

2012 ONSC 5656

Ontario Superior Court of Justice (Divisional Court)

Maya Records Inc. v. Ontario (Alcohol and Gaming Commission)

2012 CarswellOnt 14076, 2012 ONSC 5656, 223 A.C.W.S. (3d) 277

**Maya Records Inc., operating as or intending to operate
as Music Mansion, Appellant and Registrar, Alcohol
and Gaming Commission of Ontario and David D'Netto,
on behalf of a number of Objectors, Respondents**

Swinton J., Pardu J., Sloan J.

Heard: October 5, 2012

Judgment: October 5, 2012

Docket: Toronto 117/11

Counsel: David Shiller, for Appellant

Tamara Brooks, for Respondent, Registrar, Alcohol and Gaming Commission of Ontario

David D'Netto, for himself

Subject: Public

Table of Authorities

Statutes considered:

Liquor Licence Act, R.S.O. 1990, c. L.19

s. 6(1) — considered

s. 6(2)(a)-6(2)(h) — referred to

s. 6(2)(h) — considered

APPEAL by business from refusal of liquor licence application.

Swinton J., (Orally):

1 The Registrar of the Alcohol and Gaming Commission of Ontario issued a Notice of Proposal to review the appellant's application for a liquor licence in order to determine whether the issuance

of the licence is not in the public interest having regard to the needs and wishes of the residents of the municipality in which the premises are located (see para. 6 of the Notice of Proposal).

2 This language tracks the language in s. 6(2)(h) of the *Liquor Licence Act*, R.S.O. 1990, c.L-19. Section 6(1) entitles an applicant to a liquor licence unless the requirements in s. 6(2)(a) through (h) apply.

3 The Board of the Alcohol and Gaming Commission of Ontario correctly stated:

"The onus is on the objectors to prove, on a balance of probabilities, that the issuance of a liquor licence for the premises and a patio is against the public interest, having regard to the needs and wishes of the residents of the municipality in which the premises are situated." (See para. 83 of the Reasons).

4 Assuming that a standard of reasonableness applies, the decision to refuse the application for a liquor licence is unreasonable. While the Board set out the correct test in para. 83 of its Reasons, it failed to apply that test. In para. 87, it accepted the sincerity of the objector's position as conclusive evidence to establish that the granting of the patio licence was not in the public interest. The Board failed to consider the evidence on the other side and never engaged in the balancing process required by s. 6(2)(h).

5 With respect to the indoor licence, the Board never engaged in the analysis required by s. 6(2)(h), focusing only on whether the applicant had a business plan (see para. 94 of the Reasons).

6 We need not address the procedural fairness argument, because the decision is not a reasonable one, given the failure to apply the articulated test to the evidence before the Board. Failure to apply the correct test specified in the legislation is an error of law.

7 Therefore, the appeal is allowed, the decision is set aside and the matter is referred back for a new hearing.

Pardu J.:

Costs

8 On behalf of the panel, I have endorsed the Appeal Book and Compendium, "This appeal is allowed for reasons delivered orally. The Decision of the Board of the Alcohol and Gaming Commission of February 3, 2011 is set aside and the matter returned to the Tribunal for a new hearing."

Appeal allowed; new hearing ordered.

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