

## **Presentation to Law Amendments Committee**

5 December 2011

Bill 120, to amend the Liquor Control Act ( Chapter 260 or Revised Statutes0

### **Introduction**

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*Chairman of BWAB*

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*BEA – 25 years Consulting engineering company RD*

*Making wine for 35 years and have dealt with both U-Vint and regular wine stores during that time.*

**As currently written, this amendment appears to give the NSLC the authority to police its own regulations. As I understand it now, enforcement of the LCA is primarily done by liquor inspectors who are under the Alcohol and Gaming Division, part of Service Nova Scotia and by the police. (This division has three Ministers in charge of it, with the Director of Finance responsible for the LCA ). The NSLC as the provincial purveyor of spirits has a liquor monopoly. NSLC determines what it will provide, sets the price structure, manages its distribution and quantities provided, and sets the liquor regulations for liquor consumption. In short the NSLC, now makes the regulations, retails the product to satisfy the regulations, and enforces the regulations as it wishes. This concentration of these functions into one organization is a major conflict of interest at best**

and unethical at worst. Ethically it violates the principles of:

- 1) respect for people,
- 2) concern for the welfare of the people, and
- 3) justice.

If this amendment passes The NSLC can now arbitrarily and legally punish anybody it considers its competitor, or deny a service/product to whomever it wishes. It perverts the natural justice which provides for a series of checks and balances to prevent a concentration of power.

Amendment allows the NSLC to obtain an injunction against an anticipated act that contravenes the LCA. It is unclear to me how the NSLC can obtain the foreknowledge to know if an anticipated act will contravene the LCA without engaging in police like activities. The NSLC again is the judge and jury. This clearly violates the principle of innocent until proven guilty.

If NSLC were given this authority, then to perfect this ability, they would need to carry out surveillance, intelligence gathering and monitoring of "suspicious" characters, similar to what the police do for organized crime. However, they are not the police. This clearly violates the Charter of Rights, para 2. where in "Everyone has the following fundamental freedoms....(b) freedom of thought, belief, opinion and expression..." as well as section 7 regarding the right of security of person.

***As the amendment is currently written, injunctions can also be obtained " ex parte" as a matter of right. Under the Rules of Civil Procedure , part 22.03 (2) ex parte injunctions, unless specifically permitted in the legislation are only issued when there are circumstances of sufficient gravity such as:***

***(a) a child may be harmed if notice is given, and the court's obligation to secure the best interests of the child requires the court to proceed without notice;***

***(b) notice will likely lead to violence, and an ex parte order will likely avoid the violence;***

***(c) notice will likely lead to destruction of evidence or other serious loss of property, and an ex parte order will likely avoid the destruction or loss;***

***(d) a party facing an emergency has a right to make a motion, but the motion cannot be determined on notice within the time provided by these Rules, even if a judge exercises the power to shorten a notice period, or to direct a speedy method of notice. there is irreparable harm or risk of evidence loss.***

**A contravention of the LCA does not appear to fit any of these categories.**

**By asking for this additional power, the NSLC is threatening and intimidating other legitimate retailers who have a valid disagreement with their interpretation or legality of the regulations or even of the LCA itself. In my opinion this is unethical corporate behaviour.**

**At the moment, I make wine in my house - a finished room in my basement devoted to making wine. I have developed some novel techniques and equipment that**

**reduce the aging time for kit wines. I am also assisting several of my neighbours. These people are seasonal visitors to the province and their travel schedule does not allow them to service their own in-house wine making operation. Another couple uses my liquid vacuum system to bottle their wine. I charge for the use of my equipment and related supplies (corks and shrinks mainly). I do not sell/stock or distribute any wine kits. I have obtained a federal registration 56-FPR-1166 to store bulk wine on my premises, and have registered my operation with CRA for this purpose. I have also attempted to register this operation with NSLC and they would not provide me with a license since it does not fit in any of their regulatory categories**

**Under this amendment, the NSLC may now apply to the Supreme Court judge for an ex parte injunction, in anticipation that I will again rent my equipment to them for their wine making. At the end of the day, I would then have to prove that I did not intend to help them make wine. How is it impossible to prove a negative???**

**Contrary to what the Minister of Finance said in the Assembly last Thursday, the amendment changes what is now considered illegal without any recourse to legal challenge. It further concentrates legal and policing powers in the NSLC.**

**I have some fear of appearing before this committee since as I may be at risk of being served an injunction if this amendment is passed.**

## **Summary:**

***This amendment is unethical, because it violates the principles of natural justice.***

***This amendment violates the principles of the presumption of innocence.***

***This amendment violates the Charter of Rights for Canadians.***

## **Proposed Changes**

- 1) Delete automatic inclusion of any reference to ex parte for injunctions. These can be ordered if the judge feels the issue merits it.
- 2) Require an external complaint (outside of NSLC personnel) be laid as part of the information presented to a judge prior to applying for an injunction. This will demonstrate that at least somebody thinks there is some harm being done to somebody.
- 3) Remove Anticipated violation as a basis of seeking an injunction. This is obviously so illegal.

Amended version of Bill 120:

107A (1) In the event of a violation of this Act or the regulations, the Corporation may apply to a judge of the Supreme Court of Nova Scotia for an order enjoining the person from continuing the violation.

(2) On receipt of an application made pursuant to subsection (1), a judge of the Supreme Court of Nova Scotia may make any order that the judge considers appropriate.

(3) Deleted

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