

Decision Number: 60G [2022] 13109

IN THE MATTER OF the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER OF an application by **TAJ LIQUOR LIMITED** for a new Off-Licence pursuant to ss99 and 100 of the Sale and Supply of Alcohol Act 2012 in respect of premises situated at 306 Lincoln Road, Christchurch, known as 'The Bottle-O' Lincoln Road.

BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Committee: Mr D Ivory (Chair)
Mrs M Redstone JP
Mr D Blackwell QSM

CORRIGENDUM

[1] In decision **60G [2022] 13109**, dated 31 January 2023, at para [118](f) the District Licensing Committee recorded that:

Compulsory conditions – section 116(2)

(f) Alcohol may only be sold or delivered the following days and during the following hours:

Monday to Saturday, between the hours of 9.00am and 10.00pm

[2] In its application the Applicant had sought hours of 9.00am to 11.00pm seven days a week. During the hearing the Applicant agreed to adjust these to 9.00am to 10.00pm, but not to a reduction in days of operation. As such, the above is a typographical error.

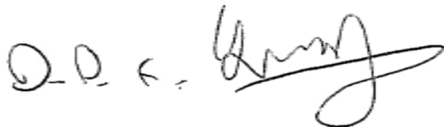
[3] Accordingly, para [118](f) is therefore hereby corrected as follows;

Alcohol may only be sold or delivered the following days and during the following hours:

Monday to Sunday, between the hours of 9.00am and 10.00pm.

[4] In all other respects the decision remains unaltered.

DATED at Christchurch this 7th day of February 2023

A handwritten signature in black ink, appearing to read 'D. D. Ivory', with a stylized flourish at the end.

Mr D. Ivory

Chairperson

Christchurch District Licensing Committee

Decision Number: 60G [2022] 13109

IN THE MATTER OF the Sale and Supply of Alcohol Act 2012

AND

IN THE MATTER OF an application by **TAJ LIQUOR LIMITED**
for an off-licence pursuant to section 100
of the of the Sale and Supply of Alcohol
Act 2012 in respect of premises situated
at **306 Lincoln Road, Christchurch**,
known as '**Bottle O' Lincoln Road**'.

RESERVED DECISION OF THE DISTRICT LICENSING COMMITTEE

BEFORE THE CHRISTCHURCH DISTRICT LICENSING COMMITTEE

Hearing: 15 December 2022 (at Christchurch)

Chairperson: Mr D Ivory
Members: Mrs M Redstone
Mr D Blackwell QSM

Appearances: Mr Josh Taylor and Ms Kate Anderson, on behalf of the Applicant
Mr Amarjit Singh, Director of the Applicant
Dr Liz Gordon, Counsel for the Objector (Saint John of God Hauora Trust)
Mr Paul McMahon, on behalf of the Objector (Saint John of God Hauora
Trust)
Ms Paula Williams, on behalf of the Medical Officer of Health, to assist
Senior Constable Graeme Jolliffe, NZ Police, to assist
Ms Anneke Lavery, Licensing Inspector, to assist

Decision: 31 January 2023

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Introduction

[1] This is an application by **TAJ LIQUOR LIMITED** ('**the Applicant**') for an Off-Licence pursuant to the Sale and Supply of Alcohol Act 2012 ('**the Act**') for premises situated at **306 Lincoln Road, Christchurch** known as '**Bottle-O Lincoln Road**'.

[2] The general nature of the premises is that of a **Bottle Store**.

[3] The application has resulted from a change of ownership. The premises currently trades under a Temporary Authority (pursuant to licence 60/OFF/102/2021) which commenced on 26 July 2022 and expired on 26 October 2022. A second Temporary Authority was issued prior to the hearing. The most recent Temporary Authority commenced on 26 January 2023 with an expiry date of 26 April 2023.

[4] The Applicant seeks the same terms and conditions as the licence currently in force for the premises.

[5] The application was received by the Christchurch City Council Alcohol Licensing Team on 31 May 2022. The application was publicly notified on 31 May 2022 and remained on the website for a minimum of 15 working days. Two objections were received.

[6] The first objection was made by the St John of God Hauora Trust ('**SJOG**') which owns and operates the community living home at 36-42 Parade Court. Ms Catherine Gall who lodged this objection has now retired. As a result the Chief Executive of SJOG, Sarah Hillier, issued a letter, received by the District Licensing Committee ('**the Committee**') on 23 November 2022, delegating authority to Mr Paul McMahon to represent them at the hearing.

[7] The second objection was lodged on behalf of the Salvation Army New Zealand Trust ('**the Salvation Army**') by Major Susan Hay, Director of their Bridge Programme. Major Hay had to withdraw from the hearing due to a family matter.

[8] This application was not opposed by the District Licensing Inspector¹, the New Zealand Police ('**Police**') or the Medical Officer of Health ('**MOH**').

[9] Before the hearing, the Committee members independently undertook external site visits of the area surrounding the premises. Further, on 19 December 2022, accompanied by Mr

¹ Inspector's Report, 7 October 2022.

Andrew Campbell (Hearings Advisor), members of the Committee inspected the premises. The Committee found a neatly laid-out store which was clean and well organised. The Committee noted that 'Nitro' products were located in the lower part of the display fridge at the rear of the store.

[10] A hearing of the application took place on 15 December 2022. The Police sought leave to be excused from attending the hearing due to workload pressures. The Committee requested feedback from all parties on this matter. Dr Gordon, counsel for the objector, sought to have a question answered by Police. Due to the complexity of the question, the Committee thought that the Applicant should also have an opportunity to test any response. As a result, Police were asked to attend at a specific time during the hearing to assist the Committee and respond to any questions from parties. The Committee heard evidence and received written final submissions on behalf of the Applicant, objector, Police, and MOH.

[11] The Committee is required to have regard to both sections 105 and 106 of the Act in forming its decision. Section 102(4A) of the Act restricts objections to the matter of Applicant suitability only when a premise is changing hands with no change in the conditions of the licence being sought.

Preliminary Matters

Conflict of Interest

[12] The Chairperson noted that he is a Trustee of the Rata Foundation which operates from a site at 4 Hazeldean Road, Addington, Christchurch. This location is near the Applicant's premises at 306 Lincoln Road.

Urgent Submission of Counsel for the Objector

[13] On 14 December 2022, the Committee received an urgent memorandum from Counsel for SJOG seeking an adjournment of the hearing set down for 15 December 2022. On 7 December 2022, Dr Gordon, Counsel for SJOG, visited the SJOG site and reported unsolicited engagement by two persons, one seeking money and another a drink. Upon further enquiry Dr Gordon found additional evidence suggesting community vulnerability. Dr Gordon requested:

'...that the District Licensing Committee either adjourn the hearing until such evidence can be collected, or allow this hearsay evidence and subsequently conduct its own investigation, under its inquisitorial powers, in the area.'

[14] The Committee advised Dr Gordon the matter would be addressed as a preliminary matter the following day at the hearing.

[15] At the hearing, Dr Gordon outlined SJOG's position and the issues experienced personally and by third parties. She submitted that amenity and good order relate to enhanced suitability². Mr Taylor, Counsel for the Applicant, opposed the Objector's request. He submitted:

- (a) the delay would be prejudicial to the Applicant;
- (b) the information was obtained two weeks earlier but only provided to the Committee on 14 December 2022;
- (c) the material submitted was hearsay in nature; and,
- (d) section 102 of the Act is clear that only objections relating to suitability can be raised in the case of an existing licence, or enhanced suitability where deprivation exists.

[16] Ms Lavery, the Inspector, agreed with Mr Taylor that matters need to relate to section 102 of the Act.

[17] The Committee was not minded to adjourn the hearing as requested by Dr Gordon. The Notice of Hearing was issued on 3 November 2022 and additional evidence could have been gathered and presented in a timelier manner.

Submissions and Evidence

The Applicant

Opening Submissions

[18] Mr Taylor presented opening submissions for the Applicant. His submissions were taken as read. Issues with suitability were identified as the sole focus for the hearing. The Committee

²*Shady Lady Lighting v Lower Hutt Liquormart Ltd*, [2018] NZARLA 198

was assured, by the end of the hearing, evidence would indicate that Mr Amarjit Singh, Director for the Applicant, could discharge the responsibilities of enhanced suitability.

Mr Amarjit Singh

[19] Mr Singh read his brief of evidence.

Supplementary Questions – Counsel for the Applicant

[20] Mr Singh outlined his experience of the past five years owning and operating another bottle store in Selwyn Street, Christchurch (**‘the Selwyn Street premises’**). He described the good relationships in place with other local businesses. He also asserted his positive community engagement skills in response to questioning by Mr Taylor.

[21] Mr Taylor asked Mr Singh to describe the area surrounding both the Selwyn Street premises and the Lincoln Road premises. Mr Singh responded that most of time it *“was all good”* and customers are *“just like a family”*. He talked about his engagement with the Salvation Army with respect to the Selwyn Street premises. He described himself as *“a team player”* and stated he is always open for engagement.

[22] In response to questions, Mr Singh outlined his attempts of engagement with the Salvation Army (Major Sue Hay) with respect to the current application. A clear intent to engage was evidenced. The Committee was presented with a document (**EXH-Singh1A**) consisting of a series of text messages between Mr Singh and Salvation Army staff attempting to arrange a meeting to discuss the application.

[23] Mr Singh outlined his knowledge of SJOG. He stated he was happy to work with them.

[24] In response to questions from Mr Taylor, Mr Singh addressed the issue of single sales and damaged boxes. He said he does not sell singles from damaged boxes and sends them back to the supplier. The franchise agreement with ‘the Bottle-O’ was also discussed. Mr Singh explained there was currently a temporary contract with them, but should the licence be granted a permanent contract will be entered into. If not, the existing temporary contract will lapse.

Questions – Committee

[25] Questions were asked of Mr Singh about the previous licence and, in particular, the undertakings made to the Salvation Army by the former owners. Mr Singh reported he was

aware of the undertakings, including the matter of breaking down of boxes. Mr Singh's attention was explicitly drawn again to the specific undertakings³:

'The Applicant has agreed that there will be no advertising of cheap alcohol outside of the shop. The Applicant has agreed to display referral information for the Salvation Army Bridge Addiction treatment service and the Salvation Army Community Ministries in store. The Applicant has agreed to engage with Addington Supportive Accommodation and the Salvation Army Bridge as to ways they could continue to be supportive and receptive of clients of concern, or minimising potential harm through the liquor store. The Applicant has agreed not to sell single bottles or cans by breaking up existing multi packs or damaged packs for individual resale.'

[26] Mr Singh was asked by the Committee if he was prepared to have the current undertakings converted to conditions for any future licence. He was also asked for his view on restricting single sales to a minimum of \$6.00 per unit. Mr Singh was left to consider these questions and discuss with Mr Taylor. He was to provide a response to the Committee later.

[27] Mr Singh confirmed a risk registry is in place and used at the Lincoln Road premises. He also reported he had cited the risk registry used by the previous owners. In response to a Committee question, Mr Singh also confirmed he regularly reviews the CCTV footage from the premises.

[28] When asked, Mr Singh said that if the application for this licence is granted he will retain the Selwyn Street premises. When questioned Mr Singh was unable to provide the premises' RTDs sales as a percentage of total turnover, this was 'unknown'. He explained the data was not yet available as it is provided on a six-monthly basis. It was also explained by Mr Singh that 'the Bottle-O' has a core range of products which he is obliged to sell (these make up most of his stock). High alcohol content craft beer is sold but not Russian beer as it is no longer supplied. There was discussion around the sale of 'Nitro' which is available at the store. Placement of 'Nitro' is at the back of the shop on a low shelf of a fridge-display unit. Mr Singh provided confirmation to the Committee that the Selwyn Street premises has been subject to controlled purchase operations and he had passed on all occasions.

³ Inspector's Report (7 October 2022), A. Lavery, Appendix 4 - Email 5 February 2021.

[29] The Committee requested financial information from Mr Singh to assess in determine the Applicant's risk profile. Specifically, information was sought on: borrowings/equity; turnover; and, predicted annual gross and net profit. These were provided to the Committee by Mr Taylor later in the hearing.

Questions – MOH

[30] Ms Williams asked a series of questions relating to **alcohol mixed energy drinks**. It was previously confirmed 'Nitro' was sold as well as similar products including 'Honey Badger'. Ms Williams advised the Committee that on a visit to the premises on Cup Day (2022) she had observed the product 'Nitro XXX Vodka Guarana liqueur' on sale. Ms Williams provided the Committee with a review/evaluation of the product undertaken by the University of Otago (**EXH-MOH1**). Mr Singh stated he was aware of the harm by the consumption of these energy drinks and explained them. He also noted that he no longer sold that product.

[31] Ms William's questioned Mr Singh on not selling alcohol to minors or people reasonably at risk of harm and how he was able to identify these people. Mr Singh responded by furnishing a recent example and explaining how he managed the incident.

Questions – Licensing Inspector

[32] Mr Singh was asked how he had financed the store by Ms Lavery. The financial information relating to this was later shared with the Inspector and the Committee only, to ensure confidentiality was maintained. These finance arrangements raised no concerns for the Committee.

[33] Mr Singh confirmed that he had become aware of the sale of the business from his friend, Mr Lovepreet Singh, whose wife, Ms Manpreet Kaur, is the sole director and shareholder of the previous owner, Progressive Retails Limited.

[34] When asked about the hours of operation, Mr Singh confirmed the premises' 9.00am opening time did not generate a lot of trade. He said he had encountered no major issues while operating under a temporary authority. The Incident Book from the premises was entered as evidence (**EXH-SINGH2**). Three entries recorded since taking over the business were explained:

- (a) a theft while the store was open;

- (b) a theft from the chiller – revealed by CCTV footage but initially not known about; and,
- (c) a customer under the influence of ‘something’. In this incident, service was refused and Mr Singh noted the *“customer was not happy - but problem solved”*.

[35] Mr Singh was asked to identify his ‘Nitro’ market. He was unable to identify customers. The location of ‘Nitro’ products was explained. He was also asked again about percentage of sales of ‘Nitro’ as total of turnover. The same response was provided that no exact figures were currently available (only after six months). He did suggest the market *“was not big”* and estimated it at under 5%. He confirmed that he sells ‘Nitro’ for \$11.00 per 1.25 Litre bottle.

[36] In terms of working hours, Mr Singh said he works every second Sunday at the Lincoln Road store and whenever an employee calls in sick. He normally works at the Selwyn Street premises from Monday to Friday each week.

[37] Mr Singh confirmed that the premises has 16 CCTV cameras and all are operational. No remote or internet sales occur. He referred to the *“Covid time”* when he did operate online and had remote sales from the Selwyn Street premises. Mr Singh explained his systems of staff training including the use of an online training manual (which is provided by ‘the Bottle-O’) which every employee needs to complete. This training manual is called RETA (retail training programme). Mr Singh also stated every two or three weeks he sits down with staff where they collectively problem-solve and discuss issues of the day.

Cross Examination - Dr Gordon for SJOG

[38] Dr Gordon asked Mr Singh questions around the purchase of the business. He knew that the licence was already four months into a 12-month licence at the time he bought the business and that it was the initial licence for the premises. The previous owners sold the premises for ‘personal reasons’. Mr Singh was aware the previous owners had made attempts to gain previous licences in the area and were declined due to the highly deprived nature of the area (not the presence of the Salvation Army shop).

[39] Dr Gordon posed questions relating to the work hours of Mr Singh and his wife, and his previous employment record. Questions were also asked on the hours worked by the two duty managers and other staff employed at the premises and also if any of these staff have manager certificates. Mr Singh responded to a question on statutory breaks, by explaining how they were managed (systems and practice) at the premises.

[40] Dr Gordon asked questions on staff training and the manual used by the Applicant. Mr Singh explained the policies and systems in place and confirmed staff were paid for attending training. Dr Gordon asked questions relating to the use of the Incident Book. She also posed detailed questions around the practicality of enforcing the policy of no multiple sales of singles to the same person in a day. This was identified as being problematic given that there are two shifts scheduled in a day. An explanation was provided by Mr Singh as to practice.

[41] Questions were posed to Mr Singh around his knowledge and understanding of the locality. An objection was raised by Mr Taylor to questions asked by Dr Gordon about specific instances that had occurred in the area. As a result, it was agreed questions of a general nature were permissible. Mr Singh was asked if he was aware of people seeking money in the area. His response was yes.. Mr Singh provided examples of such behaviours he had experienced at the Selwyn Street premises. He also explained how he managed these situations, which often involved a collaborative approach with others in the community in seeking assistance.

[42] The Incident Book was referred to by Dr Gordon when asking questions about people begging for money in the area. There was no record in the Incident Book of this. . Mr Singh indicated that this never happens inside the store, but people have come in asking for change in the past. Mr Singh expressed his awareness and concerns, shared by other local business owners, with respect to vandalism and break-ins. He noted in response to questions, that thefts and break-ins to cars are an issue but that it is a generalised concern throughout Christchurch.

[43] Dr Gordon referred to the object of the Act, and asked Mr Singh about where his customers consume the alcohol purchased from his premises. Mr Singh responded, 'at home'. Dr Gordon was clear that Mr Singh needed to have an understanding of how his products are used. Mr Singh agreed and asserted 'we have systems to deny sales if required'.

Objector – Saint John of God Hauora Trust

Opening submissions

[44] Dr Gordon presented opening submissions for the Objector which were taken as read, but some key points were highlighted. The area around the proposed site contains many sensitive areas. Social housing is present and Addington has been identified as an area of

high deprivation. Dr Gordon referred to the evidential burden resting on the Applicant and that they need to put 'their best foot forward'. She also asserted once again for the benefit of the Committee, 'enhanced' or 'extended suitability' is required in areas of high deprivation.

[45] Growing density of housing (social, transitional, and rehabilitative), high rates of crime, five vape shops, and road congestion on Lincoln Road were identified as features of the area. Comcare premises and Salvation Army sites were all identified as sensitive. Dr Gordon made reference to a Committee decision (**60B [2020] 6006**) which declined a licence near 306 Lincoln Road. Dr Gordon questioned the Applicant's understanding of the case which she suggested went beyond the location of the Salvation Army Family Store.

Mr Paul McMahon

[46] Mr McMahon explained to the Committee SJOG's structure and operations and the mahi carried out at the Parade Court site. He read out the brief of evidence prepared by Ms Catherine Gall who was initially representing SJOG.

Cross-examination - Counsel for the Applicant

[47] In response to questions by Mr Taylor, Mr McMahon confirmed the only issue before the Committee was suitability. Mr McMahon agreed the Applicant has previous experience, and has engaged with Salvation Army with respect to the Selwyn Street premises. He also confirmed the Applicant had endeavoured to engage with the Salvation Army on the current application⁴. Mr McMahon also confirmed that Mr Singh was aware of SJOG in the locality but not the extent of operations, and had expressed a willingness to work with them.

[48] Mr McMahon described a recent incident where an amputee was sat upon by two intoxicated persons who then took his electric wheelchair for a ride. Mr McMahon later confirmed there was no evidence of the alcohol being purchased from the premises. Mr McMahon stated the incident still was clear evidence of alcohol-related harm.

[49] Mr McMahon disagreed with Mr Taylor as to the suitability of the Applicant with respect to the area. Mr Taylor asserted it was not a case where no Applicant could be suitable because an existing licence is in place. Mr McMahon stated every application is new and a higher threshold is required in highly deprived areas. Mr McMahon answered questions about Mr Singh's training policies and awareness of surrounds. He confirmed that no criticism had been made of Mr Singh apart from sale of single cans and of the Nitro liqueur on Cup Day (2022)

⁴ Exhibit Singh 1A

in any of the objections or material provided. In essence, it was confirmed no other matters of suitability relating to the Applicant had been raised.

[50] During questioning it was reasserted by Mr McMahon that Addington was an area where alcohol-related harm existed along with other challenges. Addington was seen as a community filled with social housing and rehabilitation services and was 'severely deprived'. He was asked to comment on Police evidence that Addington was no worse than other areas of Christchurch with respect to alcohol related harm (which was reported by Police to have decreased). This evidence was referred to as an 'anomaly' according to Mr McMahon and Police were not asked which other areas in Christchurch this was being compared to. Mr McMahon did not consider the text messages of 14 July 2022⁵, as a commitment or effort to reduce alcohol-related harm but as evidence of a willingness to communicate.

[51] Mr McMahon said that it was good that the Applicant was willing to continue to honour undertakings from the previous owner but that did not mean the location was a good place for a liquor store.

Questions - Licensing Inspector

[52] Ms Lavery drew Mr McMahon's attention to paragraph 19 of Ms Catherine Gall's submission. She asked him if SJOG had any evidence of the bottle store having caused any problems to any of their residents. Mr McMahon referred to two recent instances where SJOG had decided not to move residents/clients with pre-existing alcohol issues to Addington for rehabilitation due to presence of alcohol. He said in terms of existing residents, any concerns were 'general' and there was nothing specific about the Applicant's premises. Mr McMahon also raised concerns about vulnerable clients going into the community and dealing with intoxicated persons begging for money. A further example was provided where a client was twice asked for money by an intoxicated person. Mr McMahon agreed with Ms Lavery that the matters raised were not a direct concern.

Questions - Committee

[53] The Committee had questions based on their pre-hearing inspection of the surrounds of the bottle store. It sought to better understand the area with the assistance of Mr McMahon. He was asked if the area was better than the picture provided in SJOG's evidence as the Committee viewed signs of regeneration on its inspection and the area appeared in reasonably good order. Mr McMahon commented on his experience as an elected community

⁵ Exhibit-Singh-1A

representative in the area. He explained it as an area of extreme contrasts with pockets of affluence, including award-winning housing developments, but also of severe deprivation and older infill housing with no insulation. To see these contrasts one has to spend time there. He referred to inequalities having intensified. The Committee asked if there were any similarities to Christchurch East of which Mr McMahon also has a good knowledge. High density housing was identified as a feature of Addington not seen in Aranui. Mr MacMahon also felt there was greater availability of alcohol in Addington. He identified both as vulnerable areas.

[54] Mr McMahon was asked if the Committee refused to grant the licence, whether SJOG could then place clients into housing in the area that they could not currently. He noted that it was not his decision but that it would reduce easy access to alcohol. Another scenario put to Mr McMahon was whether, if the licence were to be granted and the Applicant undertook as conditions the matters raised with the previous owner, including engaging with Addington Supportive Accommodation, the Salvation Army and SJOG as to ways to continue to be supportive and respectful of clients' concerns and minimising potential harm through the liquor store, this would be a measurable KPI that the inspector could apply going forward. Mr McMahon said as a condition rather than an undertaking, then yes, but measurement could be difficult. He also noted the level of care and discretion required in these matters.

Senior Constable Graeme Jolliffe, NZ Police

Questions – Dr Gordon for SJOG

[55] Dr Gordon asked about statistics on incidents in area. Senior Constable Jolliffe said the Police Intel unit has no huge concerns about the area as compared to other areas of Christchurch. Changes to reporting, moving away from Calls for Police Service data are being rolled out, with more emphasis being placed on recording when alcohol is a confirmed factor of an incident. Senior Constable Jolliffe said the new data capture will not be perfect and relies on the right questions being asked by attending Officers, but it is more precise.

[56] Senior Constable Jolliffe also noted the impact that some of the bigger complexes in the area, including the Stadium, has on the number of calls for service being generated when looking at the data. The Police data shows a drop in alcohol as a contributing factor to incidents in the area when compared to the previous year, but the data is not yet complete for the year 2021/2022. In 2020/2021, alcohol was identified as a contributing factor in 420 events in a one-kilometre radius from the premises. And 190 cases within a 500-metre radius of the

premises. In the 2021/2022 data that the Police had to the date of the hearing, there had been 290 events within the one-kilometre radius and just over 100 within the 500-metre radius.

[57] Senior Constable Jolliffe was asked whether these figures related only to incidents where alcohol was directly a cause of the event. He stated that alcohol could be directly or indirectly involved in incidents, for example, a family violence incident may arise from an argument about money being spent on alcohol, but the parties may not have been intoxicated at the time. The data collection was dependent on the attending Officer's assessment at the time of the incident as to whether they believed alcohol was involved enough to report it. Senior Constable Jolliffe stated that officers have been told that if they think it has been involved either directly or indirectly that they should report it. He also noted that people can be reluctant to provide information and sometimes the circumstances do not allow for the questions to be asked. Dr Gordon asked, given these variations in the collection of the data, how safe the figures are. Senior Constable Jolliffe could not give an answer to this, but said training was taking place to ensure the right questions were being asked where possible. The new system does give better information, but it was constantly evolving.

Questions – Counsel for the Applicant

[58] Mr Taylor asked further questions about the new Police system for data collection on alcohol-related harm, and what it will look like in practice. Senior Constable Jolliffe was limited in his response, and is awaiting documentation on what material/data will be published and what instruction is being provided at the Police Training College. He also confirmed he had started using the new tool four months ago but had captured data over the last three years.

Questions – Committee

[59] The Committee asked if Police had concerns about bottle stores that sell vapes and cigarettes being more vulnerable to thefts and break ins. Senior Constable Jolliffe said he believed it made them more of a target for ram raids, as evidenced over the previous few months. He did not have any exact statistics.

[60] The Committee also asked Senior Constable Jolliffe whether he thought it was wise for bottle stores to sell individual packets of cigarettes to a customer who is not purchasing any alcohol. There was no Police view on this matter and there were no statistics available.

[61] On request, Senior Constable Jolliffe provided an overview of the neighbourhood surrounding the premises. His response included reference to the commercial area, a high

concentration of community housing including the Poulson Street flats, and a Salvation Army alcohol rehabilitation centre. There are pockets that stand out, including the Arena which brings in its own crowds, but others, like the shopping areas, which do not. Senior Constable Jolliffe noted that Addington has experienced both busy and non-busy phases, especially just after the earthquakes. Also noted were local pubs which were mainly busy when there is an event at the Arena.

[62] The Committee stated it will reserve its decision.

Closing submissions

Closing Submissions – Saint John of God Hauora Trust (Objector)

[63] The Objector, through Counsel, submitted although the objection of SJOG is limited to matters of suitability, it is recognised that suitability is not a narrow concept, as stated by ARLA in *Re Nishchay's*.⁶

‘Traditionally that test has been interpreted as meaning whether or not an Applicant will comply with the penal provisions of the Act. In fact, the test is much wider. To carry out the responsibilities that go with the holding of a licence includes whether or not liquor abuse issues are likely to arise. Thus, it includes the object of the Act as set out in s 4. It is not limited to a narrow assessment. Everything impacting on character/suitability is potentially relevant.’

[64] Dr Gordon stated ‘extended suitability’ is required in this matter. Reference was made to the 2018 decision of Churchman J in the High Court in *Shady Lady*.⁷

‘the vulnerability of an area, in effect, raises the threshold of suitability in terms of whether the grant of the licence will result in a reduction or an increase in alcohol-related harm’.

⁶ *Re Nishchay's Enterprises Limited* [2013] NZARLA PH 837

⁷ *Shady Lady Lighting v Lower Hutt Liquormart Ltd*, [2018] NZARLA 198.

[65] Dr Gordon also noted the case law in *Shady Lady* has been developed further in two decisions of ARLA in 2021. The first was the ARLA decision in *Two Brothers*⁸, where a licence was not renewed. The second case was *Nekita Enterprises*⁹, which applied the *Shady Lady* principle of 'extended suitability' to managers' certificates and enforcement hearings. The Authority cancelled both the manager's certificate and premises licences. In essence it was asserted that, in areas with high levels of deprivation and vulnerability, applicants must meet a much higher standard of suitability than in areas of less deprivation and vulnerability.

[66] Dr Gordon submitted that the evidence before the Committee, and accepted by the Applicant, is that the area is one of high deprivation. It was noted both objectors provided evidence of deprivation.

[67] Dr Gordon also recalled her urgent submission on behalf of SJOG to the Committee, the day before the hearing seeking an adjournment. It was contended that her experiences and observations were relevant to the application. It was also noted that the Committee declined to exercise its s 201(3) power under the Act, as requested to investigate the matters raised in the urgent submission.

[68] Dr Gordon submitted that the vulnerabilities of the area around Addington are significantly more serious than those outlined in the High Court in *Shady Lady* that led to a new licence being declined. The Committee was told there is evidence in this matter of growing housing density of the area which clearly increases the risk of alcohol related harm.

[69] Counsel argued that data collected by the new Police system, which is still being developed, showed 99 reported incidents in the immediate area relating primarily to alcohol in the previous year. It was submitted this was a rate three times higher than that identified by the High Court in *Shady Lady* and in the current matter these were only the reported crimes.

[70] Previous Committee decisions in the locality were referenced by Dr Gordon. It was submitted that this Committee's Decision No. 60B [2020] 6006 (18 December 2020) was of 'significant relevance' in terms of the vulnerability of the area and the current application. This decision related to premises seeking to relocate from 283-291 Lincoln Road across the road to 1B/300 Lincoln Road, Christchurch.

⁸ *Two Brothers Wholesale Limited v MOOH and NZ Police ARLA* [2021] NZARLA 32

⁹ *Christchurch City Council Alcohol Licensing Inspector v Nekita Enterprises Limited* [2021] NZARLA 139 (17 September 2021)

[71] Dr Gordon argued that decision identified considerable evidence of the deprivation and vulnerability of the Lincoln Road area. The Decision concluded by stating:

[74] After weighing up all the evidence, looking at the sections of the Act and the relevant case law, it is our opinion there cannot be a more clear-cut case of risk of an increase in alcohol-related harm in a small segment in the population, in an area of Christchurch which is already socially deprived and facing harm from the cause and effect of unsafe alcohol consumption.

[75] In the words of Gendall J in the Vaudrey case quoted above, “if the object of the Act cannot be achieved by the application, then it cannot succeed”. This application is declined.

[72] Dr Gordon submits that, having made such a ‘clear cut’ statement about the socio-economic deprivation of the area and associated risk of alcohol-related harm, no application for a new bottle store or a relocation of a bottle store should have been successful before the Committee ‘until these circumstances had clearly changed for the better’.

[73] Dr Gordon also takes particular issue with a recent licence decision being granted ‘on the papers’ to the previous owner, Progressive Retails, by one of the current Committee Members, Mrs. Redstone. (**Progressive Retails Ltd – Merchants Liquor (Decision No. 60F [2021] 8089)**). Dr Gordon submitted the Inspector’s report made no mention of two key matters: the previous Committee decision in December 2020 (raised by objectors) and the terms of an agreement between the Salvation Army that included undertakings to be adopted by the licensee. This was the basis on which the Salvation Army agreed not to oppose that licence. Dr Gordon submits that information provided to the Committee in making the decision ‘on the papers’ in May 2021 did not reflect the Committee’s previous ‘very serious concerns’ regarding vulnerability of the area and its refusal to grant a relocation of a bottle store.

[74] Dr Gordon notes SJOG raised concerns in evidence about the sale of this business within four months of its first probationary licence being issued and questioned:

- (a) why a new licensee would sell its business; and,
- (b) why a person would buy a business, which is still on the one-year probationary licence.

[75] SJOG also had concerns that the Applicant intends to rebrand to 'the Bottle O' in the future. Dr Gordon identified actions of the Applicant as being predetermining the Committee decision. Dr Gordon noted large, expensive signage had already been purchased and the branding was complete. It was submitted that the expectation and anticipation held by the Applicant raises questions of suitability.

[76] Dr Gordon stated SJOG remains concerned about many elements of this application, including:

- (a) Little assurance provided that employees take the breaks required under employment legislation, including locking all doors during such breaks if in sole charge;
- (b) Employees do not appear to receive appropriate training for operating in a very vulnerable location;
- (c) Evidence was that the incident book was poorly presented and appears to be very incomplete; And,
- (d) The Applicant's director himself spends only five hours per week at the store on a Sunday, when he works alone. His wife, the sole shareholder of the company, does not work at the premises at all. '

[77] Dr Gordon submitted that whatever the intention the directors had in purchasing this business, the evidence does not show they know or understand the area well.

[78] Dr Gordon argued that the Applicant has not demonstrated their suitability to the extended level. While there is no onus of proof on an applicant, it does have an evidential burden it must meet¹⁰. In conclusion it was submitted that the Applicant has not met the evidential burden necessary to demonstrate extended suitability.

Position on Proposed Conditions

[79] SJOG agrees with the applicant on the following conditions:

- (a) No sales of Nitro Liqueur;

¹⁰ *Patel's Superette 2000 Ltd v Muir* [2019] NZARLA 75 at 228.

- (b) Reduce hours of licence to 9am – 10pm Monday-Sunday; and,
- (c) No exterior advertising of products or specials in any form.

[80] Conditions on which there is partial agreement are as follows:

- (d) No single sales of beer, cider, or RTDs priced at, or less than, \$6.00 per unit are to be sold¹¹. The applicant wishes to add the qualifier ‘that have an alcohol / ABV percentage greater than 5.5%’. SJOG does not accept this further qualifier.
- (e) No sales of Nitro or similar products that:
 - (i) Contain alcohol and also feature caffeine-based stimulants such as guarana;
 - (ii) Are sold in soft drink type containers; and,
 - (iii) Are arguably targeted at a younger market.

SJOG notes that the Applicant seeks to remove the words ‘soft drink type’ containers from clause (ii) above and replace them with “vessels greater than 1 litre in volume”. Dr Gordon states that the Applicant also seeks to remove clause (iii) above. SJOG does not accept these further qualifications.

- (f) No remote sales made, picked up or delivered from this site by the licensee or any authorised third party.

SJOG noted that the Applicant agrees with this proposed condition, but wishes to add: ‘other than where there is an increase in Traffic Light settings (or other restrictions relating to Covid-19) those restricts or prevents the operation of the store or where the supply is to another business or on-licence’. SJOG submits that this goes against the offer made by the Applicant at the hearing that there be no remote sales.

[81] Conditions with which the Applicant disagrees in full:

¹¹ *St Joseph's School v Singh Trading*, NZARLA [2021] 123 at 157 (v).

- (g) All employment requirements, including staff breaks, be documented and enforced. In particular, if a person is working alone, the premises must be shut during both 10 minute and 30-minute break periods.

[82] SJOG indicated there were two further matters on which it did not consult with the Applicant. SJOG asks that the Committee also consider including the following as conditions of the Licence:

- (a) removing either the flag or the wooden display stand, or both, from the footpath, which are green and have 'The Bottle-O' logo on ('The Bottle-O' logo is also repeated seven more times on the shop signage and the Committee may consider whether this is excessive and order removal, using the ARLA decision in as authority).
- (b) No sales of singles or re-constituted packs arising from broken packaging, except when the packs are re-sold in their original packaging size (e.g. 12 cans).

Closing Submissions – Medical Officer of Health (MOH)

[83] The MOH filed a closing submission, noting no opposition was made to this application. Ms Williams noted the evidence provided by the objector of a vulnerable community affected by more than alcohol harm, now requires the Committee to undertake its evaluative exercise.

[84] Ms Williams made reference to the 'extended suitability' required by the Applicant who seeks to operate premises in this specific location, noting that *'the applicant needs to show awareness of any potential problems associated with those premises'*.

[85] Ms Williams stated that in order to satisfy the 'heightened threshold' a suggested list of conditions is drawn to the attention of the DLC for its consideration:

- (a) No single sales of beer, RTD's or cider greater than 7.2% ABV;
- (b) No single sales of beer, RTD's or cider under \$6.00;
- (c) No sales of Nitro and cigarettes or vapes, although the latter 2 are not licensing matters;

- (d) No external advertising apart from 'The Bottle-O' branding and A4 sheet of specials; and,
- (e) No after pay.

Closing Submissions – Licensing Inspector

[86] Ms Lavery submitted that the Committee is required to have regard to matters raised in section 105 and 106 of the Act in forming a decision.

[87] Ms Lavery noted this is an application for a new off-licence for an established alcohol store which is changing hands. The store itself has been operating from the Lincoln Road location under the current licence since 15 December 2021.

[88] A new licence for an existing premises should, in the view of Ms Lavery, see 'little or no change' to the level of alcohol harm should the licensee maintain a high standard of staff training and understanding of the community in which they are operating.

[89] Ms Lavery submitted that the question for the Committee is whether the applicant is suitable and will they do all they can to minimise alcohol-related harm should the licence be granted.

[90] The Inspector highlighted in her closing submission that: the applicant has been operating at this store on a Temporary Authority since April 2022 and has agreed to continue to adhere to the previously agreed undertakings. It is submitted such a position indicates that the Applicant is concerned and cares about the community. Further, Ms Lavery referred to the Applicant as an experienced operator with no complaints from his other store on Selwyn Street, and who has demonstrated a high degree of suitability and agreed conditions.

Closing Submissions - The Applicant

[91] Ms Anderson, Co-Counsel for the Applicant, reiterated The Applicant Director's experience in operating a bottle store. She submitted that Mr Singh's engagement with the Salvation Army over this licensing application, and with respect to his Selwyn Street premises supports his suitability.

[92] Looking forward, Mr Singh's commitment to continue working with the Salvation Army is identified as material. Ms Anderson refers also to the management training and support

provided to his staff with respect to 'policies by staff, and strategies for the management of incidents in and near the store'.

[93] Ms Anderson submits the evidence provided by Mr McMahon related to the vulnerability of the community and suitability of the location for a bottle store, not the suitability of the Applicant.

[94] Also subtitled by Ms Anderson was that the Applicant has satisfied the criteria for the issue of an off-licence under section 105 of the Act, and there have been no objections raised by the agencies. Furthermore, the objections filed did not raise an issue to the Off-Licence on the grounds of the applicant's suitability, the only applicable ground for objection.

[95] Ms Anderson reported on the outcome of discussions between the Applicant and SJOG about proposed conditions for the single sales of beer cans and 'Nitro' as suggested by the Committee.

Proposed Conditions

[96] Ms Anderson reported that parties were unable to agree on conditions. However the applicant proposed the following conditions to address the single sale of beer cans or certain alcohol mixed energy drinks:

- (a) No sales of beer, cider, or RTDs as single (i.e. only selling one can / vessel at a time);
 - (i) that have an alcohol / ABV percentage greater than 5.5%; and,
 - (ii) are priced at, or less than, \$6.00.
- (b) No sales of Nitro or similar products that:
 - (i) contain alcohol and also feature caffeine-based stimulants such as guarana; and,
 - (ii) are sold in vessels greater than 1 litre in volume;
- (c) No sales of Nitro "liqueur"; and

- (d) No remote sales made, picked up or delivered from this site by the licensee or any authorised third party, other than:
 - (i) where there is an increase in Traffic Light settings (or other restrictions relating to Covid-19) that restricts or prevents the operation of the store; or
 - (ii) where the supply is to another business or on-licence.

[97] In summing up, Ms Anderson notes that the Applicant is experienced and has provided evidence of suitability to operate a bottle store. She stated that the Applicant: has an awareness of the issues faced by the surrounding community; has taken steps to minimise alcohol-related harm; and, shown a willingness to work with local businesses and community services, including the Salvation Army and SJOG.

Considerations of the Committee

[98] Having considered the application together with the Agency Reports and objections placed before it, and the oral evidence and submissions received, the Committee must now stand back and determine whether a new licence should be granted.

Evaluation and findings

[99] The Committee would first like to acknowledge the view of all parties that it would be greatly assisted by a Local Alcohol Plan, but Christchurch does not have the benefit of such a Plan.

[100] This application was not opposed by the Reporting Agencies.

[101] There were two objections to the application from the Salvation Army and SJOG. Mr McMahon, for SJOG, appeared at the hearing, represented by Dr Gordon. Major Sue Hay, on behalf of The Salvation Army, filed a brief of evidence but was unable to attend the hearing due to a family matter. Major Hay's brief of evidence was considered by the Committee.

[102] The Applicant had sought hours of 9.00am to 11.00pm seven days a week. Those hours are within the national default hours for an Off-Licence of 7.00am to 11.00pm. However, during the course of the hearing, the Applicant agreed to adjust these to 9.00am to 10.00pm.

[103] The Committee accepted the evidence of SJOG and Salvation Army as to the high deprivation and vulnerability of the area. Good evidence was provided to the Committee, including that of Mr McMahon, and the deprivation tables and data provided by Major Hay of the Salvation Army. However the Committee also notes Police evidence that the area does not stand out when compared to other areas of Christchurch. Further, Police evidence was provided that reported incidents of alcohol-related harm in the area had declined over the last reporting period, however the Committee was cautioned by Police around the accuracy of the data provided. We note that in the future there may well be more accurate and enhanced Police reporting on incidents of alcohol-related harm.

[104] In assessing the application against the objects of the Act, standing back and evaluating, the Committee is of the view that, given this is not an application for a new Off-Licence in a deprived area, the harm caused by the excessive or inappropriate consumption of alcohol would not be minimised. Further, the amenity and good order of the community would not decrease to any great extent by the Committee declining the grant of this licence.

[105] The Committee accepts that the deprivation and vulnerability in this community requires the Applicant to meet a higher threshold in terms of their ability to deal with the risks associated with the harmful effects of alcohol on the community. However, it does not accept the objector's submission that deprivation alone meant that the Applicant, or in fact any applicant, is not suitable to hold a licence.

[106] Section 105(1)(b) sets out suitability of the applicant as one of the criteria for the issue of a licence. In discussing the meaning of 'suitability', Holland J said in *Re Sheard* [1996] 1 NZLR 751, [1996] NZAR 61 (HC) at 755:

'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 (sic) 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.'

[107] The Authority has considered the issue and held that: "*The meaning of 'suitability' has not changed as a result of the enactment of the Sale and Supply of Alcohol Act 2012*".¹²

¹² *Re Karambayev Ltd* [2013] NZARLA 1214 at [17]

[108] Counsel for the objector stated that previous Committee decisions in the locality were of 'significant relevance' in terms of vulnerability, and argued for the need for consistency as between decisions. The Committee notes that all its decisions are separate and are made or formed on the evidence presented in each specific case. As in all cases before the Committee, once evidence is heard, weight is attached to it, and then matters are considered with respect to the Act and any relevant case law. The submission that the Committee is subject to precedent with respect to its previous decisions fails.

[109] The Committee is not aware of any evidence that indicates the Applicant is not adhering to its responsibilities and obligations, with respect to employees, under the Employment Relations Act 2000.

The suitability of the Applicant

[110] We find that the Applicant is a suitable entity to hold a Licence. The Directors of the applicant are both skilled and experienced in operating an Off-Licence. This experience is evidence in the operation of their existing Off-Licence at the Selwyn Street premises in Christchurch. They have been operating at the current premises on a Temporary Authority since April 2022 without incident and have agreed to continue to adhere to the previously undertakings to the point of making them conditions. The Committee shares the view of the Inspector that a continuation of undertakings indicates that the Applicant is 'concerned and cares about the community' in which it operates. The Committee also notes the regular use of an Incident Book. In addition, the Applicant has a highly experienced Duty Manager, and Mr Singh, as director, also takes an active role in the running of the business alongside experienced staff. This management structure is supported by regular meetings and training.

[111] With the Applicant being owner-operated, we believe they have the opportunity to continue to be an active participant in the Addington community. This should further enhance their ability to continue to run their business at a high level. The attempted engagement with the Salvation Army over this application, the agreement to honor and formalise the pre-existing undertakings as conditions, and good community engagement evidenced at the Selwyn Street premises also suggests a willingness and capacity to be part of the local community.

[112] As part of its risk profiling, the Committee made enquiry about the Applicant's finances. The Applicant provided the Committee with information about: the level of debt to equity; the source of finance for the purchase of the business; turnover information; and, profit projections. All financial information received suggests conservative settings are in place for the business.

[113] Mr McMahon's evidence about his experience and insight of the community was well received by the Committee. The restriction imposed by section 102(4A) of the Act clearly adjusted that evidence to focus on the suitability of the Applicant.

[114] The Committee is minded of the decision of the High Court in *Medical Officer of Health (Wellington Region) v Lion Liquor Retail Ltd*¹³, where it was held:

'that there can be no realistic doubt the premises contributes to some of the alcohol-related harm in the locality'.

[115] In the current application we have a community which is vulnerable and suffers from deprivation. The clear harm which can result from single sales of beers in cans and the sale of Nitro products is both relevant and material. The Committee acknowledges the willingness of both Counsel to enter into discussion with a view to seeking agreement on conditions. The contribution of the MOH in these discussions, and suggested conditions is also appreciated. The reported discussions and matters raised at the hearing with respect to conditions have been carefully considered. The Committee has decided to adopt the conditions offered by the Applicant.

[116] After carefully considering all the evidence presented we find the Applicant meets the suitability test (as set out in section 105 1(b) of the Act) to enable them to be given a licence to operate their business at 306 Lincoln Road, Addington, Christchurch. The Committee, more broadly, is satisfied after standing back and evaluating all the matters placed before it, and having had regard to the criteria as set out in sections 102 and 105 (and informed by section 106) of the Act, that granting the application subject to conditions and undertakings received achieves the purpose and objects of the Act.

[117] The licence will be issued for twelve months (often referred to as the probationary period), and at the renewal the Applicant's performance in running the Off-Licence can be further assessed.

Decision

[118] Accordingly, pursuant to section 104(1) of the Act we grant the application for an Off-Licence for a period of one year, subject to the following conditions:

¹³ [2018] NZHC 1123 at [65]

The Licensed Premises

- (a) The premises are identified on the plan provided with the application for a licence¹⁴.

Restricted and Supervised Areas - section 119

- (b) The licensed area is designated as a supervised area.

Discretionary conditions – section 116 (1)

- (c) The following steps must be taken to ensure that the provisions of the Act relating to the sale of alcohol to prohibited persons are observed:
 - (i) Display of appropriate signs adjacent to every point of sale detailing the statutory restrictions on the supply of alcohol to minors and the complete prohibition on sales to intoxicated persons.
- (d) The following steps must be taken to ensure that the provisions of the Act relating to the management of the premises concerned are observed:
 - (i) Alcohol must only be sold and supplied within the area marked on the plan submitted with the application.

Compulsory conditions – section 116 (2)

- (e) No alcohol is to be sold or supplied on the premises on Good Friday, Easter Sunday, Christmas Day, or before 1pm on Anzac Day.
- (f) Alcohol may only be sold or delivered the following days and during the following hours:

Monday to Saturday, between the hours of 9.00am and 10.00pm.

- (g) Drinking water is to be freely available to customers, while alcohol is being supplied free as a sample on the premises.

¹⁴ As attached to the application

Section 117 – Other Discretionary conditions

- (h) The following steps must be taken to promote the responsible consumption of alcohol:
- (i) The licensee must implement and maintain the steps proposed in The Taj Liquor Limited Host Responsibility Policy¹⁵ aimed at promoting the reasonable consumption of alcohol.
- (i) The Licence is also subject to the following conditions, which in the Committee's opinion are not inconsistent with the Act:
- (i) No sales of beer, cider, or RTDs as singles (i.e. only selling one can/vessel at a time):
 - that have an alcohol / ABV percentage greater than 5.5%; and
 - are priced at, or less than, \$6.00
 - (ii) No sales of Nitro or similar products that:
 - contain alcohol and also feature caffeine-based stimulants such as guarana; and
 - are sold in vessels greater than 1 litre in volume; and
 - (iii) No sales of Nitro 'liqueur',
 - (iv) No remote sales made, picked up or delivered from this site by the licensee or any authorised third party, other than,
 - where there is an increase in Traffic Light settings (or other restrictions relating to Covid-19) that restricts or prevents the operation of the store; or,
 - where the supply is to another business or on-licence.

¹⁵ Attached to the application

- (j) Further, the Licence is also subject to the following conditions:
- (i) there will be no advertising of cheap alcohol outside of the premise.
 - (ii) to display referral information for the Salvation Army Bridge Addiction Treatment Service and the Salvation Army Community Ministries in store.
 - (iii) to engage with Addington Supportive Accommodation, the Salvation Army New Zealand Trust, **and Saint John Of God Hauora Trust**, as to ways they could continue to be supportive and receptive of clients of concern, or minimising potential harm through the liquor store.
 - (iv) not to sell single bottles or cans by breaking up existing multi packs or damaged packs for individual resale.

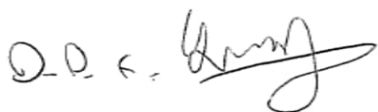
Other restrictions and requirements

- (k) Section 56 – Display of signs
- (l) Section 57 – Display of licences
- (m) Section 59 – Requirements relating to remote sales by holders of off-licences.
- (n) Section 214 – Manager to be on duty at all times and responsible for compliance.

[119] The licence shall be issued for one year.

[120] The Applicant's attention is drawn to section 259 of the Act which makes it an offence not to comply with certain requirements and restrictions imposed by or under the Act. Specifically, sections 46 to 63 and 231(1). The Applicant must comply with all conditions specified on a licence.

DATED at CHRISTCHURCH this 31st day of January 2023



D Ivory
Chairperson
Christchurch District Licensing Committee