

4. Had this application been argued to its natural conclusion, the applicant would have been entitled to a decision of this Court as to whether the Board's decision should be quashed for being, among other things, unreasonable in the sense well established by the Wednesbury case (Wednesbury Corporation v Ministry of Housing (No. 2) [1965] 3 W.L.R. 956).
5. As matters transpired the Board, through Ms. Rambarran, conceded in Open Court on 30 September 2010 that its decision should be quashed, but on the basis that there had been procedural irregularity or irregularities. When clarification was sought by the Court, it was specifically explained by Ms. Rambarran that the Board was most concerned about having heard representation on behalf of the Commissioner of Police in closed session when any such representation should have been heard in open session, thereby giving the general public and indeed the applicant, an opportunity to respond. Thus, procedural irregularity had occurred such as to have rendered the Board's decision (communicated to the applicant in a letter dated 25 April 2010) invalid and on that basis amenable to being set aside.
6. On that basis, I decided to quash the decision of the Board but required affidavit evidence to be filed explaining the reason why the Board saw the need to rehear the matter having regard to the procedural irregularity that had been identified. The Court would then give directions for any rehearing that could be appropriate. On this resumed hearing, I have been presented with a supplemental affidavit from its Deputy Chairman on behalf of the Board which goes much further than indicated on 30 September 2010 by way of describing the perceived irregularities.

7. It includes a concern that some 200 persons, who had signed a petition of objections and whose petition had been considered by the Board, should be given a further opportunity to object but this time by filing personal objections if they wish, rather than by way of petition. The Board's view is that the filing of personal objections is the recourse allowed by the Liquor Licensing Law, not a petition. Taken all together, this and the other concerns raised in the Dep. Chairman's supplemental affidavit would propose the need for a complete rehearing of the application and that is what, in effect, Mrs. Rambarran has been instructed to press.
8. While I accept that this Court must be careful not to usurp the functions of the Board in any decision at which it may arrive and any directions it may give, the Court is nonetheless obliged to ensure that the remedies to which a successful applicant should be entitled, are made available to the applicant.
9. With those broad concerns of fairness in mind, I arrive at the following decision and give the following directions:
 - (1) I am satisfied that the application should be granted, not only on the basis of the irregularity admitted by Ms. Rambarran but also on the basis of *Wednesbury unreasonableness* and illegality, insofar as the three reasons given in the letter of 25 April 2010 from the Board cites reasons which are either outside the ambit of the Law and/or cannot be supported by reference to criteria which the Law identifies.

By this I mean specifically the following. First, that in the absence of objections from the Planning Department (which is yet to consider the

matter) and from the Commissioner of Police, there is no basis for a conclusion by the Board (as set out at paragraph (a) of its letter) that the proposed facility will result in traffic congestion.

- (2) Second, that there is no legal basis for a conclusion – as expressed at paragraph (b) – that the relevant public “would not benefit in any significant way or different way” by virtue of a grant of a variation of the existing licence; as the Law, in section 9(i)(d) allows the Board to consider in this respect only whether the proposed facilities are “located where they will be of service to the public”. In this respect, the Board therefore appears to have, impermissibly, applied a different and new test.
- (3) It is the applicant’s particular concern that this impermissible conclusion of the Board reveals an attempt by the Board to impose a commercial restriction against competition which is not a kind of restriction allowed by the Law. See *Jacques Scott Limited v Moxam and Liquor Licensing Board* (below). Indeed, the policy of the Law in this respect is clearly apparent from the continuing embargo against the grant of new licences. Any consideration seeking to fetter competition amongst existing licensees would therefore also be *ultra vires* the Board.
- (4) There is, finally, no reasonable basis, especially in the continued absence of any objection from the Commissioner of Police (which, until today – 21st October 2010 – Ms. Rambarran concedes, is the case), for the conclusion in paragraph (c) of the Letter, that “*the presence of the*

proposed facility would have a high propensity to additional public order”

(sic, but for which read disorder) for the District of West Bay.

- (5) It is simply not reasonable for the Board to have arrived at this conclusion seeming by supposition on its own, without citing some basis for this conclusion and especially when the Law (in section 13(11), the proviso) contemplates that the Commissioner of Police could object if concerns over public disorder arise.

10. While the Board, as a result of its decision having been quashed, remains at liberty to determine its procedure for the final disposition of the matter; in light of the foregoing conclusions, and out of concern to ensure fairness for the applicant, I give the following appropriate directions:

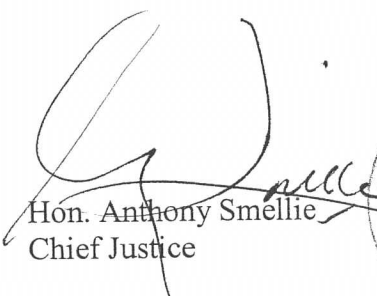
- (1) Pursuant to GCR O. 53 r.9, the Board is directed to reconsider the application and to reach a decision within 14 days in accordance with the following findings of the Court:

(i) The Board is not required to re-advertise the said application, or seek further submissions, objections or evidence in relation to the application.

- (2) Pursuant to section 5(7) of the Liquor Licensing Law (2000 Revision) (“the Law”), if thought fit by the Board, any variation of the License may be made conditional upon:

(i) the approval of the Central Planning Authority for the construction of the new commercial building from which the said license will be operated; and

- (ii) confirmation from the Chief Fire Officer that the completed building complies with the requirements of sections 9(1)(a) of the Law.
- (3) In circumstances where the Board has accepted the need to reconsider the application, and having regard to the nature of the application by the Applicant (being a variation of license to a new location), the evidence presented at the hearing on 22 April 2010, and the discretion afforded to the Board consistent with the principles expressed in the case of *Jacques Scott & Company Limited v Moxam & Liquor Licensing Board (1998) CILR 323*; the Court considers, for the reasons explained above, that the conclusions in paragraph (a), (b) and (c) of the Board's letter dated 25 April 2010 fall outside the range of conclusions reasonably available to the Board and are therefore not appropriate grounds upon which to refuse the said application.


Hon. Anthony Smellie
Chief Justice

November 18 2010

