Geographical Indications (Wine and Spirits) Registration Amendment Bill

14 October 2015
Hon Christopher Finlayson QC, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Geographical Indications (Wine and Spirits) Registration Amendment Bill

Purpose

1. We have considered whether the Geographical Indications (Wine and Spirits) Registration Amendment Bill (“the Bill”) is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 (“the Bill of Rights”).

The Bill

2. The Bill amends the Geographical Indications (Wine and Spirits) Registration Act 2006 (“the Act”). Although the Act was enacted in 2006, it has not yet been brought into force. This Bill provides a mechanism for bringing the Act (as amended) into force by no later than 1 July 2018 and establish a system for registering Geographical Indications (“GIs”) for New Zealand wines and spirits. GIs identify the geographical or regional origin of wines and spirits where their quality, reputation or other characteristic is essentially attributable to that origin (e.g. Central Otago Wine).

3. The Bill introduces a new provision in the Act’s purpose (new s 3(c)) that says one of the purposes of the Act is to protect the interests of consumers of wine and spirits in New Zealand by providing assurance that a wine or spirit using a registered GI originates in the territory, region, or locality to which the registered GI relates.

4. The Bill amends the Act to replace what was originally an indefinite term of registration with a renewable, 10 year registration period for GIs, which will provide a long term source of funding for the maintenance of the register of GIs. The GIs “New Zealand”, “North Island” and “South Island”, will have enduring GI registration status, so will not have to be renewed.

5. The Bill also makes consequential amendments to the Trade Marks Act 2002. The amendments prohibit the Commissioner registering trade marks that include registered GIs for wine or spirits not covered by the registration. The Commissioner can however register such a trade mark if the registrant consents or the Commissioner considers no confusion would result.

Consistency of the Bill with the Bill of Rights Act

Section 14 – The right to freedom of expression

6. Section 14 of the Bill of Rights Act affirms the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form.
The freedom of expression is “as wide as human thought and imagination” [1] and includes any activity which conveys or attempts to convey a meaning. [2]

7. Legislative provisions limiting a particular right or freedom may nevertheless be consistent with the Bill of Rights Act if the limit can be considered reasonable and demonstrably justified in terms of section 5 of that Act.

8. The section 5 inquiry may be approached as follows: [3]

a. a) does the provision serve an objective sufficiently important to justify some limitation of the right or freedom?
   b. b) if so, then:
      i. is the limit rationally connected with the objective?
      ii. does the limit impair the right or freedom no more than is reasonably necessary for sufficient achievement of the objective?
      iii. is the limit in due proportion to the importance of the objective?

9. The Bill appears to limit section 14 of the Bill of Rights Act by restricting the right to express where a wine or spirit originate[s] from in a commercial context. The central rationale of this restriction is to protect the value and reputation associated with wines and spirits that genuinely originate from the geographical location concerned. We consider the limitation on section 14 in this context is clearly justified, is analogous to the protection of intellectual property rights [4] and achieves the stated purpose of protecting consumers by assuring them of the integrity of the wine or spirit they may purchase.

10. Clause 10 of the Bill restricts the use and registration of GIs if it would, in the opinion of the Registrar, be likely to offend a significant section of the community, including Māori. Clause 10 mirrors the restriction on the registration of trade marks under section 17 of the Trade Marks Act 2002.

11. Geographical names and locations can have special significance to tangata whenua or other groups with spiritual or historical ties to the land. Association with alcoholic products for commercial purposes may therefore have significant potential to cause offence to certain groups. We consider protection of those groups’ interests to be a sufficiently important objective to justify some limitation of the freedom of expression affirmed by section 14 of the Bill of Rights Act. This view reflects the Courts’ recognition of the Crown’s obligations under the Treaty of Waitangi, in particular the duty to actively protect Māori interests. [5] The clause also ensures the views of other cultural groups are considered.

12. We also consider that ensuring GIs and trade marks are treated consistently is a sufficiently important objective to justify a limitation on the freedom of expression in this context. The limit is rationally connected to these objectives, and impairs the freedom of expression no more than necessary to achieve the objectives. The limit directly achieves both objectives without placing further or unnecessary restrictions on the use of GIs. For the same reasons, we consider the limit is in due proportion to the importance of the objectives.
13. We therefore consider, to the extent the restriction on using particular regional names could be considered to limit the right to freedom of expression, that limitation is justified under section 5 of the Bill of Rights Act.

Conclusion

14. We have concluded the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.

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Footnotes

[4] Protection of intellectual property rights is a widely accepted limitation of the freedom of expression.