

## Bill 120

I would like to start by thanking the Committee for allowing me to speak today.

My name is Ross Harrington. I own a small business in Halifax.

In business I sell grape concentrate kits so that customers can make their own wine. Wine kits have been a readily available product for more than 40 years in this province. I also offer in-store winery service for customers that would prefer not to, or cannot make the wine at home.

This brings us to Bill 120. On November 29<sup>th</sup> the Government introduced a bill that would “enhance” the powers of the NSLC to enforce regulations. That begs the question, “why does the

NSLC need more power”? The story behind Bill 120 is a long one but I will be as brief and succinct as possible.

Moments ago I spoke of in-store winery service. This is a common practice across Canada, most notably in our neighbouring provinces of New Brunswick and Prince Edward Island. For years potential customers would enter my store and request said service. I would say no it was currently not available in Nova Scotia. I and other retailers like me questioned government officials about in-store winery and we were never given a reasonable answer. I was becoming frustrated by having to turn away customers that were willing to pay for a service they could obtain in New Brunswick and other provinces. In 2006 I started offering the service. A competitor complained to the NSLC that I possessed an unfair advantage because of in-store winery service. At the behest of

the NSLC the Halifax Regional Police conducted an undercover sting operation which resulted in three charges; 1) Keeping Liquor for Sale, 2) Manufacture and keep liquor, 3) Use of premises for storage of liquor.

I stopped offering the service and went to court. I was found not guilty of the second and third charges but guilty of keeping liquor for sale because the Judge deemed a grape concentrate kit to be liquor by the LCA definition. Our industry requested the definition be changed to exclude our products but instead the NSLC issued a pseudo license to allow us to keep selling. Of course, the license came with conditions. I have an issue with one retailer issuing licenses to another retailer. After 5 years of writing letters the respective Premiers and Ministers with no progress made, I started offering the service again. As the NSLC was unable to stop me and other retailers from providing this

service, the NSLC has chosen to have the Minister introduce a Bill that will empower them to act like police.

If this Bill passes the House then the NSLC can rewrite the regulations behind closed doors to meet their needs. Suddenly the rules have changed again without due process. Where will it end?

I am at a loss as to why the NSLC is threatened by me and my industry. We are small business. We compete with others in our industry, big box stores like Costco and value retailers such as Giant Tiger, not the NSLC. They retail alcoholic beverages as we sell grape concentrate and juice. We sell a hobby and provide a service. Bear in mind that not all wine kit sellers want

to provide in store winery service and stay strictly retail, but that is their choice.

Does the NSLC believe that I am stealing sales from them? If so, it is obvious that they do not understand the marketplace very well. How often does someone inquire if they can make wine at the NSLC? Is the NSLC in the grape concentrate kit business? They do not want Nova Scotian wine drinkers spending their money in my store they would prefer it spent at the NSLC. That is understandable as they are a retailer.

In reality, when a competitor has an advantage, a company will set new goals, sharpen their pencil, become more efficient, and compete. In the vacuum that is the NSLC's world, they simply ask the Government to move the goal posts so that they can regulate success through an abuse of power.

If I compare my annual sales to the NSLC, I amount to a mere 5 one-hundredths of one percent. In other terms, I would have to work almost 500 years to match the sales of their last fiscal quarter. I am not a threat.

In the NSLC annual report they speak of ethical and sustainable business practices. I see nothing ethical about attempting to change the LCA to further their agenda at the expense of small business. They will claim that it is for public safety<sup>\*</sup>, which is not true; they simply want close all venues of competition. I am that competition in their collective mind. Also, in the Annual report they speak to their mission: "To become recognized as a superb retailer know for business performance". I applaud them for wanting to be the best, but not by subverting the process of democracy.

Being a small business owner was my choice, but it is not always easy. We hear the Government expound on how small business is the backbone of our economy and how they are always helping small business. The TV ads say what a wonderful place Nova Scotia is to do business. Well now it the time to prove it. Support us by not allowing a monolithic institution like the NSLC squash small business. This store is my life; it is how I provide for my family. I would like to know that my children can attend university without me worrying how to pay for it. I would like to sell a thriving business and retire on the proceeds. It is MY pension fund.

In closing, I hope you will share your findings with your peers in caucus. I understand that if every MLA votes along party lines

that this Bill will pass. If all MLAs were to poll only a handful of the electorate they would soon realize that what the NSLC wants is not what the people want. At the risk of sounding naïve, I still believe in democracy. I need not remind you that when you chose a career in public service you promised to do what is best for your constituents and for all Nova Scotians. At the time of the vote, ask yourself, what would Joe Howe do?

Thank you for your time. Are there any questions?



## **Presentation to Law Amendments Committee**

5 December 2011

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

### **Introduction**

*Richard Hattin, P.Eng*

*Ethics community representative on CDHA Ethics Board #4*

*Chairman of BWAB*

*CEO of Coeurmetrics*

*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

**Richard Hattin**  
270 Captain Hemlock Lane  
Seabright, NS