

**IN THE CORONERS COURT
AT WELLINGTON (IN COURT)**

IN THE MATTER

of the Coroners Act 2006

AND

IN THE MATTER OF

of an Inquiry into the death of

KENNETH DAVID LOW

Date of Death: 12th December 2010

In attendance: Constable C Stewart for NZ Police
Date of Hearing: 7th June 2012
Date of Reserved Findings: 23rd October 2013

RESERVED FINDINGS OF CORONER I R SMITH

[1] Introduction

This was an inquest into the death of 20 year old Kenneth David Low, a visitor to Wellington, who normally resided at 32A Talbot Street, Wanganui. Mr Low and another friend arrived in Wellington on 8 December for a short visit. Mr Low initially had nowhere to stay but went out drinking in the late evening of 8 December. He met with an acquaintance, who at that time resided in an apartment located at 135 Taranaki Street, Wellington. Mr Low was able to sleep on the bedroom floor of that apartment.

[2] In the early hours of the morning of 12 December the deceased was seen to be sitting astride a wide ledge on a balcony outside apartment 6B on those premises. He had his right leg over the edge and shortly after a noise was heard and on inspection Mr Low was located some 20 metres down on the ground below. Emergency services attended, but Mr Low had died from injuries sustained from the fall.

[3] Several issues have arisen concerning his death that required investigation pursuant to s 57(3) Coroners Act 2006 which states that a Coroner “may make recommendations or comments that, in the Coroner’s opinion, may, if drawn to public attention, reduce the chances of the occurrence of other deaths in circumstances similar to those in which the death occurred.”

[4] Therefore, in relation to this death there are issues surrounding the amount of alcohol consumed by this young man during his short stay in Wellington, the availability to alcohol in Wellington at all times of the night and finally consideration of the apartment environment in Wellington central per se. These issues are similar ones to be considered in at least one other tragic death that I still have to deal with.

Evidence of Detective Sergeant Shane Dye:

[5] Detective Sergeant Dye stated that Mr Low and another friend arrived in Wellington at about 10.00 pm on Wednesday 8 December. They went out drinking in Wellington central city area where Mr Low met up with an acquaintance, who said he could sleep on the floor of his apartment. He arrived home at that address at about 1.00 am on the Thursday morning.

[6] On Saturday afternoon Mr Low obtained \$100 from his bank account but decided not to eat, as in his mind that was too expensive. It was about that time that he started drinking. This continued until returning to another friend’s flat where he had a meal before then returning to town to continue drinking.

[7] At about 1.00 am on the Sunday morning he went to the Grand Hotel to see his friend, a Mr Davies, who was working there. The friend thought Mr Low was under the influence of alcohol as he had “glassy eyes”. At approximately 3.30 am when Mr Davis finished work he caught up with the deceased at what is known as the “Mini Bar”. He noted that Mr Low was still drinking and was extremely intoxicated.

[8] From there they both went to what was known as the Coyote Bar where Mr Low consumed bourbon. Mr Davies left that establishment at approximately 5.00 am, but Mr Low remained. Mr Davies returned to the apartment but then decided to backtrack to try and find Mr Low but failed to locate him. Eventually, however, Mr Low arrived home at 5.42 am.

[9] Mr Low then proceeded to play loud music, raising the ire of the other tenants who began knocking on the apartment door. At approximately 7.00 a.m. another tenant also woke up to this loud music. She looked out of her apartment and saw Mr Low astride the balcony rail in the apartment directly below her. She left the window briefly to talk with a flatmate about the loud music when she heard another loud noise. She looked again out the window and noticed that Mr Low had fallen from the balcony and was lying on the road below the apartment. Emergency services and the police attended, but Mr Low was deceased.

[10] The subsequent post-mortem report determined the cause of death to be from non-survivable blunt force injuries to the head, chest and abdomen. Toxicology testing revealed a blood alcohol level of 237 milligrams of alcohol per 100 millilitres of blood.

[11] The police investigation concluded that during the course of that night's drinking Mr Low visited the following establishments – Airport Bar – Molly Malone's – Max Brewery – JJ Murphy's – Four Kings – Hope Brothers – YHA, where he drank six Steinlagers that he'd taken to those premises, – Basement Bar – Rain Bar – Mini Bar and finally – Coyote Bar.

[12] Detective Sergeant Dye commented on a deposition made by Detective Inspector Basham with regards to another matter where a heavily intoxicated youth fell from the eighth floor of an apartment to his death. In that report Detective Inspector Basham commented that most youths in New Zealand were brought up in single level detached suburban houses and were not sufficiently aware of the inherent risk associated with living in multi-storey inner city apartment buildings. Detective Sergeant Dye also noted that the

balcony rail at 135 Taranaki Street was 104 centimetres high but had an abnormally wide flat top, 30 centimetres wide, which was, in his view, an invitation to sit on.

[13] A check with the City Council's Building Services confirmed that the balcony and rail complied with the requisite Building Code and was correctly permitted.

Evidence of Police Sergeant John Lewis:

[14] Sergeant Lewis is the Wellington Alcohol Harm Reduction Officer, who provided the Court with detailed reports and statistics regarding the Wellington city alcohol scene. His evidence also included details on the Alcohol Reform Bill. In his evidence, he stated that at the time of his report there were no less than 720 licences in force under the jurisdiction of the Wellington District Licensing Authority made up of 70 club licences, 150 off-licences and 499 on-licences. Of the 151 off-licences, 66 were in the CBD. Dependent on the District Plan rules, a zoning bottle stores are usually permitted to trade between 8.00 am to 11.00 pm, with supermarkets permitted to sell alcohol up to midnight. Of the 499 on licences, 331 were located in the CBD (274 were restaurants and 99 taverns).

[15] Sergeant Lewis commented when speaking with colleagues from Melbourne, a city with a wider population of 4.25 million, as opposed to Wellington's wider population of 400,000, they were astounded at the number of liquor outlets in Wellington and that on a ratio basis Wellington was well ahead of Melbourne for alcohol outlets.

[16] Sergeant Lewis stated that after the introduction of the 1989 Sale of Liquor Act (SOLA) the closing time allowed for most tavern-style on licences in Wellington city changed from a conservative 11.00 pm to between 5.00 am and 7.00 am and for at least the last 15 years any applicant for a tavern-style liquor licence had been granted a 3.00 am closing time "by default" and after one year of "suitable trading" would have no difficulty in having their on-

licence renewed with a 5.00 am or even a 6.00 am closing time. In addition, a number of these tavern-style on-licences and a number of entertainment style on-licences have 7.00 am closing times or even 24 hour licences. He also stated that the SOLA legislation was geared towards police and the DLA opposing liquor licences on the basis of “suitability” of the applicant. Licensing hours in Wellington had been therefore dictated by the Council’s liquor policy, which in hindsight has done very little to restrict trading hours.

[17] Sergeant Lewis stated that this situation was thankfully expected to change when the long-awaited Alcohol Reform Bill took effect. The new legislation will have “a default close” 4.00 am closing time for on-licences unless the local council (influenced by public consultation) determined otherwise. The new Act will provide the Council and the community with a much-awaited and important opportunity to totally revise the way alcohol is consumed in Wellington city. Sergeant Lewis said as an example of this is the possibility of introducing “a one way door” policy an hour or two before closing time, which will influence patrons when they choose to leave a licensed premises and he says “hopefully to go home”.

[18] As a Wellington-based frontline police officer since 1989, Sergeant Lewis stated that Wellington’s nightlife/drinking culture had evolved greatly over the past 20 years. The relaxation of licensing hours during the early 1990s and the drop in the drinking age in the last 1990s and the large alcohol price difference that seemed to exist between bars and supermarkets and the movement of many residents/students into central Wellington were just some of the factors that have contributed towards how alcohol was consumed in the city.

Evidence of Ms Alison Curtis:

[19] The Court heard evidence from Ms Curtis, who is employed by the Wellington City Council as manager of public health. She is responsible for the management of the City Council’s public health regulatory activities that include the liquor licensing team. Ms Curtis provided the Court with a

detailed and very helpful report that outlined the process for granting and monitoring liquor licences. She stated that after the passing of the Local Government Act 2002 the Council introduced a liquor control bylaw with the purpose to address concerns relating to the potential offending and safety concerns linked to the possession and consumption of liquor in public places. The intention of imposing the ban was the consumption of liquor in “controlled areas” that would be restricted to private residences and licensed premises. The current control area in the CBD is the CBD, Oriental Bay, Mount Victoria Lookout, Aro Valley, Central Park, Mount Cook and Newtown.

[20] Ms Curtis also spoke about the Alcohol Reform Bill (now the Sale and Supply of Alcohol Act 2012) which came into effect on 18 June 2013 with a second limb to it coming into effect on 18 December 2013. Under the new Act the Liquor Licence Authority or LLA will be replaced by the Alcohol Regulatory and Licensing Authority (ARLA) and that during the first 12 month period the ARLA will consider all contested licence applications and manager’s certificates while the DLA will continue to consider all uncontested applications.

[21] The new Act also provides for the development of Local Alcohol Policies (LAPs) which come into effect on 18 December of this year. The territorial local authorities were to develop the LAP communities that will (a) be able to restrict or extend trading hours of premises, (b) limit the location and density of such licences, (c) impose conditions on those licensed premises. LAPs are optional. If a territorial authority wants to develop an LAP it can take the following steps before 18 December 2013:

- (1) Develop a draft LAP in consultation with police, license inspectors and medical officers of health.
- (2) Consult with the community on the draft policy using the special consultive procedure.
- (3) Prepare a provisional policy based on consultation feedback.

[22] As I understand it, this process is currently being carried out by the Wellington City Council.

[23] In answer to a question as to whether it was likely that the hours of operation for serving alcohol would be curtailed, to say at 3.00 am at the latest, Ms Curtis said that was a likely outcome.

[24] The Court also heard evidence from Dr Ruth Richards, employed by the Regional Public Health Authority, who had a strong interest in alcohol management and the long-term effects alcohol has on a person. In particular, Dr Richards discussed how alcohol has an effect on the long-term development of the brain of a young person as the brain of those young people is still under development, perhaps up to the age of 22 years.

[25] A post-mortem was carried out by forensic pathologist Dr John Rutherford, who concluded that the death occurred from non-survivable injuries to the head and chest. He noted that the deceased was heavily intoxicated at the time.

Coroner's comments:

[26] I am very concerned at not only the large number of alcohol licences and outlets that are available within the Wellington CBD, but also the hours that are open to the public. This concern is currently being debated under the new Sale and Supply of Alcohol Act 2012, so there is no need for any further recommendations to be made by me, but I do think it is necessary to curtail the sale of liquor from at least 3.00 am in the mornings as a means to arrest what is an ever increasing problem with alcohol intoxication and all the side effects that spin out from that.

[27] The owners of the particular apartment building passed on their condolences to the family of Mr Low and stated that if at any stage in the future it became a legal requirement to update any changes to their building, they would willingly carry those out. They went on to say that in the 10 years

that the building has operated as an apartment, this was the first such incident. I would say to the owners that despite that there is no legal requirement on them at this time to alter the balcony rails to the units, the fact that the top rail is some 300 millimetres wide simply will encourage people to sit on it and as such it does rather defeat the purpose of it being a protective barrier and I would encourage the owners to alter that situation to eliminate the possibility of any other person falling from the deck. Notwithstanding all of the above, I acknowledge that Mr Low was severely under the influence of alcohol, which was the main contributor to his fatal plunge.

[28] CODA

A copy of the Court's Findings in this Inquest was sent to the parties in provisional form for the purposes of S58(3) of the Coroners Act.

A reply was received from Counsel acting for the Wellington City Council and the essential part of that reply is provided as follows:

The Strategy and Policy Committee of Council (which is a committee of all Councillors) considered the draft LAP this month. Some amendments were made to the draft policy following the submissions and hearings process. Importantly in respect of your draft findings, the Council's LAP approved by the Strategy and Policy Committee, which is anticipated to be confirmed by the Council on 2 October 2013, provides the District Licensing Committee the discretion to grant on-license hours from 7am until 5am the following day, 7 days a week. The draft LAP explicitly provides that applications for new licenses or renewal for hours beyond 3am will in future have to meet higher standards. We understand that the suggested standards are generally consistent with the evidence provided to you by Ms Curtis.

Having seen this response it remains my view that 3.00am is any amount late enough for facilities to be open to serve liquor to patrons.

Verdict

[29] I find that Kenneth David Low, late of 32A Talbot Street, Wanganui, died at 135 Taranaki Street, Wellington, on 12 December 2010 as a result of accidentally falling from the balcony from the apartment complex, sustaining non-survivable blunt force injury to the head, chest and abdomen.

[30] Finally, I also wish to extend my condolences to the family and friends of the deceased.

Signed this 23rd day of October 2013 at Wellington

Ian Roderick Smith

Wellington Regional Coroner