

LICENSING COURT OF SOUTH AUSTRALIA

COSTCO WHOLESALE AUSTRALIA PTY LTD

JURISDICTION: Application for Special Circumstances Licence with Extended Trading Authorisation

FILE NO: 2037 of 2014

HEARING DATE: 25 and 29 August 2014

JUDGMENT OF: His Honour Judge BP Gilchrist

DELIVERED ON: 16 October 2014

*The applicant seeks a special circumstances licence to enable it to sell liquor for off licence consumption - The proposed business contemplates sale to members only from premises not physically separate from premises used for other commercial purposes and that there will only be a limited range of liquor available - Requirements for a special circumstances licence considered - Applicants must prove that the use of an existing class of licence would produce a result that the proposed business would be substantially prejudiced - Consideration of the nature and appropriateness of a retail liquor merchant's licence - Whether such a licence could adequately cover the business of the applicant - Whether applicant's proposed business would be substantially prejudiced if the applicant's trading rights were limited to a retail liquor merchant's licence - Whether discretion should be exercised to grant special circumstances licence - **Held:** That although the applicant has established that no other category of licence could adequately cover the kind of business it proposes and that the proposed business would be substantially prejudiced if its trading rights were limited to those possible under a retail liquor merchant's licence, the Court in the exercise of its discretion should refuse the application - Ss 3, 37, 40, 53 and 58 Liquor Licensing Act 1997.*

Liquorland (Aust) Pty Ltd [2012] SALC 42

Liquorland (Islington North Shopping Centre) [2013] SALC 64

Little Miss Miami and Little Miss Mexico [2014] SALC 41

Bottega Rotolo Pty Ltd v Saturno's Colonist Tavern P/l & Anor [2008] SASC 6

Wilman Nominees v Harver (1984) 35 SASR 473

Facac v Talbot Hotel Group Pty Ltd and another [2001] SASC 445

Liquorland (Australia) Pty Ltd and others v Lindsey Cove Pty Ltd [2002]

SASC 17

REPRESENTATION:

Counsel:

Applicant:

Respondent objector Woolworths:

Respondent Hotel objectors:

Solicitors:

Applicant:

Respondent objector Woolworths:

Respondent Hotel objectors:

Mr J Firth with Mr B Moody

Mr J Walsh QC with Mr R D'Aloia

Mr C Thomson

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- 1 This is an application for a special circumstances licence made by Costco Wholesale Australia Pty Ltd, the proprietors of Costco Wholesale. It seeks the licence in respect of premises situated at 380 to 408 Churchill Road, Kilburn.
- 2 The proposed premises are within a building, presently under construction, which is very large, comprising of some 14,000 square metres. It will house a Costco Wholesale store. The building will form part of a major retail development on the former site of the Islington Railway yards, known as the Churchill Centre.
- 3 The Churchill Centre is a large sub-regional shopping development. It houses a large variety of specialty shops offering a variety of goods ranging from fresh food to home ware, fashion and technology items. It also has larger retail outlets such as Cheap as Chips, K Mart, Dick Smith and Coles. Just outside the Coles store in an internal mall is an attractive, modern store trading as a Liquorland. Stores trading under that banner have previously been described as convenience based businesses that stock a narrow range of products directed towards the convenience customer in premises either attached to a supermarket or providing a drive through service.¹ My impression, based on the view of this store, is that it carries a more comprehensive range of products than a typical Liquorland store. It appeared to be a well-stocked retail liquor facility.
- 4 The application has drawn objections from Woolworths Pty Ltd, Rogwill Investments Pty Ltd, the proprietors of the Albion Hotel and Goodearth Hotels Pty Ltd, the proprietors of the Empire Hotel.
- 5 The Albion is situated on the eastern side of Churchill Road, just north of the Churchill Centre. The Empire is due west of the Churchill Centre on Prospect Road.²

Costco's proposed business model

- 6 Costco seeks a special circumstances licence with the following features.
 - Costco will operate a wholesale/retail store to be known as Costco Wholesale and it seeks a licence to sell and supply liquor for consumption off the premises.
 - Liquor will be displayed and offered for sale in a defined area in the south west corner of the store. Although this is a defined area it is not physically separate from the rest of the store. The point of sale will be through a bank of checkouts on

¹ See *Liquorland (Aust) Pty Ltd* [2012] SALC 42 at para 35

² *Liquorland (Islington North Shopping Centre)* [2013] SALC 64 at para 12

the southern edge of the store through which all purchases of goods from the store will be made.

- Trading hours will not be greater than Monday to Friday from 9.00am to 9.00pm and Saturday, Sunday and Public Holidays, from 9.00am to 7.00pm.
- Liquor will only be sold and supplied to persons who have applied to Costco for membership and who have paid the annual Costco membership fee and to Costco employees who hold a current membership card. Such persons must be over the age of 18 years.
- Liquor shall only be sold and supplied to purchasers attending in person at the premises and not by direct sales transactions.
- Costco may supply liquor by way of sample for consumption on the premises.
- The range of liquor shall be no greater than 300 lines of product at any one time. A line being a vintage or variety.
- All liquor shall be of high quality and non-refrigerated. The range shall have an emphasis on imported products. Beer shall only be sold by the case.
- Extended trading authorisation is sought to allow sales on Sunday between 9.00am and 11.00am.

The issues

- 7 The pre-requisites for the grant of a special circumstances licence are as set out in *Little Miss Miami and Little Miss Mexico*³ and I will not repeat all of them here. It is sufficient to note that pursuant to s 40 of the *Liquor Licensing Act 1997* a special circumstances licence cannot be granted unless the applicant satisfies the licensing authority that no other category of licence could adequately cover the kind of business proposed and that the proposed business would be substantially prejudiced if the applicant's trading rights were limited to those possible under a licence of some other category. Even if that has been established s 53 of the Act, which confers upon a licensing authority an unqualified discretion to grant or refuse an application, might, in the circumstances of a particular case, require the application to be refused.
- 8 The objectors contend that Costco's business could operate effectively under a retail liquor merchant's licence and that its business would not

³ [2014] SALC 41 at para 2.

be substantially prejudiced if its trading rights were limited to those possible under such a licence. Next they contend that in any event, the Court should exercise its discretion to refuse the licence.

- 9 These are the issues that I must determine.

The evidence

- 10 In support of the application Costco relied upon the evidence of its Vice President and Director, Mr Patrick Noone. Over twenty years ago, when working in Canada, he became involved in a new retail concept known as a warehouse club. After some mergers and name changes that club became known as Costco Wholesale.
- 11 Over time Costco has opened stores all over the world. It has 466 stores in the United States, 88 in Canada, 33 in Mexico, 26 in the United Kingdom, 20 in Japan, 11 in South Korea, 10 in Taiwan and 6 in Australia.
- 12 The first Australian store was opened in 2009. It is located in Melbourne's Docklands area. Stores in Sydney and Canberra were opened in 2011. Stores in Ringwood in Melbourne's east and at the Cross Road's shopping centre in Sydney's south-west were opened in 2013. A store was opened in North Lakes in Brisbane earlier this year. The Adelaide store is due to open this November.
- 13 Costco also operates a distribution facility in western Sydney and has its home office in Auburn, New South Wales.
- 14 Costco's mission statement and philosophy is to carry quality brand name merchandise at substantially lower prices than those typically found at a conventional wholesale or retail outlet.
- 15 The stores have the appearance of warehouses. The business model is focussed party towards being a wholesale facility for small to medium sized businesses with the expectation that they will buy goods for reuse or resale and a cheap retail facility for individual customers.
- 16 Its competitive edge arises as a result of a combination of bulk purchasing, lower overheads and membership fees.
- 17 Although the vast majority of Australian purchasing and buying is done through Costco's Sydney office, Costco collates information from different companies around the world that enables it to buy globally. It buys everything in as large a quantity as possible so the production runs tend to be longer leading to lower prices.

- 18 As I said the stores resemble warehouses. They have concrete floors. They use steel racking. Most merchandise is palletised. The stores do not have any of the frills or neon signs and the like that other retailers might use.
- 19 Membership fees in Australia are \$60 a year. They are US\$55 in the United States and similar amounts elsewhere.
- 20 To obtain membership a person has to be 18 years or over and needs to present some photo identification. If it is a business a taxation file number or other business proof must be supplied. A member must supply a name and address.
- 21 The membership is renewable each year. The membership is not transferable although a gold star membership will be issued with two cards, one for the principal and one for somebody else at the same address, provided that person's picture is also provided.
- 22 Membership sales for the Adelaide store have commenced. Before it started taking memberships here, it had about 1,500 members with a South Australian postal code. As the opening date nears, Costco expects to have signed up several thousand new members.
- 23 Like some stores elsewhere, the Adelaide store will include a fuel outlet. It will be a fully self-serviced operation. Members will insert the membership card to be verified, and then insert a credit card or a debit card, fill up the vehicle, get a receipt and drive off.
- 24 If the person is not a member the pump will not operate.
- 25 The store will have over 650 car parks each of which will be longer and wider than standard shopping centre car parks. This is in the expectation that customers will be returning to their vehicles with trolleys laden with goods.
- 26 Customers typically shop at a Costco just under once a month. They generally spend about \$175 per shop, excluding petrol.
- 27 The stores sell a vast array of goods ranging from car tyres to expensive jewellery, watches, hearing aids, outdoor patio equipment, swim and sporting goods, gardening items, clothes, deli goods, meat, bakery items and electrical appliances.
- 28 Most of the goods on offer are brand names. Costco also sells goods under its own name, Kirkland. The majority of its stores sell take away liquor. The liquor on offer is generally of very high quality, including French Champagnes and table wines, very old malt whiskies and imported beers.

- 29 Its business model for the Adelaide store contemplates a stock list of initially 267 and no more than 300 lines. This is consistent with its business model elsewhere.
- 30 Mr Noone contrasted this with the range at say a typical BWS store which can be expected to carry over 2,000 items.
- 31 He explained why the limited number. He said that Costco attempts to buy the best quality items at the best price and to bring them into their stores in pallet quantities. He said that to carry more items would be very labour intensive which is a very different business model to the one under which it operates.
- 32 He explained as follows:

“All of our pack sizes tend to be larger except for wines, which we stock out by the case; so it’s just not in our DNA to have hand-stacking like that going on all the time. Also we just couldn’t carry the number of items that they carry; so the 2000 I’m seeing here at the BWS would be counterproductive to us, and it’s not our system. We would be loss - it would cause us an enormous amount of extra costs to carry those things, hand stack them every day; take item maintenance on those things; com shop everything there on the floor, and then bringing a pallet of 2000 items means I would have to store 2000 pallets in the warehouse, and I just can’t do that. So the reason we keep our stock nice and tight is we can buy those pallet quantities, and we can either store them or stock them out right away.”⁴

- 33 He said that none of the liquor products would be refrigerated.
- 34 He was asked whether it would be inconvenient to have one section selling only liquor, isolated from the rest of the store, having its own checkouts. In the context of such a requirement at its Melbourne store he said:

“Yes, it was very inefficient, because the member would have to line up and buy her wine or beer and then stop the whole shopping process, and then be able to walk out on the floor and go back and line up at the front end again. So for them it was an extreme frustration. Not having that register now means that people can do one shop, and they can get in there and get out quicker. It’s a very simple process, and it’s been very successful for us as well.”⁵

- 35 As indicated Costco’s business model contemplates having the liquor section in the south west corner of the store with no register there such that people will walk in and out of the area and make their purchases at

⁴ Tr 38.

⁵ Tr 40.

the central bank of checkouts. Part of this is focused to minimising shop-lifting. He said that Costco stores only lose about 0.25% to 0.3% through shop lifting as compared to most retailers who operate at 2% to 3% losses.

- 36 He said that even if this application fails Costco will be trading at the proposed site for the foreseeable future. He acknowledged that Costco sells a vast array of different goods apart from liquor. He said, however that a liquor department adds that depth, luxury; and a sense of value to Costco and was an important part of the business.

- 37 When asked why Costco could not sell liquor to members of the public, he said:

“It would be an enormous problem for us. Membership is driven by the fact that it’s exclusive that you can shop at Costco and get those prices. So if we had it open to the public, why would we charge membership? It makes no sense. That’s not our business model at all. It just wouldn’t work.

...

The membership fee has to apply for the entire business. It applies for the gas station, petrol station; it applies for tyres; it applies for diamond rings, and liquor as well. And we’re just not set up to differentiate, and it would cheapen the membership brand; and again, why would you buy membership if things were free from the person next door to you?”⁶

- 38 Costco also relied upon the evidence of its Australian liquor buyer, Mr Anton Ramshak. He explained the difference between the markets that Costco was focussing on as opposed to hotels and bottle shops.

- 39 He said:

“...we aim for the higher demographic for fine wines and premium and craft items wherever available and BWS and the hotel bottle shops are convenience outlets. They’re selling singles and six-packs and at higher margins which is pretty normal in the convenience industry.”⁷

- 40 He said that the conditions that are set out in the application mirror the way in which Costco operates in liquor warehouses in Australia and indeed, globally.

- 41 The objectors relied upon the evidence of Mr Anthony Smith; the business manager for liquor licensing for Woolworths Ltd.

⁶ Tr 63 and 64.

⁷ Tr 75.

- 42 He said that Dan Murphys sell a lot of the premium products that Costco proposes to sell and at comparable prices. He said that he inspected a number of take away liquor facilities in the locality and that in his opinion the locality is well served. His evidence was to the effect that Woolworths objects to the application because it seems to it to be no more than a back door way of obtaining a retail liquor merchants licence that avoids the stringent requirements that the Act imposes in connection with the grant of such licences.

Analysis

- 43 The applicant's proposed business model contemplates that there will be sale of liquor for off licence consumption to members only from premises not physically separate from premises used for other commercial purposes and that there will only be a limited range of liquor available.
- 44 It is plain that the only category of licence that could potentially fit the Costco's proposed business model is a retail liquor merchant's licence.
- 45 The conditions attached to a retail liquor merchant's licence are as prescribed by s 37 of the Act. It provides:

“(1) Subject to this Act, a retail liquor merchant's licence authorises the licensee—

- (a) to sell liquor on the licensed premises on any day except Good Friday and Christmas Day between the hours of 8am and 9pm, or over a continuous period authorised by the licensing authority, for consumption off the licensed premises (but a period authorised by the licensing authority must begin no earlier than 5am, must end no later than midnight, and must not exceed 13 hours); and
 - (ab) to sell liquor at any time through direct sales transactions (provided that, if the liquor is to be delivered to an address in this State, the liquor is despatched and delivered only between the hours of 8am and 9pm and not on Good Friday or Christmas Day); and
 - (b) to sell or supply liquor by way of sample for consumption on a part of the licensed premises approved for the purposes by the licensing authority.
- (2) It is a condition of a retail liquor merchant's licence that the licensed premises must be devoted entirely to the business conducted under the licence and must be physically separate from premises used for other commercial purposes.

Exceptions—

- 1 Goods may be sold in the same premises if they are of the kind normally associated with, and incidental to, the sale of liquor (eg glasses, decanters, cheeses and pates).
- 2 The licensing authority may grant an exemption from the above condition if satisfied that the demand for liquor in the relevant locality is insufficient to justify the establishment of separate premises or there is some other proper reason for granting the exemption.”

46 In *Bottega Rotolo Pty Ltd v Saturno’s Colonist Tavern P/L & Anor*, DeBelle and Bleby JJ summarized the various provisions of the Act dealing with the nature and purpose of a retail liquor merchant’s licence. They said:

- “ • It enables the retail sale of the full range of available packaged liquor. While the Act specifies the maximum trading hours available, the licensee is not required to trade for a minimum number of hours. In this regard it is to be contrasted with the hotel licence. However, an applicant who did not intend to trade for at least the greater part of the permitted hours might have difficulty in establishing a need for the licence.
- It is not intended to accommodate the sale of a very limited and specialised range of liquor, however poorly supplied that range may be in the locality.
- As the Act does not permit the imposition of conditions that change the nature of the licence, the licensing authority is not able to impose a condition limiting the kind of liquor that may be sold under the licence to a restricted or narrow range.
- With certain very limited exceptions, the business carried on under a retail liquor merchant’s licence must be exclusive of any other business carried on in the same premises, and the licensed premises must be physically separate from premises used for any other commercial purpose.”⁸

47 Although not expressly stated it is implicit that that the holder of a retail liquor merchant’s licence must sell to the public generally. This must be so because such a licence cannot be granted unless the applicant has established that existing premises do not adequately cater for the public demand for liquor.⁹

⁸ [2008] SASC 6 at para 49.

⁹ Section 58(2) of the Act.

- 48 Thus there are three issues in respect of the applicant's business model that potentially do not fit under this licence.
- 49 First, is the fact that it only wants to sell no more than 300 lines.
- 50 Second, is the fact that it does not propose selling to members of the public. It only wants to sell to its paid up members and employees.
- 51 Third, it does not wish for the licensed premises to be physically separate from premises used for other commercial purposes.
- 52 Looked at from the premise that hypothetically Costco has established a relevant need for a retail liquor merchant's licence would a licensing authority issue such a licence with a condition limiting the range to no more than 300 lines?
- 53 The older cases would suggest no.
- 54 For example, in *Wilman Nominees v Harver*, King CJ, with whom Walters J agreed, said as follows:

“The alternative argument for the appellant is that he should have granted the licence subject to a condition restricting the liquor authorised to be sold to wines and spirits. In fact he does not seem to have been asked to do this. I do not think, however, that such a course would have been justified in the circumstances of this case. It is true that a licence limited to wines would be likely to have no great impact on the finances of the two hotels. But an important factor in the exercise of the discretion is the policy of the Act expressed in s 22. I quote from the judgment of Bray C.J. in *Carjay Pty. Ltd. v. Target Cellars Pty. Ltd.*

Section 22(1) says that a retail storekeeper's licence shall authorize the sale and disposal of liquor of any kind in any quantity, provided that the Court may impose conditions. I think that this means that if a retail storekeeper's licence is to be granted at all, it will be a licence authorizing the sale of all kinds of liquor in any quantities and in all lawful modes unless the Court in the exercise of a judicial discretion sees fit to order otherwise.’

It is true, as Bray C.J. said in the same case, that ‘circumstances justifying the imposition of conditions on a retail licence may be of comparatively common occurrence’, but the Licensing Court should attach weight in exercising its discretion to the consideration that the statute contemplates that the licence should ordinarily authorize the sale of all kinds of liquor. Public dissatisfaction with restrictions on the type of liquor which may be sold quickly grows and pressures mount for the removal of the restrictions. In my opinion, the Court should rarely grant a licence subject to such condition unless it can foresee the development of

conditions which will enable the restriction to be removed in due course.”¹⁰ (footnote omitted)

55 It must be acknowledged, as Doyle CJ later observed in *Facac v Talbot Hotel Group Pty Ltd and Another*, that:

“The Act permits licences to be shaped or moulded to a greater extent that was possible under the former Act, and contemplates licences being shaped so as to permit trading in a way that would not have been consistent with the scheme of the previous Act.”¹¹

56 Whether the enhanced capacity of a licensing authority to mould a licence goes far enough to place a restriction limiting the range of lines on offer to no more than 300 lines is a vexed question.

57 I find that the range and stock that Costco intends to have on offer is not especially limited. It is not as if it wishes to only sell wine, or only spirits, or only beer, or only liquor from a particular region, or at or above a certain price. The indicative stock list suggests a range of liquor over a range of prices. The business model contemplates that whilst the overall number of lines would not extend beyond 300, the range on offer will vary from time to time. Doubtless the expressed wish of customers as to the products they are seeking will inform the composition of that range.

58 I think it is certainly arguable that if a “need” for a retail liquor merchant’s licence was established that that need might be capable of being met through the limited range of liquor that Costco’s business plan contemplates.

59 It is not, however, necessary for me to resolve this issue because in my view, on this issue, the position in respect of the second and third matters is much clearer.

60 There is no power to grant an exemption in respect of the second matter.

61 As to the third, a licensing authority may only grant an exemption if satisfied that the demand for liquor in the relevant locality is insufficient to justify the establishment of separate premises or there is some other proper reason for granting the exemption. In my view neither of these applies.

62 I therefore conclude that a retail liquor merchant’s licence would not be granted in respect of an application that only contemplated the sale of liquor for off licence consumption to members only. I further conclude

¹⁰ (1984) 35 SASR 473 at 475.

¹¹ [2001] SASC 445 at para 32.

that in the circumstances of this case an exemption from the requirement that the licensed premises must be devoted entirely to the business conducted under the licence and must be physically separate from premises used for other commercial purposes would not be granted.

- 63 It follows that Costco's proposed business model could not trade under a retail liquor merchant's licence.
- 64 I now turn to consider the next test, namely as to whether, if Costco was forced to trade under such licence, the proposed business would be substantially prejudiced.
- 65 Had I formed the view that a licensing authority would not issue a retail liquor merchant's licence limiting the number of lines that the licensee could stock at any time it would not follow that Costco's proposed business would be substantially prejudiced without that condition.
- 66 The absence of a condition limiting the range of stock is not the same as a mandatory requirement to carry a range beyond that number. If Costco were granted a retail liquor merchant's licence without this condition it would be legally able to carry whatever range of liquor it wished to.
- 67 I did not find the evidence of the inconvenience of the licensed premises not being physically separate from premises used for other commercial purposes compelling. To require Costco to comply with that obligation might result in some inconvenience in the sense that it might require some remodelling, as it has done elsewhere. But in my view the evidence fell well short of establishing that to impose this requirement would result in the proposed business being substantially prejudiced.
- 68 But the position in relation to requiring Costco to sell liquor to the public is quite different. I found the evidence of Mr Noone on this issue, which evidence I accept, compelling. I find that to impose this obligation would result in the proposed business suffering a degree of prejudice that would be real and of substance. I find that it would be substantially prejudiced.
- 69 I now turn to the issue of discretion. The licensing authority is invested through s 53 with a wide discretion to grant or refuse an application. For present purposes, it is sufficient to refer only to subsections (1) and (1a) which are in these terms:

“(1) Subject to this Act, the licensing authority has an unqualified discretion to grant or refuse an application under this Act on any ground, or for any reason, the licensing authority considers sufficient (but is not to take into account an economic effect on other licensees in the locality affected by the application).

(1a) An application must be refused if the licensing authority is satisfied that to grant the application would be contrary to the public interest.”

- 70 Section 3(2) of the Act provides that in deciding any matter before it a licensing authority must have regard to the objects set out in the Act. As such, the discretion can be exercised to advance or to maintain the principles and policies found in the objects and in the Act generally.¹²
- 71 If the proposed business model had been contrived to avoid running the gauntlet of the pre-requisites of a retail liquor merchant’s licence that of itself might enliven the discretion to refuse the application. But here there is no sense of any contrivance in connection with the proposed business model. The proposed business model reflects Costco’s general model.
- 72 However, a decision to grant a special circumstances licence in connection with a business model that is effectively a slightly modified form of retail liquor merchant’s licence that would enable Costco to sell liquor for off licence consumption to a limited section of the public is of concern. It may set an undesirable precedent for the grant of further special circumstances licences.
- 73 The only rider here is that that section of the public, other than employees, must pay \$60 a year. What would prevent another applicant putting up the same business model with a membership fee of say \$20? If that were allowed could another suggest the same model with a \$10 fee?
- 74 Many retail stores run loyalty programs. Many retail stores can be expected to wish to sell take away liquor. It would not take a lot of imagination for a retailer to construct a loyalty program in a way that mirrored Costco’s business plan. If this application were granted it might set a precedent that might result in a proliferation of such licences that might compromise the interests of the liquor industry and its appropriate regulation and control; might fail to ensure that the liquor industry develops in a way that is consistent with the needs and aspirations of the community; and might fail to ensure that the sale and supply of liquor contributes to, and does not detract from, the amenity of community life. All of these would be contrary to the objects of the Act.
- 75 I accept the undoubted attractiveness of the Costco’s proposal. The evidence establishes that Costco stores are very popular and no doubt the addition of a facility within the store enabling the purchase of first class liquor at competitive prices is something that the public can be presumed to want. That said, even without this licence, Costco’s customers have access to an attractive, modern retail liquor store within the Churchill

¹² *Liquorland (Australia) Pty Ltd and others v Lindsey Cove Pty Ltd* [2002] SASC 17 at para 28.

Centre and a drive through bottle department with a walk in section, almost directly opposite on the other side of Churchill Road.

- 76 In the end, like Doyle CJ in *Liquorland (Australia) Pty Ltd and others v Lindsey Cove Pty Ltd*, I consider that “the issue which arises here is one which calls for a cautious approach. If an undesirable precedent is set, the Licensing Court will be left to cope with the effects of that precedent.”¹³
- 77 I have come to the conclusion that in all the circumstance it is appropriate to exercise the discretion adversely to Costco and to refuse the application.

Conclusion

- 78 Although Costco has established that no other category of licence could adequately cover the kind of business it proposes and that the proposed business would be substantially prejudiced if its trading rights were limited to those possible under a retail liquor merchant’s licence, the Court has resolved that in the exercise of its discretion the application must be refused.

¹³ [2002] SASC 17 at para 84; (2002) 81 SASR 337.