *Concord Data Solutions Pty Ltd v Director-General of Education* [1994] 1 Qd R 343 at 346-7.
9 [1975] AC 396.
10 (2006) 227 CLR 57.
11 (1968) 118 CLR 618.

criticised aspects of the speech of Lord Diplock in *American Cyanamid Co v Ethicon Ltd*.[12] In *Beecham* the High Court held that a court hearing an application for an interlocutory injunction addresses itself to two inquiries:

> "The first is whether the plaintiff has made out a prima facie case, in the sense that if the evidence remains as it is there is a probability that at the trial of the action the plaintiff will be held entitled to relief ... The second inquiry is ... whether the inconvenience or injury which the plaintiff would be likely to suffer if an injunction were refused outweighs or is outweighed by the injury which the defendant would suffer if an injunction were granted."[13]

[24] Lord Diplock in *American Cyanamid* suggested that, provided the court is satisfied that the applicant's claim is not frivolous or vexatious, then there will be a serious question to be tried. His Lordship stated that the court "no doubt must be satisfied that the claim is not frivolous or vexatious; in other words, that there is a serious question to be tried".[14]

[25] In *O'Neill* Gummow and Hayne JJ[15] observed that when Kitto, Taylor, Menzies and Owen JJ in *Beecham* used the phrase "prima facie case", their Honours did not mean that the applicant must show that it is more probable than not that at trial it will succeed. It is enough that the applicants show a sufficient likelihood of success to justify in the circumstances the preservation of the *status quo* pending the trial. Gummow and Hayne JJ[16] adopted the following statement from *Beecham*:

> "How strong the probability needs to be depends, no doubt, upon the nature of the rights [the applicant] asserts and the practical consequences likely to flow from the order he seeks."[17]

[26] Special considerations apply where injunctive relief is sought to interfere with the decision of the executive branch of government to prosecute offences or to restrain enforcement of a law under challenge.[18] In *Films Rover International Ltd v Cannon Film Sales Ltd*[19] Hoffmann J (as his Lordship then was) said:

> "The principal dilemma about the grant of interlocutory injunctions ... is that there is by definition a risk that the court may make the 'wrong' decision, in the sense of granting an injunction to a party who fails to establish his right at the trial (or would fail if there was a trial) or alternatively, in failing to grant an injunction to a party who succeeds (or would succeed) at trial. A fundamental principle is therefore that the court should take whichever course appears to carry the lower risk of injustice if it should turn out to have been 'wrong' in the sense I have described."

[27] I consider that the respective strengths of the parties' cases should be taken into consideration not simply as a threshold consideration in determining whether there is a "serious question to be tried" before turning to the balance of convenience, but

---

12 [1975] AC 396.
13 (1968) 118 CLR 618 at 622.
14 Ibid.
15 Supra at 81-82 [65].
16 [1975] AC 396 at 407.
17 (1968) 118 CLR 618 at 622.
18 *Castlemaine Tooheys Ltd v South Australia* (1986) 161 CLR 148 at 155-156 per Mason ACJ; Australian *Broadcasting Corporation v O'Neill* (supra) at 82 [66].
19 [1987] 1 WLR 670 at 680; [1986] 3 All ER 772 at 780-781.

more generally in determining whether awarding or refusing an interlocutory injunction is more likely to cause irreparable harm.

[28] The High Court's adoption of *Beecham* does not preclude use of the term "serious question". Gummow and Hayne JJ in *O'Neill* stated:

> "There is … no objection to the use of the phrase 'serious question' if it is understood as conveying the notion that the seriousness of the question, like the strength of the probability referred to in *Beecham*, depends upon the considerations emphasised in *Beecham*."[20]

[29] Under the doctrine in *Beecham* an applicant has to make out a prima facie case, in the sense that if the evidence remains as it is there is *a probability* that at the trial of the action it will be held entitled to relief. Accordingly, the applicants must make out a prima facie case, in the sense that if the evidence remains as it is there is *a probability* that at the final hearing they will be held entitled to the relief they seek. Each applicant need not show that it is more probable than not that it will succeed at trial. It is enough that the applicant shows a sufficient likelihood of success to justify in the circumstances the preservation of the *status quo* pending the trial.

[30] The present application does not involve a challenge to the validity of a law, but the public law context raises additional different considerations, at least in determining the balance of convenience, to those that arise in private law litigation in which purely private interests are at stake, and the court must balance the irreparable harm that will be suffered to those interests. The balance of convenience must take account of the risk to public safety during the period of any interlocutory restraint if the respondents are prevented from exercising powers under s 97. More than purely private interests are at stake.

The first ground of challenge: s 98(2)(b) failure to state "the reasons"

[31] The applicants submit that the notices fall short of what is required by s 98(2)(b). They observe that the notices merely allege one glassing incident and assert that as a consequence the chief executive considers all of that part of the licensed premises where liquor is consumed should be classified as high risk. They submit that the allegation of a "glassing" does not automatically lead to the classification of "high risk". The notices are said to state a conclusion and not "reasons" as required by s 98(2)(b). The applicants contend that the notices fail also to address the relevant considerations. The purpose of allowing the applicants the real opportunity to provide written representations is said to be frustrated in the present case because they have not been given adequate notification of what is alleged and the reasons required by s 98(2)(b) of the Act.

[32] I consider that this submission tends to blend two separate matters. The first is notification of allegations. The second is a statement of reasons. A statement of reasons may include allegations, and usually would. However it does not have to include allegations and considerations if they do not form part of the reasons.

[33] The applicants' s 98(2)(b) challenge is largely premised on the assumption that the decision maker could not possibly have reached the stated conclusion simply on the basis of one glassing incident, and without addressing a range of considerations. These considerations include:

- the nature and specific circumstances of the glassing incident;

---

[20] Supra at 83 [70].

- whether the incident was fuelled by alcohol abuse or misuse, and to what extent, and the level of intoxication of persons involved. This is submitted to be a fundamental consideration given the very purpose of the regime in Division 9 and the various references to the Act's object in s 3(a);

- whether the glassing was an isolated incident or part of a pattern of incidents at the licensed premises;

- whether the glassing incident was reflective of a failure on the part of the licensee to have measures in place at the licensed premises that sufficiently minimised the risk of harm caused by alcohol abuse and misuse.

[34] In effect, the applicants assume that any reasonable decision-maker must have considered the circumstances of the incident and other relevant considerations, and that, having done so, the stated reasons for the decision do not disclose the considerations that were taken into account, and therefore fail to state the reasons. However, the material does not support the proposition that such considerations were taken into account on this occasion. It appears that the decision-maker concluded that the fact of an incident involving glassing was sufficient to consider that all or part of the licensed premises are high risk. That was the reason and the reason was stated.

[35] The first ground of challenge does not require me to decide whether, as a matter of law, it is open to the chief executive to consider that all or part of licensed premises are high risk simply on the basis of a glassing incident having happened during the relevant period, and without knowing more about its circumstances, give a notice under s 98.

[36] I am not persuaded that the applicants have made out a prima facie case, in the sense that if the evidence remains as it is there is a probability that at the final hearing they will be held entitled to relief on the basis of a failure to comply with s 98(2)(b).

The second ground of challenge: s 98 (2)(a) the part of the premises considered to be high risk

[37] I do not accept that the notice which referred to "that part of your licensed premises where liquor is consumed" is invalid for non-compliance with s 98(2)(a). The notice described part of the premises. The fact that the notice does not follow the example given in s 98 by identifying specific parts of premises, such as restaurants, that are not considered to be high risk, is not to the point.

[38] I am not persuaded that the applicants have made out a prima facie case, in the sense that if the evidence remains as it is there is a probability that at the final hearing they will be held entitled to relief on the basis of a failure to comply with s 98(2)(a).

The third ground of challenge: natural justice

[39] I consider that the obligation to give reasons under s 98(2)(b) and the express obligations to accord an opportunity to make written representations and to consider those representations under s 98(2) and s 99 do not exhaust the obligation to afford natural justice in connection with a decision under s 97.

[40] The obligation to afford natural justice is shaped both by the statute pursuant to which the impugned decision has been made and the particular circumstances of the case. The Full Court of the Federal Court in *Habib v Director-General of Security*[21] recently summarised the requirements of natural justice as follows:

> "Natural justice requires that a person know the substance of the case against him or her and be given the opportunity to respond to adverse material that is credible, relevant or significant: *Kioa v West* (1985) 159 CLR 550 at 629; 62 ALR 321 at 380–1; [1985] HCA 81 (*Kioa*) (per Brennan J)."

[41] In addition to knowing the reasons the chief executive considers the premises or part of them to be high risk, a licensee is entitled to know of the material upon which the chief executive proposes to rely in making the decision to classify the premises or part of it as high risk, or at least the relevant facts and circumstances contained in the material. However, it is debatable whether this material must be disclosed *before* the s 98 notice is given, save insofar as it is required in order to state the reasons the chief executive considers the premises or part of them to be high risk.[22]

[42] Even if such material must be disclosed before the s 98 notice is given, the applicants have not pointed to the existence of such material in the present case. The possibility exists that additional information to that disclosed in the schedule was in the possession of the decision-maker before the s 98 notices were issued. However, I do not consider that there is a probability that the applicants will succeed in having the s 98 notices declared invalid on the grounds of a failure to afford natural justice.

Balance of convenience

[43] A notice under s 98 starts a process which may have serious adverse consequences in the event that premises or a part of them are classified as high risk under s 97. Those significant consequences are the subject of substantial evidence. They include the risk of criminal prosecution, substantial financial cost, loss of custom and loss of reputation.

[44] The paucity of the reasons stated in the s 98 notice, the need for a licensee to make proper representations, including responses to further material which comes to light and which the decision-maker proposes to rely upon[23] and the matters requiring investigation by a licensee in order to make proper representations suggest that a substantial period far in excess of the minimum 14 day period in s 98 will be afforded.

[45] In the absence of evidence that the decision-maker intends to act without affording natural justice and a reasonable time to make representations, there is not an imminent threat to make a decision under s 97. The substantive hearing of the application may be determined within that time. Given the extensive and expensive steps that would be required to be undertaken by an applicant in order to observe a

---

21 (2009) 175 FCR 411 at 428 [63]-[64].

22 *Murdaca v Australian Securities and Investment Commission* (2009) 258 ALR 223 at 250 [125]-[127].

23 Including, for example, the summary of incidents provided to the Office of Liquor and Gaming Regulation after the notices were given, and upon which the chief executive will presumably rely.

classification, a decision under s 97 would necessitate a reasonable period to elapse before the day on which the classification starts: see s 99B(2)(b).

[46] In the circumstances, I do not consider that the balance of convenience favours the grant of an interlocutory injunction at this stage. If, however, the respondents intend to make a classification under s 97 before the final hearing and determination of the present application for judicial review, the application for interlocutory relief may be renewed on short notice.

Conclusion

[47] I am not persuaded that the applicants' prospects of having the s 98 notices declared invalid on the grounds contended for by them are sufficiently strong to warrant a restraint upon the exercise of the discretion under s 97. I decline to order an interlocutory injunction at this stage. The application for interlocutory relief is adjourned to a date to be fixed. If circumstances of urgency arise, it may be brought on upon short notice.

[48] My decision to not grant interlocutory relief at this stage should not be interpreted as an endorsement of the process followed in issuing notices under s 98, apparently on the basis of next to no information about the incidents. Whether it is a sound approach to public administration to issue notices before acquiring substantial information about the incidents is not a matter for the Court. The Court is concerned only with the legal issue of the validity of the notices.

[49] The decision-maker has proceeded on the basis that he or she is entitled to issue a notice under s 98 simply on basis of a glassing incident, without any need to address the circumstances of the incident or the circumstances that have occurred since the incident, including steps taken by a licensee to prevent a repetition. According to Counsel for the respondents, the law is in effect "One Swallow doth a Summer Maketh".[24]

[50] I have not been asked to consider the legal issue of whether this view of the law is correct, and whether its routine application in issuing s 98 notices invalidates the notices. One view of the law is that the kind of considerations that the applicant contends should be taken into account must be taken into account in deciding whether to issue a notice under s 98. The competing view is that there is no such requirement and that it is sufficient, at least for the purpose of giving a s 98 notice, that a glassing happened in the relevant period, and that these additional matters arise for consideration, if at all, prior to the decision to classify under s 97. That legal issue is not presently in contention. That may be a question for another day.

[51] Having apparently adopted the view that it is sufficient to give a s 98 notice if a glassing incident has occurred within the relevant 12 month period, each notice states the reasons the chief executive considers the premises or a stated part of it to be high risk, namely that a glassing incident occurred within the previous 12 months. The notice having stated the reasons, it is not invalid under s 98(2)(b). The notice stated that the chief executive considered a stated part of the premises to be high risk, namely the part in which liquor is consumed, and, in my opinion, complied with s 98(2)(a). At the time the notices were given, the decision-maker apparently had little more than a schedule of the dates upon which the incidents occurred and the premises involved. A short summary of the incidents came later.

---

[24] cf the proverb "One swallow doth not a Summer make" J Howell, *Proverbs* (1659).

If, as seems to be the case, the decision-maker was bereft of information at the time the notice was given, then there probably was no adverse material at that stage that could have been provided, assuming an obligation to afford natural justice arose prior to the notice being given.

[52] The three grounds relied upon to challenge the validity of the s 98 notices do not warrant interlocutory relief being granted, at least at this stage.

Order

[53] The application for interlocutory relief is adjourned to a date to be fixed.