

Decision No. QLDLC Hearing 0011/17

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

**AND**

**IN THE MATTER** of an application by  
**YVONNE MARY COSTELLOE** pursuant to  
s 219 of the Act for a Manager's Certificate

**BEFORE THE QUEENSTOWN LAKES DISTRICT LICENSING COMMITTEE**

Chairman: Mr E W Unwin

Members: Mr L A Cocks

Mr J M Mann

**HEARING** at QUEENSTOWN on 6<sup>th</sup> April 2017

**APPEARANCES**

Ms Y M Costelloe – Applicant

Mr N Bates – Queenstown Lakes District Licensing Inspector – to assist

Sergeant T D Haggart – N Z Police – in opposition

**RESERVED DECISION OF THE COMMITTEE**

**Introduction**

[1] Before the committee is an application by Miss Yvonne Mary Costelloe (the applicant) for a Manager's Certificate. The application was received by the Queenstown Lakes District Licensing Agency (the Agency) on the 2<sup>nd</sup> December 2016 and was accompanied by the necessary Licence Controller Qualification (LCQ) and the appropriate employer reference. Miss Costelloe is 25 years old, originally from Kerry in Ireland and is the holder of a work visa which expires on the 2<sup>nd</sup> February 2018. The visa has a condition attached that states the holder 'may only work as a Duty Manager (621511 – Retail Supervisor) for Pog Mahones in Queenstown'.

[2] The application was sent to the Police on the 5<sup>th</sup> December 2016 which drew a report in opposition on the 22<sup>nd</sup> December 2016 questioning the suitability of the applicant to be a holder of a manager's certificate for the reason below,

**Sale and Supply of Alcohol Act 2012**

***s222 (a) the applicant's suitability to be a Manager***

*On the 30<sup>th</sup> November 2016 Yvonne Costelloe was the Temporary Duty Manager at Pog Mahones. Police observed an intoxicated male entering the premises.*

### **The Evidence Tendered by the Police.**

[3] Sergeant Haggart presented the Police evidence. It showed that at 12.35am on the 30<sup>th</sup> November 2016, Police were driving along Rees Street Queenstown and observed what appeared to be an intoxicated male entering the premises Pog Mahones Irish Pub. Police noted at the time that the male was with about three friends and that he took two attempts to open the door, missing it completely the first time and that he appeared unsteady on his feet. The Police stopped and decided to carry out a licensed premise visit. Police spoke to the male's friends outside who confirmed they had been drinking in the bar and that he had just gone in to retrieve his bag. On entering the premises, Police observed the male standing by the bar and conversing with about four or five people. There were about thirteen people in the bar at that time with one bar person serving drinks.

[4] Police spoke with the male noting that no staff had approached him when he entered the premises. He identified himself as Scott Walsh, a Duty Manager for Pog Mahones but was off duty. Police noted he was difficult to understand, slurring his words and unsteady on his feet. He admitted he had been on the premises for a few hours.

[5] The Police then asked to see the temporary Duty Manager, Miss Costelloe who was upstairs securing till drawers prior to the premises closing for the evening. Police asked Ms Costelloe to assess Mr Walsh using the intoxication assessment tool. Miss Costelloe agreed with Police that Mr Walsh showed all the signs of being too intoxicated to remain in the bar and that was why she had cut his alcohol supply an hour earlier. When asked as to why Mr Walsh had still been on the premises, Ms Costelloe told Police that she thought he was safer staying onsite drinking water. Both attending Police Officers pointed out that Mr Walsh was in the company of three friends.

### **The Applicant's evidence**

[6] Miss Yvonne Costelloe, in her evidence introduced herself to the committee as being a worker in the hospitality industry for nearly ten years. During this time, she said she has managed a restaurant in Ireland and a café in Australia, and her duties have included controlling the sale and supply of alcohol during her shifts. She said she has been working at Pog Mahones since February 2016, completing her LCQ and working with security and shadowing other Duty Managers before stepping up to that role herself.

[7] Miss Costelloe in her evidence confirmed that Mr Scott Walsh was off duty and not intoxicated when he arrived at the bar in Pog Mahones around 9.00pm on 29<sup>th</sup> November 2016. Miss Costelloe went on to say that whilst Mr Walsh had been at the bar, she monitored his drinking and behavior along with the other patrons as a matter of course. She said she made a decision at some point to slow down his consumption by offering food from the late night menu as well as water from the complimentary station. She went on to say she again intervened not long after this and cut Mr Walsh's alcohol supply completely. She thought he was influenced by alcohol, offering him a pint of water and asking him to leave the premises and to get some food on his way home. She said she saw Mr Walsh leave the premises and she continued on with managing her shift.

[8] Miss Costelloe stated that part of her role as a Duty Manager was securing the tills in the safe as part of the closing down procedure of the bar. About 20 – 25 minutes after Mr Walsh had left the bar she informed her staff she was leaving to go to the office briefly to deal with the tills. It was at this time that Mr Walsh re entered the premises to pick up his jacket and bag. Miss Costelloe said that Mr Walsh was not served any alcohol and a member of staff did ask him to leave the premises. Miss Costelloe submits that almost immediately after this the Police entered the premises.

[9] Miss Costelloe submitted that she felt there had been a miss – communication between herself and the Police officers. She said that at the time she was nervous and felt intimidated and did not get her points across as well as she could or should of. She said she felt the point that Mr Walsh had left the premises 20 – 25 minutes earlier and that she was unsure if there had been any further alcohol intake had been missed. Miss Costelloe went on to submit that she felt she acted correctly while Mr Walsh was a customer of Pog Mahones.

### **The Licensing Inspector**

[10] The Inspector in his submission pointed out to the committee that Ms Costelloe made admissions to the effect that she believed a male had become intoxicated on the premises and as a result she had ‘placed [him] on water 40 – 45 minutes before the Police arrived.’ Further, that the applicant has not had any other adverse interactions with police either before or after this incident.

### **The Committee's Decision and Reasons**

[11] The Committee is aware that managers of licensed premises may have other duties within the premises that require their attention, and the way these are managed or not is the nub of the issue in front of us. In our view, the responsibility for providing the resources and ensuring the systems are in place for a Duty Manager to manage a premises in accordance with the provisions of the Sale and Supply of Alcohol Act (the Act) lie with the licensee. The object of the Act is clearly not being fulfilled when the operational procedures for the business allow for an intoxicated person to remain on the premises or, if previously removed to re enter the bar and chat with staff or patrons. Miss Costelloe was in breach of the Act when she allowed Mr Walsh to remain on the premises and was again in breach when she failed as acting Duty Manager to ensure that an intoxicated person could not enter the premises.

[12] The Committee received a comprehensive submission and detailed evidence from the Police. In their conclusion, they submit that ‘the actions of Miss Costelloe, in allowing an off duty work colleague to drink on the premises to the point that he became intoxicated, and then to remain on the premises, brings into question her suitability to hold a Manager’s Certificate’. They also question her ability to be strong enough to move friends or fellow work colleagues on in order to avoid breaching conditions of an on licence or to prevent offenses being committed under the Sale and Supply of Alcohol Act.

[13] When considering an application under s219 of the Act the Committee is directed by

s222 to have regard to the following matters:

- (a) the applicant's suitability to be a manager;*
- (b) any convictions recorded against the applicant;*
- (c) any experience, in particular recent experience that the applicant has had in managing any premises or conveyance in respect of which a licence was in force;*
- (d) any relevant training, in particular recent training, that the applicant has undertaken and evidence that the applicant holds the prescribed qualification required under section 218;*
- (e) Any matters dealt with in any report under section 220 of this Act.*

There are a number of decisions that we can use for guidance in this matter and both the Police and the Inspector offered the following;

**Warren Richard Stewart LLA PH880-881/2005** in which it was said:

*We believe that raising the bar for the holders of General Managers Certificates and keeping it at 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*

The Police submitted that although the decision was decided prior to the 1999 amendment the Authority's comment is still relevant today in;

**Deejay Enterprises Limited (LLA Decisions 531/97-532/97)**

*"The broad pattern in recent years has been to gently raise the required standard for licensees and holders of a General Manager's Certificate....The "guiding hand" or "hands-on" operator of any company or the potential holder of a General Manager's Certificate now receives greater scrutiny from both the Police and other reporting agencies. Character and reputation are closely examined. The law and human desires of patrons frequently take different directions. The Police cannot be everywhere. Little but a licensee's or manager's character and suitability may stand between upholding the law and turning a blind eye. Self-imposed standards in accordance with the law must be set by licensees and by holders of General Manager's Certificates who control and manage licensed premises..... "*

[14] The Committee had the benefit of evidence from Miss Costelloe's employer. Mr William Adams is the General Manager of Pog Mahones, a role he has taken on quite recently commencing on 1<sup>st</sup> April 2017. He spoke very highly of Ms Costelloe, assuring the committee of his full support of both the application and his employee.

[15] In addition we noted that within the concluding submissions of both the Inspector and the Police, Miss Costelloe has continued to work at Pog Mahones as a Temporary/Acting Manager and has not had any further incidents come to Police attention in her role as the Duty Manager.

[16] Miss Costelloe was prepared and conducted herself in a professional manner at the hearing. We accept that she genuinely thought she had dealt with Mr Walsh's state of intoxication and his subsequent removal correctly at the time. We also think that these proceedings and this experience should have been a lesson of sorts and a cause for her to reflect on the incident and the decisions she made.

[17] We have noted the final submissions of the reporting agencies and in particular those relating to the applicant's professional performance since the incident on the 29<sup>th</sup> November 2016. That along with the appropriate support indicated from the Licensee and General Manager leads the committee to conclude that she could continue on at Pog Mahones and become an effective and reliable certificated Duty Manager.

[18] Accordingly, the Committee rules pursuant to s219 of the Act the application MC6127 by Yvonne Mary Costelloe for a Manager's Certificate is granted.

**DATED** at Queenstown on this 26<sup>th</sup> day of April 2017

A handwritten signature in blue ink, appearing to read 'J M Mann', with a stylized flourish at the end.

J M Mann  
Commissioner