



No. S1911287
Vancouver Registry

In the Supreme Court of British Columbia

Between

FETS FINE FOODS LTD. dba FETS WHISKY KITCHEN

Petitioner

and

HER MAJESTY THE QUEEN IN RIGHT OF THE PROVINCE
OF BRITISH COLUMBIA (LIQUOR AND CANNABIS
REGULATION BRANCH)

Respondent

Re: Judicial review of a reconsideration decision pursuant to s.53.1 of the *Liquor Control and Licensing Act*, S.B.C. 2015, c. 19

**NOTICE OF CONSTITUTIONAL QUESTION
RE: RETURN OF SEIZED LIQUOR**

ON NOTICE TO:

The Attorney General of British Columbia

The Attorney General of Canada

c/o Chantelle Rajotte
Ministry of Attorney General
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TAKE NOTICE that an application will be made by the petitioner, Fets Fine Foods Ltd. dba Fets Whisky Kitchen (the “Licensee” or “Fets”) on a date to be agreed between the parties, or as soon after that time as the application can be heard, at the courthouse at 800 Smithe Street, Vancouver, British Columbia, pursuant to the *Canadian Charter of Rights and Freedoms* (the “Charter”) for:

Part 1: ORDERS SOUGHT

1. A declaration that the Liquor Control and Cannabis Regulation Branch breached the right of both the petitioner and its principals, to be free from unreasonable search and seizure under to s. 8 of the *Charter*.
2. A declaration that the Liquor Control and Cannabis Regulation Branch breached the right to counsel of both the petitioner and its principals under sections 10(a) and 10(b) of the *Charter*.
3. An order that the liquor seized by the Liquor Control and Cannabis Regulation Branch (the “**Branch**”) on January 18, 2018 be immediately returned to the principals of the petitioner Eric and Allura Fergie pursuant to section 24(1) of the *Charter*.

Part 2: FACTUAL BASIS

4. The petitioner relies on the facts as set out in the attached “Petition to the Court” made and filed on October 7, 2019 (the “**Petition**”).

Part 3: LEGAL BASIS

CONTEXT

1. Section 5 of the *Offence Act* does not apply to the *Liquor Control and Licensing Act* or the regulations. Accordingly, most breaches of the *Act* do not carry the potential for criminal consequences.
2. However, section 57 of the *Act* enumerates 25 sections of the *Act* that if a person contravenes, they commit an offence, punishable under the *Offence Act* on summary conviction, to a term of imprisonment, a fine, or both. By drafting the *Act* in this manner the legislature created a regime where certain contraventions of the *Act* are considerably more serious than others.
3. The Liquor Control and Cannabis Regulation Branch, both during and shortly after the Search & Seizure, orally and in writing, advised the petitioner and its principals that they

were being investigated for contraventions of sections 8(2)(e) and 8(3) of the *Act*, relating to the purchase and sale of unauthorized liquor.

4. Pursuant to sections 57 (1) and (2) and 58 of the *Act*, the principals of Fets, Mr. and Ms. Fergie were at all material times exposed to prosecution under the *Offence Act*, and in jeopardy of a term of imprisonment for not more than 12 months.

BREACH OF SECTION 8

5. Section 8 of the *Charter* provides everyone “the right to be secure against unreasonable search and seizure.”
6. The warrantless entry and seizure of liquor from the premises of Fets constituted a warrantless and unreasonable search contrary to s. 8. The predominant purpose of the warrantless search and seizure from the outset was to gather evidence for prosecution or sanction. There was no continuing regulatory purpose for the warrantless search and seizure, which infringed the reasonable expectation of privacy of Fets. A search and seizure conducted without a warrant is presumptively unreasonable and constitutes a breach of s. 8 of the *Charter*.

BREACH OF SECTION 10(a) and (b)

7. S. 10(a) of the *Charter* provides everyone “the right on arrest or detention..to be informed promptly of the reasons therefore.”
8. S. 10(b) of the *Charter* provides everyone “the right on arrest or detention...to retain and instruct counsel without delay and to be informed of that right.”
9. The purpose of *Charter* rights, namely s. 8 rights to be free from unreasonable (warrantless) searches and seizure, and s. 10 rights to be informed promptly upon detention of the reason for the detention and to be informed of the right to retain and instruct counsel, is to prevent unjustified searches or other state instructions on liberty before they happen.
10. Section 10 rights permit an accused person to make an informed decision about their jeopardy and whether to contact a lawyer. When an individual is being investigated for an

offence, and has been detained and questioned about that offence, they need to be provided with their rights so they understand:

- a) they do not need to speak with the inspectors;
 - b) they are facing penal consequences; and
 - c) they can speak with counsel.
11. The liquor inspectors conducting the Search & Seizure did not advise Ms. Allura Fergie that she did not have to speak with them. Had any one of the inspectors advised her of her s.10 *Charter* rights, she would have known this.

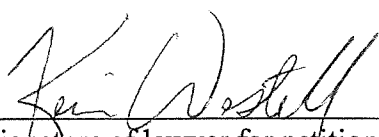
SECTION 24(1) REMEDIES

12. S. 24(1) of the *Charter* provides anyone “whose rights or freedoms, as guaranteed by” the *Charter* “have been infringed or denied may apply to a court of competent jurisdiction to obtain such remedy as the court considers appropriate and just in the circumstances.”
13. This section provides this Honourable Court with a wide and largely unfettered discretion to grant remedies that are responsive and proportional to a given breach.
14. The petitioner seeks the return of liquor that was unlawfully and unconstitutionally seized by the Liquor and Cannabis Regulation Branch.

Part 4: MATERIAL TO BE RELIED ON

1. Petition filed October 7, 2019.
2. Affidavit #1 of M. Yawney, made October 7, 2019.
3. Sections 8, 10(a), 10(b), and 24(1) of the *Canadian Charter of Rights and Freedoms*
4. Relevant Jurisprudence including *Hunter v. Southam*, [1984] 2 S.C.R. 145, *R. v. Jarvis*, 2002 SCC 73, *R. v. Nolet*, 2010 SCC 24,, and *R. v. Bjelland*, [2009] S.C.J. No. 38

Date: January 7, 2020



Signature of lawyer for petitioner
Kevin B. Westell