

Decision No. GREYDLC 142/2024

IN THE MATTER

of the Sale and Supply of Alcohol
Act 2012 (the Act)

AND

IN THE MATTER

of an application by **KIRSTIE TANIA
O'DONNELL** pursuant to s.219 of
the Act for a Manager's Certificate

BEFORE THE GREY DISTRICT LICENSING COMMITTEE

Chairperson: Mrs Rachel van der Geest
Members: Mr Alan O'Connell
Mr John Canning

HEARING at GREYMOUTH on the 7th November 2024

APPEARANCES

Mrs K O'Donnell - applicant
Miss T Feary - Licensing Inspector - in opposition
Sergeant R Glue - NZ Police - in opposition

DECISION OF THE COMMITTEE

The Application

[1] Before the committee is an application by Kirstie O'Donnell for a manager's certificate. Mrs O'Donnell holds the required Licence Controller Qualification and has been employed as a retail assistant at the premises "Super Liquor" Greymouth on a full-time basis since June 2024. She has previously held a manager's certificate with the Tasman District Licensing Committee. The certificate expired on the 29th October 2022 and was not renewed by the applicant.

[2] The application was received on the 5th September 2024 with the required documentation, including references in support of Mrs O'Donnell from her current employer and a previous employer. No convictions were disclosed on the application.

[3] The application is opposed by the Police and the Licensing Inspector under S.222 (a) because of a driving with excess breath alcohol offence committed by Mrs O'Donnell. On Sunday 12th May 2024 at 12.07am, Mrs O'Donnell was the driver of a motor vehicle on Doyle Street, Blaketown which was stopped by police during a routine traffic stop. She subsequently failed breath screening procedures and her breath was found to contain 600 micrograms of alcohol per litre of breath. Mrs O'Donnell pleaded guilty to the charge at the Greymouth District Court. She appeared on the 29th August 2024 and was disqualified from driving for six months and discharged without conviction under section 106 of the Sentencing Act.

[4] The Licensing Inspector opposes the application under S.222 (a) because of Mrs O'Donnell's inability to satisfactorily answer questions posed to her regarding her knowledge of the Act in her application interview on the 18th of September 2024. The inspector has advised in her report that Mrs O'Donnell "answered poorly" when asked about the object of the act, was not confident in her understanding of acceptable identification for overseas patrons and that she could not name all of the days in a year that alcohol was not to be sold.

[5] Mrs O'Donnell, in her affidavit to the Court dated 8 August 2024, advised that on the night of the offence she was under pressure and stress due to serious events involving members of her family and finances. She stated that her decision to drive a motor vehicle to the service station to purchase a vape while under the influence of alcohol was a poor one and she feels remorse and shame.

[6] In her submission to this Committee, Mrs O'Donnell advised that a condition of her current employment contract is that she obtains her manager's certificate. Mrs O'Donnell, quite fairly, is concerned that if she loses this current job it will be difficult to find other employment. Her employer in his affidavit to the Court on the 9th August 2024 in support of the applicant's S.106 discharge, states "If she is unable to get the managers licence, she will be unable to meet her job requirement, and I will be forced to consider other options".

[7] Mrs O'Donnell further advised that her employment situation may affect her husband's health further, after he suffered a heart attack earlier this year. In her email dated 30 October 2024, Mrs O'Donnell also stated that losing her job would put her in financial hardship and put their mortgage at risk and that she "...made an unfortunate error of judgement..." which she "...understands the seriousness of".

[8] Mrs O'Donnell was supported at the hearing by Julie Mazey, herself the holder of a manager's certificate. She advised the committee that the applicant is very good at her job, understands right from wrong and understands alcohol legislation.

The Police

[9] Sergeant Glue's evidence provided reference to several decisions supporting the meaning and consideration of suitability, including when a S.106 discharge is involved. His evidence provided information regarding procedures and policies relating to intoxication and offences, including that any new applicant needs to remain free of negative dealings with the Police for two years from the date of any information or the date of the offence.

[10] In his verbal submission, Sergeant Glue stated that there is a requirement for consistency and fairness in relation to such procedures and policies, especially to others in similar situations. He sympathised with the applicant and stated he understood the situation she has got herself into. He accepts that the applicant is suffering some hardship but it is very important to himself and other duty managers that there is consistency.

The Licensing Inspector

[11] Miss Feary, in her evidence, refers to S.4 (1)(a) & (b) of the Act when she stated that “drink driving directly demonstrates the unsafe and irresponsible use of alcohol, which the Act plainly sets out to prevent”, and that the applicant does not meet the required criteria to hold a managers certificate. Miss Feary provided the *Craddock vs Kumar* [2023] NZARLA 66 decision to support this opinion. Miss Feary also submitted that the applicant’s “...insufficient knowledge of the legislation is a fundamental concern in terms of the applicant’s suitability”.

[12] The Licensing Inspector also submitted her concern that as the previous holder of a Manager’s Certificate, the applicant should have “...a competent understanding of the requirements of the Act through experience and through the award of the prescribed qualification (LCQ)...” however, her actions on 12 May 2024, and her unsatisfactory applicant interview on the 17th September 2024 would suggest otherwise.

[13] In her verbal submission, Miss Feary reiterated that she also has sympathy for the applicant and while Mrs O’Donnell meets a number of the criteria required, a two year stand down period is appropriate in this case.

[14] Mrs O’Donnell, in her closing submission, admits that what she did was wrong. She stated that in her application interview with Miss Feary she would have been nervous and got things wrong. Mrs O’Donnell stated that if she “...wasn’t right...” then she would not have her LCQ or have held a previous managers certificate. She advised that she enjoys her job at Super Liquor and is a happy person. She would struggle if she had to find work that was not within walking distance and reaffirmed her concerns about her household being on one income should she lose her employment.

The Committee’s Decision and Reasons

[15] When discussing ‘suitability’, Holland J in *Re Sheard* [1996] NZLR 751, [1996] NZAR 61 (HC) at 755 stated:

“Suitability is a word commonly used in the English language and is well understood. In an earlier decision the Authority has adopted the definition in the Concise Oxford Dictionary as ‘well fitted for the purpose; appropriate.

I do not find it helpful to refer to other decisions on different facts as to the meaning of that word. Where a statute uses an unambiguous and well understood word or expression and chooses not to enlarge on the ordinary definition of the word or expression by a special interpretation in the statute it is usually unwise for a Court to add to the ordinary meaning of the word as a general guide for all cases, as distinct from applying the word to the particular facts before it.”

[16] In this application, suitability due to the driving offence involving alcohol and the applicant’s insufficient knowledge of the Act, are the basis for the Police and Licensing Inspector’s opposition.

[17] This Committee duly considered the evidence produced, the evidence of the applicant, s.222 (a) of the Act and the relevant case law. In coming to its decision, this

Committee took particular note of *Horse Trap Tavern and Stewart* [2005] NZLLA 880 (a case which has relevance to the present facts) where the Authority stated:

“We believe that raising the bar for the holders of General Manager’s Certificates and keeping it at a certain height has the potential to bring about a reduction in the abuse of liquor nation-wide. If certain otherwise meritorious applicants suffer in the process, that may not be too high a price to pay in order to achieve this long term goal.”

[18] The applicant’s breath alcohol reading of 600 micrograms of alcohol per litre of breath is well over the current legal limit of 250 micrograms of alcohol per litre of breath and although she was discharged under S.106, the Court saw fit to disqualify her from driving for six months.

[19] Both the Police and the Inspector have stated that a 2 year stand down period before the applicant can reapply for her Manager’s Certificate would be appropriate.

[20] Of relevance to this application, in the case of *Graham Leslie Osborne* LLA 2388/95, the Liquor Licensing Authority suggested a stand-down incident-free period of two years for an isolated excess breath/blood alcohol conviction.

[21] This Committee does not consider that there are exceptional circumstances to support deviating from the established two year stand down period.

[22] The application and supporting information does not satisfy the committee that the criteria it must have in regard to as set out in s.222 of the Act have been met. The District Licensing Committee **declines** this application by Kirstie Tania O’Donnell for a Manager’s Certificate.

[23] The applicant may re-apply for her Manager’s Certificate two years from the offence date of 12 May 2024.

DATED at GREYMOUTH this 18th day of November 2024



Rachel M van der Geest
Chairperson/Commissioner