



**DECISION OF THE  
GENERAL MANAGER  
LIQUOR CONTROL AND LICENSING BRANCH  
IN THE MATTER OF**

A hearing pursuant to Section 20 of  
*The Liquor Control and Licensing Act* RSBC c. 267

Licensee: Lonsdale Hotels inc.  
dba Lonsdale Quay Hotel  
123 Carrie Cates Court  
North Vancouver, BC

**APPEARANCES**

For the Licensee: Dennis Coates, Q. C.  
Salim Karim, Co-owner/Manager

For the Branch: Peter Jones, Advocate

Enforcement Hearing Adjudicator: M. G. Taylor

Case No.: EH03-038  
EH03-039

Dates of Hearing: August 7 and 8, 2003

Place of Hearing: Vancouver, B.C.

Date of Decision: December 11, 2003

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**Ministry of Public  
Safety and Solicitor  
General**

Liquor Control and  
Licensing Branch

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## Introduction

The licensee, Lonsdale Hotels Inc., operates the Lonsdale Quay Hotel (the "hotel") which has three (3) liquor licenses - a Liquor Primary Licence (LPL) No 111281, a second LPL No. 111297 and a Food Primary Licence (FPL) No. 111302. The LPL No.111281 is for a lounge called the Tantra, located on the 2<sup>nd</sup> floor of the building which is the entrance floor to the hotel. The hotel lobby is on the 3<sup>rd</sup> floor.

The hotel is a family run business operating since 1989. There are 70 hotel rooms located on the 3<sup>rd</sup> and 4<sup>th</sup> floors, a small fitness centre, whirlpool, banquet facilities, and the Tantra Lounge and Grill. The building also has a shopping concourse with 50 to 60 shops, and underground parking. The building is located on the waterfront in North Vancouver.

The contraventions alleged in this proceeding are directed to the Food Primary Licence (FPL) No. 111302. The FPL covers 5 interior areas and 1 patio, all on the 3<sup>rd</sup> floor. Those interior areas include an area formerly used as a restaurant, an area that adjoins and is indistinct from, and is accessed through, the restaurant area, and banquet/meeting rooms. The second LPL (No. 111297) is for a lounge on the 3<sup>rd</sup> floor. That lounge space also adjoins, is indistinct from, and is accessed through, the restaurant area.

The permitted liquor licence capacities of each area are:

LPL No. 111281 (Tantra)	180 patrons plus 45 on patio
LPL No. 111297 (3 <sup>rd</sup> floor lounge)	54 patrons plus 16 on patio
FPL area 01(former restaurant)	66 patrons
FPL area 02 (banquet/meeting)	155 patrons
FPL area 03 (meeting room)	20 patrons
FPL area 04	25 patrons
FPL area 05 (adjoins restaurant)	37 patrons
FPL patio	59 patrons

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The incident that gives rise to this hearing was a New Years Eve celebration on the 2<sup>nd</sup> and 3<sup>rd</sup> levels, which are joined by an outdoor stairwell between the patios. The licensee served a buffet style dinner in area 02 on the 3<sup>rd</sup> level (the "banquet room") and provided music, dancing, and liquor service in areas 01, 05 and LPL No. 111281 (collectively referred to in this decision as the "Atrium"). Advance tickets were sold and guests had the option of purchasing tickets with or without dinner.

### **Alleged Contraventions and Recommended Enforcement Action**

By two Notices of Enforcement Action (NOEA) dated April 24, 2003, the branch alleged that, on December 31, 2002, the licensee contravened the *Act*, regulations and the liquor licence and recommended enforcement action, as noted below. Schedule 4 of the *Liquor Control and Licensing Regulations, BC Reg. 608/76, Enforcement Actions*, provides a range of licence suspensions and monetary penalties for each contravention. The range for each alleged contravention is noted below.

The branch alleges that:

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1. The licensee permitted more persons in the establishment than the capacity permitted by the liquor licence, less than or equal to the occupant load, contrary to section 12 of the *Act*;

The branch recommended a monetary penalty of \$7,000. Under Schedule 4, Item 14, the range of penalty for a first contravention is 1 to 3 day licence suspension, or \$1,000 to \$3,000 monetary penalty. The branch's recommended penalty is greater than the range, recognizing the discretion granted to the general manager under section 68(2) of the Regulations.

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2. The licensee permitted liquor sold in the establishment to be removed from the establishment, contrary to section 42(4) of the Regulation;

The branch recommended a monetary penalty of \$3,000. Under Schedule 4, Item 29, the range of penalty for a first contravention is 1 to 3 day licence suspension, or \$1,000 to \$3,000 monetary penalty. The branch's recommended penalty is the maximum of the range.

3. The licensee permitted prohibited entertainment (dancing) contrary to section 50 of the Act;

The branch recommended a monetary penalty of \$3,000. Under Schedule 4, Item 35, the range of penalty for a first contravention is 1 to 3 day licence suspension, or \$1,000 to \$3,000 monetary penalty. The branch's recommended penalty is the maximum of the range.

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4. The licensee was operating in a manner that was contrary to the primary purpose of the licence, contrary to sections 20(1)(d) and 16 of the Act and section 11(1) of the Regulations;

The branch recommended a monetary penalty of \$10,000. Under Schedule 4, Item 1, the range of penalty for a first contravention is 10 to 15 day licence suspension, or \$7,500 to \$10,000 monetary penalty. The branch's recommended penalty is the maximum of the range.

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## Compliance History

There is no record of proven similar contraventions, offences or enforcement actions (“compliance history”) for this licensee or this establishment within the year preceding this incident. Therefore, these contraventions, if proved, would each be considered a first contravention for the purposes of the Penalty Schedule.

## Issues

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1. The licensee admits to the contravention of section 12 of the *Act* by being over the patron capacity less than occupant load, but disputes the recommended penalty of \$7,000.

Issue: Is the recommended penalty appropriate?

2. The licensee admits to the contravention of section 42(4) of the *Regulations* (i.e. that patrons carried liquor between the 3<sup>rd</sup> floor banquet room, where the dinner was served, and the Atrium, the main area of the function). The licensee disputes the recommended penalty of \$3,000.

Issue: Is the recommended penalty appropriate?

3. The licensee disputes the alleged contravention of section 50 of the *Act* on the grounds that dancing is a normal banquet room activity and, therefore, there is no contravention.

Issue: Does the impugned activity constitute a contravention under the *Act* or regulations?

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4. The licensee disputes the alleged contraventions of sections 20(1)(d) and 16 of the *Act* and section 11(1) of the *Regulations* on the grounds that a one-time occasion does not constitute the contravention and the branch does not have policy directed to banquet room functions.

Issue: Does the impugned activity constitute the contravention of operating in a manner that was contrary to the primary purpose of the licence?

Issue: If the branch imposes penalties for other contraventions arising out of the same activity, is it appropriate to apply a penalty for this contravention?

**Exhibits**

Exhibit No. 1	Book of Documents
Exhibit No. 2	Large scale plans
Exhibit No. 3	Large scale plans
Exhibit No. 4	Liquor licence No. 111297 and attached floor plans
Exhibit No. 5	Correspondence – Sept 12, 2000; licensee putting licence into administrative suspension
Exhibit No. 6	Licence No. 111297; expires Nov 30, 2000
Exhibit No. 7	Packet of Food and Liquor Primary Licences for five establishments
Exhibit No. 8	New Years Eve ticket for Tantra
Exhibit No. 9	Photos 1 to 25
Exhibit No. 10	Liquor Licence No. 111297, expiry date November 30, 2003
Exhibit No. 11	Three pages of photographs by Inspector
Exhibit No. 12	Lonsdale Quay Hotel Banquet Functions
Exhibit No. 13	Catering promotional package
Exhibit No. 14	Payroll list for December 16 - 31, 2002 and 2 sign out sheets
Exhibit No. 15	Floor plan for second level of Lonsdale Quay
Exhibit No. 16	Package of receipts for December 31, 2002
Exhibit No. 17	Package of slips used on December 31, 2002 for payment to the door security personnel
Exhibit No. 18	Package of receipts re ticket sales
Exhibit No. 19	Statement of revenue and expenses for December 31, 2002
Exhibit No. 20	Affidavit of a witness

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**Applicable Statutory Provisions**

See Appendix A

**Evidence**

The branch's witnesses were an R.C.M. Police (R.C.M.P.) Constable, the branch's regional manager, and a liquor inspector. The licensee's witnesses were the executive chef (the "chef"), the manager of the Tantra Lounge and Grill (the "manager"), and the "owner/manager" of the Lonsdale Quay Hotel. The licensee also presented a witness affidavit, Exhibit No. 20.

The licensee acknowledged that there was a New Year's Eve party on December 31, 2002, which involved the Tantra lounge and the areas on the 3<sup>rd</sup> floor, referred to as the Atrium and the banquet room. There were disk jockeys, dancing, and liquor service on both levels. On the 3<sup>rd</sup> three bars were set up in the Atrium (which comprised areas 01 and 05 and LPL No. 111297). Patrons had the option of purchasing advance tickets with (\$100.00) or without (\$55.00) a meal. Of the total 550 tickets sold, 155 included the meal. No tickets were sold at the door. The event was scheduled to run until 3:00 A.M., which was legal on this occasion.

***Branch's Evidence******R.C.M. Police Constable***

The R.C.M.P. Constable testified that he was telephoned after Midnight on December 31, 2002, (actually January 1) by the owner/manager of the Lonsdale Quay Hotel. The owner/manager told him the regional manager of the liquor branch had ordered him to shut down the New Year's Eve party. The owner/manager was concerned about possible incidents as they stopped liquor service and required people to leave.

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The constable testified that when he arrived at the hotel, between 12:30 and 1:00 A.M., there were 100 to 150 people outside, many of whom appeared intoxicated in various degrees. The people were waiting for taxis or other rides and others, seemingly, were trying to get back inside.

The constable had been designated site commander. He and another officer tried to disperse the crowd. They met the branch's regional manager and the three of them went into Tantra by the exterior stairs, from the quay. The interior exit of Tantra goes to the mezzanine of a shopping concourse, and he observed there were patrons in the mezzanine "spilling out" of Tantra. He and the other officer went to the 3<sup>rd</sup> floor to deal with patrons who had been involved in an altercation. His recollection of the 3<sup>rd</sup> floor was that there was a large crowd and a line up of people in the mezzanine. He testified that it took them about 10 minutes to move into and through Tantra and the mezzanine to get to the altercation. He recalled loud music, canned not live. He did not recall people dancing and thought it was too crowded for dancing. He did not recall seeing any food service or food service areas. He also did not recall seeing any patrons drinking in the mezzanines or hallways.

There had been an altercation between two male patrons, one of whom had a bloodied nose and a swelling face. The constable recalled it was around the coat check area. He was told it arose because of a missing coat. The officers dealt with the altercation and the injured patron for 20 to 30 minutes. The constable estimated there were 60 to 100 people in the area where they were dealing with altercation. The officers escorted the two patrons to the 2<sup>nd</sup> level and called for an ambulance. The constable testified that in order to get treatment for the injured person, he had to move him outside the building because there were too many people to render treatment inside. The constable recalled that the crowd on the 2<sup>nd</sup> level outside Tantra was similar to upstairs, but larger.

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Once the ambulance arrived, the constable turned his attention to clearing the main level. When the police started getting patrons to leave they worked in small numbers. He testified that there was a legitimate concern that if the establishment was shut down immediately, and patrons told to leave, there could have been an outbreak of violence. He also testified that excessive overcrowding was a valid concern. The situation presented public safety issues - if someone had fallen and required emergency health services, or if a fire alarm had been raised, if people had to evacuate, there would have been a serious threat given the numbers inside the hotel and in the mezzanine. He testified that people in the mezzanines on both levels appeared to be intoxicated.

The constable observed that the hallway on the 3<sup>rd</sup> level leading to the Atrium is relatively narrow, 15 to 20 feet wide and that the crowd occupied that entire area. The hallway is secured by a railing looking down on the mezzanine and he feared that someone could have toppled over the railing. In order to leave the 3<sup>rd</sup> floor, patrons went down the outside stairwell that joins Tantra and the 3<sup>rd</sup> floor. The stairwell is 10 to 20 feet long and only wide enough for two people. Given that the quay is on water and the stairway is 15 to 20 feet from the edge of pier, he had a fear that someone could fall into the water. There is an elevator by the hotel lobby but it is relatively slow and only holds about 10 people. There is also an exit stairwell by the elevator that is sufficiently narrow that the officers could not walk side by side. The constable was not sure whether there was another exit stairwell from the 3<sup>rd</sup> level.

The constable testified that in his experience, approximately 25 years in the R.C.M.P., this was a serious situation. This was the largest New Years' Eve party in North Vancouver. According to the police codes, he put this at the most serious, a code 7 – the greatest potential for problems. Before he left, he spoke with the owner/manager and had an agreement that liquor service would stop, the music would be turned off and people would be required to leave in small groups. When he left his partner remained to oversee the closure.

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***Regional Manager***

The branch's regional manager testified that the R.C.M.P. alerted the branch to possible problems at the Lonsdale Quay Hotel due to the large number of patrons gathered for a New Year's Eve party. The regional manager and a liquor inspector attended the hotel at approximately 11:15 P.M. The regional manager testified that the 3<sup>rd</sup> floor hallway leading to the Atrium was crowded and patrons were lined up waiting to get into the function. He observed people in the hotel lobby and other public areas carrying drinks.

The branch personnel identified themselves and were admitted to the Atrium where the function was occurring. The regional manager testified that a disk jockey station was set up in an area which he identified from the plan as Area 05, patrons were dancing although the area was so crowded it was difficult to move, there was a main bar and two others, and that the only seating were chairs around the perimeter of an area he identified from the plan as the LPL No. 111297. The patio was covered by marquis tents and he saw patrons on the patio. He described the exterior stairs as approximately four feet wide and said the stairs were so crowded patrons were stuck trying to move between the two levels. Patrons on the patio and stairs had drinks in their hands.

The regional manager and the liquor inspector met with the licensee's owner/manager in the kitchen on the 3<sup>rd</sup> floor. The regional manager testified that he told the owner/manager his concerns that the number of patrons far exceeded that permissible, that exits were blocked, that he had serious concerns about safety, for example, if a fire started, and that people were drinking in the lobby, on the patio, and in the stairwell. The regional manager further testified that he told the owner/manager he might have to impose a suspension of the liquor licence to shut down the party and that he would talk with the R.C.M.P. about the situation. In the meantime, he told the owner/manager to stop allowing people to come in and start reducing the numbers.

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At approximately 11:50 P.M., the regional manager spoke with the R.C.M.P. about what might happen if they suspended liquor service. After that consultation, he told the owner/manager that at 12:30 A.M. he would have to stop liquor service and have the patrons removed by 1:00 A.M. At that point, the regional manager estimated there were 500 to 600 people.

The regional manager recalled that there were as many as 14 R.C.M.P. officers at the hotel that night. They had a paddy wagon and police cars. At 12:30 A.M. the regional manager again conferred with the R.C.M.P. and decided it would cause a worse situation if they tried to shut it down immediately. He told the owner/manager to start turning the lights up slowly, have the disk jockeys reduce the music levels gradually and reduce liquor service gradually. The R.C.M.P. agreed to stand by.

The regional manager went outside and the liquor inspector stayed inside. At approximately 1:30 A.M., the liquor inspector reported to the regional manager (telephone contact) that the lighting, music and liquor service had not changed and there was no obvious attempt by the licensee to disburse people. Some patrons had been taunting the liquor inspector and the regional manager directed him to leave. The two of them remained outside the establishment until approximately 2:30 A.M.

The branch presented Exhibit No. 5, a letter dated September 12, 2000, from counsel for the licensee to the branch's licensing administrator, requesting that licence No. 111297 [the Liquor Primary Licence on the 3<sup>rd</sup> level]

be placed in administrative suspension effective immediately. This request is being made to coincide with renovations that are planned for the hotel facility. In fact, we will be submitting an Application for Permanent Change regarding "B" (DL[dining lounge]) Licence No. 111302, to extend the "B" patio and expand Area 1 to include what is presently designated as

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“A” (AP[“A” Pub]) Licence No. 111297. That “B” change application can only be processed if “A” Licence No. 111297 is, in fact, placed in administrative suspension.

Exhibit No. 6 is copy of Licence No. 111297, with an expiration date of November 30, 2000.

### ***Liquor Inspector***

The liquor inspector testified that when he and the regional manager first arrived at approximately 11:15 P.M. his impression was that the hotel was grossly overcrowded. His main involvement was on the 3<sup>rd</sup> floor. He counted patrons. On his first count at 11:25 P.M., he counted 374 patrons, inside only. His second count at approximately 11:40 P.M. was 319 patrons, inside only. His third count, at approximately 11:55 P.M. was 325 patrons, including the patio. The third count he did with one the licensee’s security staff. The staff member had told him there were approximately 150 patrons, but when they counted the staff member said his count was 250. The inspector testified that initially he did not appreciate there were separate areas denoted for the liquor licence. He did not attempt to count the areas individually.

The liquor inspector testified that he saw people drinking on the patio and on the exterior stairwell. He stated that the licensee’s staff where not controlling the crowd. He testified to the music, dancing, liquor service and patrons in the hallway. He stated that he was in the hotel from 11:30 P.M. until 2:10 A.M. He testified that he did not see any food service, cutlery, condiments or areas to sit to have a meal. He did not look in the refrigerators to see if food was available. However, he said there was no evidence that this was a restaurant – it looked just like a bar.

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He testified that the branch's goal had been to get people to leave. Initially, the regional manager said the licensee would have to shut down by 12:30 A.M., then extended that to 1:00 A.M. Shortly after 1:00 A.M., the liquor inspector searched for the owner/manager and found him in his office, with the assistant manager, with the lights out. The inspector told the owner/manager that he should be out on the floor to have the music turned down and to get people to move out. The owner/manager's reply was along the lines of – what am I to do? However, the owner/manager did go back into the party and the inspector recalled that the music might have been turned down after that.

The liquor inspector testified that he was concerned for public safety because of the numbers and that he had been afraid of what would happen if the branch shut down the party. Because of that added concern, the branch and the police decided to close it down slowly.

The liquor inspector testified that there are stairs inside the atrium but that they are not available at night when the concourse is closed.

Subsequently, as part of his investigation, the liquor inspected attended the hotel in January 2003, and took photographs, which are in Exhibit No. 11. He testified that he also spoke with the Ticket Master manager concerning the ticket sales. He was told Ticket Master printed 800 tickets and sold 250 tickets. From his conversation with Ticket Master, the liquor inspector gathered that the licensee would have told Ticket Master that the maximum capacity was 800. As a result of his investigation, he thought that 650 tickets were sold, however the owner/manager maintained it was 550 tickets.

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## **Licensee's Evidence**

### ***The Chef***

The executive chef (the "chef") testified that he has been in the food industry for 16 years and with Lonsdale Hotel for three years. He testified that the licensed areas on the 3<sup>rd</sup> floor are used strictly as banquet facilities. It is never set up in restaurant-style tables and chairs. He provided Exhibit No. 12 which shows some information for scheduled functions. He also provided Exhibit No. 13 which outlines the banquet functions and services. He testified that the entertainment for functions varies, but usually there is music and occasionally there is dancing.

The chef provided Exhibit No. 14, a payroll summary for December 16 to 31, 2002. He stated that on December 31, 2002, he worked from approximately 11:00 A.M. until 10:00 or 10:30 P.M. The sou chef worked until 11:00 or 11:30 P.M.; the first cook and one other kitchen staff worked until 12:30 A.M. The chef testified that the kitchen prepared 155 dinners, served between 7:00 P.M. and 10:00 P.M., and 500 servings of hors d'oervres, served throughout both floors, between 7:00 P.M. and 12:30 A.M. He testified that every 15 to 30 minutes servers circulated with trays of food. Concerning the branch's evidence that food was not evident, the chef said that it was stored in the walk-in cooler, waiting to be put on a tray or to be cooked in the fryer.

The chef testified that the intention had been to serve food until 2:00 A.M. which is their usual closing hour. However, because of the disruption by the liquor inspectors and the police, the kitchen started closing down early. He stated that normally, if someone asked for a meal at 12:45 A.M., the kitchen would prepare it. However, on this occasion, because they had been closed down, staff had left by 12:30 A.M.

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***The Manager***

The manager of the Tantra Lounge and Grill (the “manager”) testified that he has worked in the industry for 17 years, including managing several night clubs, and has been with the Lonsdale Hotel for two and a half years. On December 31, 2002, he had responsibility for the Tantra section and another manager had responsibility for the areas on the 3<sup>rd</sup> floor. The plan was for a total of 550 patrons, some of whom would be having dinner in the banquet room. This figure was arrived at by combining the licensed capacities for Tantra, the Atrium areas and the banquet room. There was a disk jockey and dance floor in both the Tantra and Atrium. The plan included being open until 3:00 A.M., which he said was a special concession the branch or the police granted all the licensees for New Year’s Eve. He testified that it was a surprise to him that dancing was not permitted in the Atrium. The hotel had a similar event the previous year, but there were not as many patrons.

The manager testified that his responsibilities that night included coordinating the 10 security staff. There were staff meetings on December 30, 2002, for all staff to go over the event and responsibilities. The manager also had a meeting on December 31, 2003, at 7:30 P.M., with all the security staff. He stated that the security staff has radios so they are in two way communication at all times and that their areas of responsibility overlap so that more than one staff can see all areas. He testified that the security staff were well positioned at the entrance, the interior, the patio and the stairwell. Upstairs, door security staff were stationed at the lobby entrance to the Atrium, the beer tub just inside Atrium entrance, across the room at the portable bar by patio, and at the top of the exterior stairs. There was a head doorman who had responsibility to supervise and roam the establishment. The manager testified that the licensee hired three additional experienced security staff for this occasion.

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When guests arrived that night, those having dinner were directed to the 3<sup>rd</sup> floor either by the elevator or the mall stairwell. The 3<sup>rd</sup> floor venue had its own security entrance and coat check. As non-dinner guests arrived, they were directed to the Tantra or, by the exterior stairwell, to the Atrium. The kitchen supplied finger food service from 9:00 P.M., in intervals. He recalled that the last serving of food was about 12:30 A.M. and that not all the food was consumed.

The manager testified that the overall capacity in the Atrium is around 150 patrons. Just before midnight, he was in the hallway outside the Atrium and about 20 people were still lined up between the coat check and the Atrium. They had purchased non-meal tickets but couldn't be admitted. One of the security staff counted approximately 250 patrons in the Atrium, just before midnight.

The manager testified that door security had been instructed not to let patrons leave the Atrium or Tantra with drinks. There were tables set up for glasses to be deposited. No one was to have been permitted to enter the stairwell with drinks. After the liquor inspectors and police arrived, they directed the licensee to stop people using the exterior stairwell because they were concerned about the congestion on the stairwell. The manager testified that he had observed the traffic on the stairwell, which is 4 to 5 feet wide, and did not think there was a problem. However, closing it caused considerable tension for patrons, particularly as midnight approached. Patrons had been travelling between rooms and friends had become separated from people they wanted to be with at midnight. There were big gatherings of people at both the top and bottom of the exterior stairwell, trying to get past the security staff. He testified that he realized that it was a potentially volatile situation. He located the R.C.M.P. officer in charge and told him of the potential security problem. The officer gave him permission to reopen the stairwell and then there was a rush. He said he did not see alcohol being carried between the two floors, but if it happened, it would have been in the rush towards midnight.

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Concerning the liquor inspectors' observations of people in the elevator with drinks, the manager suggested the people might have been hotel room guests. The hotel desk personnel would have been responsible for room guests.

The manager testified that in their planning they had thought people having dinner would stay in the banquet room because they had music in there – piped in by the catering service. In the other areas, they had planned to control the distribution of the patrons by switching music. He surmised that what happened instead was the dinner people wanted to be part of the action in the Atrium and the Tantra, and people in those busier rooms didn't feel the need to move into the quieter room. As a result, there was congestion in the Atrium and on the stairwells, which became the 'hot spots' as the evening progressed.

The manager testified that the New Year's Eve event was scheduled to close down at 3:00 A.M. but after the liquor inspectors arrived, the owner/manager instructed him to stop liquor service at 1:00 A.M., which he did. After he stopped service, the music continued and patrons finished their drinks. At approximately 1:30 A.M., the lights were turned on, music stopped and the patrons left. He testified that everyone left relatively quickly and most were gone by 2:00 A.M., without incident.

The manager testified that, overall, considering that patrons' New Year's Eve celebration had been reduced from what was advertised, he was surprised that people were not more upset and was pleased that there were no incidents.

The manager testified that the hotel maintains regular security on the main and second levels. There are exit stairways in the large open space in centre of building with access from the 3<sup>rd</sup> level to the main floor. The fire exits in the mall area are exit-only and do not allow access to Tantra or Atrium. The exit from Tantra is the front door. There is a rope preventing people from leaving from the

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patio. At the end of an evening, that rope is often lifted to allow people to go down the stairs to the taxi stand.

### ***The Owner/Manger***

The co-owner/manager is responsible for the management of the hotel on a day to day basis. He testified that the areas referred to as the Atrium operate as one facility, as a banquet room. Previously, there had been a pub in this area but in 1992, they renovated, added guest rooms, moved the pub and eventually closed it because they found that the banquet room facility was the most feasible.

Regarding Exhibits No. 5 and 6, he recalled discussions about the liquor licence going into administrative suspension, but did not know whether that had happened. Since then the area has operated only as a banquet room. The hotel has continued to pay licence fees.

The owner/manager referred to Exhibit No. 13, Catering Promotional Package, and said the function of the catering manager is to sell these rooms. The ballroom, atrium, the 'coat check', and boardroom are used often for corporate meetings or banquet functions. He testified that in 14 years managing this hotel, he always understood that it was permissible to have some entertainment, including dancing, in the banquet rooms. He said he has had discussions with police in previous years about functions at the hotel and has never been advised that what he was doing was not permissible. For the New Year's Eve event for the previous year, he said he discussed every aspect with the police and they said it would be legal as long as he did as he outlined. He also testified that he has been to many other establishments for banquet type functions and dancing is common.

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The Hotel has had New Year's Eve events for the past three years. On December 31, 2001, there were people in Atrium and Tantra and they had the ability to go back and forth; the event did not use the ballroom and there were fewer tickets sold than for December 31, 2002. He testified that the total capacity is 657.

For the New Year's 2003 event (December 31, 2002), the manager testified they sold 550 tickets, expecting some travel between the Atrium, ballroom, and Tantra. They anticipated that each room would have its own draw. They did not expect any particular room to have a greater draw. They thought the banquet room would have a lounge atmosphere that would attract patrons to stay there and anticipated about 150 people would be in this quieter setting. Dinner was cleared from the room throughout the night. In the other areas, patrons could not have a conversation without having to go outside.

Concerning instructions to staff and staff meetings, the owner/manager stated that he conducted the meetings the day before and he spoke with each staff member. There was a separate meeting for each group. The security staff were aware that there was not to be overcrowding in any area. Although the hotel gave the patrons the impression they were free to move from room to room, the doormen knew that was not the case. They hoped each venue would attract people and there would be a natural dispersal. However, it turned out that there was no draw for the banquet room once the meal was finished. The door security let people into the Atrium even after it reached its maximum capacity and that is what caused the overcrowding – if the staff had directed patrons back into the banquet room, the situation would not have developed and this hearing would not be happening.

The prime time for the evening was when inspectors came in, between 11:15 P.M. – 12:00 Midnight. The inspectors felt there were fire and safety issues in the Atrium area. Between 11:15 and 11:45 P.M., the inspectors

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counted patrons, looked at licences, and said the Atrium areas were overcapacity. At 11:45 P.M., the regional manager said that the event would have to be shut down, that the music was to be shut off, lights turned on, and everyone required to leave. The owner/manager stated that he pleaded and reasoned with the regional manager not to shut it down like that because of the potentially volatile reaction from patrons. The regional manager considered it further and said to shut it down at 12:30 A.M. According to the owner/manager, he and the regional manager continued talking about the situation right through midnight as he was still concerned about creating problems by closing early. He thought if they let it run its course, it would start to thin out after Midnight. He told the regional manager that if they were to shut down, they would need police assistance for orderly evacuation.

The police arrived at about 12:30 A.M. The owner/manager impressed upon them his view that the longer the event was allowed to run, the less likelihood there would be of angry outbreaks. The officer in charge then agreed to keep it open longer, but said they would have to stop liquor service at 1:00 A.M., turn the music down, and take as long as necessary to clear the area. The police were confident nothing would happen because they had such a large presence there. The regional manager agreed with the 1:00 A.M. closing schedule and said words to the effect of: "don't put yourself on a stop watch, just get everyone out on this new schedule."

Once the bar gave patrons 'last call' for 1:00 A.M., people were approaching the owner/manager, angry because the night was ending early. He testified that he was becoming a potential source of conflict and since he had two other managers and a head doorman who were senior staff, he felt the safest thing was to remove himself. He went to accounting office. He testified that he told the liquor inspector where he was going and why and that the plan would be implemented. The police had left at this point. At 1:10 A.M., the inspector came to the office and told him he should be out with the patrons. The inspector said

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patrons were taunting him, it was not a safe environment for him and he was leaving. The owner/manager went back out and saw to the music being turned off at 1:30 A.M., by 2:20 A.M. only staff was left. The police returned around 2:30 A.M. but there was only staff left doing clean up.

Concerning liquor being removed from the licensed areas, the owner/manager testified that the security staff had strict directives not to allow patrons to move between the rooms with drinks. However, he had considered the hallway from the banquet room to the Atrium as one area so there was no restriction there. The glassware used that night was one time use only and it was white glass, very obvious to see.

Concerning ticket sales, he said that Ticket Master assumes it is the only ticket seller so their records would show availability of about 800 tickets. However, other promoters were selling as well as the hotel, and the owner/manager kept a daily total and could tell Ticket Master not to sell any more, or say how many there were left to sell. He testified that there was never a risk of overselling because he had access to the daily numbers sold. The documents in Exhibit No.16 show that Ticket Master sold 250 tickets. Those documents also show the GST, advertising and other expenses, income from tickets, and total liquor sales for the night. Exhibit No.18 is a package of receipts for ticket sales. There were 155 dinner tickets sold, none of which were sold by Ticket Master.

Exhibit No. 19 is a statement of revenue and expenses for December 31, 2002, which shows that it was not a profitable night, although it did net a small profit. He noted they had to refund some tickets, but the accounting on that was not complete. He testified that if the event had stayed open until 3:00 A.M. the liquor sales would have made it profitable.

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Concerning safety, the owner/manager testified that if there had been an emergency, people could have gone to the Tantra patio and exited from there by another stairwell that goes to ground level. He testified that he considers this to be one of the safest licensed premises because it is surrounded by water and cement; there are exits on both floors; there is an interior fire exit off the meeting rooms and an internal hotel fire exit down the guest room corridor on the 3<sup>rd</sup> floor. From the 3<sup>rd</sup> floor patio, there is a fire exit that goes to a mezzanine area and leads to a separate street exit.

The owner/manager referred to the affidavit submitted by a friend who was present and assisted him that night. The affidavit supports his chronology of the directions from the liquor inspector, which resulted in the decision to shut off liquor service at 1:00 A.M.

## **Submissions**

### ***Burden of Proof***

The licensee submitted that until recently, contraventions of the *Act* were considered to be absolute liability offences. However, in *Whistler Mountain Ski Resort v. General Manager Liquor Control and Licensing Branch*, 2002, B.C.C.A. 426, the Court pointed to the serious consequences of orders issued by the general manager and found that offences alleged under section 20 of the *Act* are strict liability offences to which the defence of due diligence applies.

Applying the case law in *Regina v. Sault Ste. Marie* [1979] SCR 1299, *Regina v. Wholesale Travel Group Inc.* (citation not provided) and the *Whistler* case, the licensee argued that the branch must prove the *actus reas* of the offence 'beyond a reasonable doubt' and then the onus shifts to the licensee to establish that it took reasonable care 'on a balance of probabilities'.

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***Prohibited Entertainment***

The licensee submitted that no penalty should be imposed for this alleged contravention. The branch does not have a policy statement that covers entertainment in banquet rooms. Further, from a view of Exhibit No. 7 and knowledge of industry practice, the licensee submitted that no hotels have entertainment endorsements. However, it is common experience to go to hotel banquet rooms for a variety of functions which include entertainment such as disk jockeys and dancing. If the branch inspected banquet rooms at other major hotels, they would likewise be found to be in breach.

***Operating Out of Class & Overcrowding***

The licensee submitted that the intention of this contravention is directed to a course of action over a period of time, not to a three hour period on one occasion. The branch policy, set out in the Compliance and Enforcement Policy and Procedures Manual ("the blue manual"), section 4.1.1 does not refer to banquet facilities. The policy is focused on restaurants that start to operate as bars or pseudo pubs/restaurants, where there has been a shift in the primary focus from food to liquor. The standards and the indicators outlined in policy, such as state of the kitchen, lighting, menu, advertising, are directed to fundamental operations, not what occurs over a period of a couple of hours.

The licensee noted that none of the inspectors asked to see the records of the overall operation, say 30 days or 5 days. They also did not check the refrigerators or the freezers to determine what food might have been ready to be brought out. This was New Year's Eve, an unusual night. Even so, the licensee's evidence was that a meal could have been prepared, if ordered, at 11:00 P.M. or Midnight.

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The licensee referred to page 7 of Policy 4.1.1 and the reference to a 'dining establishment inspection record' and submitted that these procedures do not contemplate a contravention for operating contrary to the primary purpose for a matter of a couple of hours.

The licensee stressed that the branch has not alleged that the capacity was beyond the occupant load and, therefore, has not alleged nor led evidence of any fire or safety issues. There was no evidence of the occupant load capacities. The licensee noted that although the branch witnesses expressed concerns about safety, they were not aware of the occupant load capacities and were not aware of the number, or locations, of the exits. The hotel is combined with a shopping concourse, which was closed on this night. The licensee submitted that had there been an emergency, all of the concourse area was available which means there was considerable exiting capacity.

### ***Liquor Removed***

The licensee submitted that the situation on the stairs between the Tantra and 3<sup>rd</sup> floor was sanctioned by the police and, therefore, should not attract a penalty. The licensee had security personnel on check points with instructions not to allow patrons to carry drinks between the two areas. However, just before Midnight, patrons were attempting to find friends and partners and the regional manager and the police agreed that there could be worse consequences from requiring them to leave their drinks behind than by allowing them to travel freely between the two areas.

Although there was some evidence of guests having alcohol in other areas of the hotel, there was no evidence that they were from this celebration. They could have been hotel guests and it might not have been alcohol they were carrying.

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The licensee submitted that there were 10 door people specifically told to disallow removal of alcohol from the licensed areas. Accordingly, the licensee took reasonable actions, acted with due diligence and should not receive any penalties for these violations.

### **Reasons and Decision**

All of the alleged contraventions are directed to the events on the 3<sup>rd</sup> floor and on the exterior stairwell. The licensee admits the overcrowding and that liquor was transported in the hallway between the banquet room and the Atrium. The licensee also admits the dancing, which is the impugned conduct in allegation No. 3, but denies that it is a contravention. The licensee also admits, in general, the conduct that the branch says constitutes the contravention operating outside of the class, but denies that it is a contravention.

The branch has addressed the burden of proof issue in other decisions and has consistently found that the appropriate burden of proof is the civil standard, balance of probabilities. The licensee has not persuaded me to find otherwise in this decision.

### **I find as fact the following:**

1. One factual issue is the status of licence No. 111297. The owner/manager indicated he did not know the status but pays annual fees to the branch. The last licence issued expired November 30, 2000. Based on the letter contained at exhibit No. 5 and the fact that the branch has not issued a new licence, I find that this licence is in administrative suspension.

It follows that the licensee was not entitled to have patrons in there. That area accounts for 54 interior capacity.

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2. I accept the licensee's evidence that 550 tickets were sold for the New Year's Eve event. I find that close to that number of patrons were present, particularly in the half hour on either side of midnight. As Midnight approached, the numbers would have been on the increase. When the branch personnel arrived at 11:15 P.M., the first patron count in the Atrium area was 374. The allowable capacity in the Tantra was 225, including the patio. Together, those numbers suggest upwards of 600 patrons. From all accounts, patrons were freely and frequently moving between the Tantra and Atrium areas and I find that the evidence easily supports a finding that there were between 325 patrons and 375 patrons in the Atrium and the patio. The licensee's security staff count was 250. I find that would have been a reasonable count of the number of patrons inside. For the total area, I prefer the evidence of the liquor inspector that there were 325 patrons at that point.

3. The licensee was aware of the capacity issues relating to the Atrium, the banquet room and the Tantra. The owner/manager testified that staff were instructed not to permit overcrowding. However, the staff did not maintain control of the capacities in the Atrium or on the patio.

Contrary to the licensee's submission, I find that the branch did present evidence on safety issues. There was evidence from the police officer attending to the altercation, both that it took him about 10 minutes to make his way through the crowd, and that he would not have been able to get emergency medical personnel to the area. He testified that this event was at the high end for potential problems. There were 14 officers deployed to this event to assist with patron dispersal. There was evidence from the branch personnel about the crowded conditions on the exterior stairwell and in the hallway leading to the Atrium. The branch raised concerns about lack of exit capacity. On this point, I find that the licensee's witnesses had better evidence from their knowledge of the facility. However, I nonetheless find that the sheer numbers and use of the

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exterior stairwell were legitimate safety issues for which the branch personnel and the police were obligated to take action.

4. The licensee and the branch personnel attested to drinks being carried between the banquet room and the Atrium. The branch personnel also testified to liquor being carried on the exterior stairwell. Although the licensee attempted to undermine that testimony, I find that the licensee's staff was not able to control this event in the manner the licensee described. I find it more probable than not that patrons were walking between the two areas with their drinks.

The branch and the police believed that the safety of patrons was compromised through the use of the exterior stairwell and directed that it be closed. However, as soon as that happened, patrons became upset and they had to reopen it again, with the result that there could be no effective control. Patrons travelled back and forth, with drinks.

5. The licensee takes issue with the branch alleging a contravention for having dancing at this event. I accept the licensee's main argument that the branch has not produced a policy on entertainment in banquet facilities and that many hotels offer banquet events, such as wedding receptions, that include dancing. These events and the entertainment provided have gone unheeded by the branch. I find that it is inappropriate to find a contravention for entertainment at this time.

I find that the branch has not made out this alleged contravention.

6. 'Operating in a manner that is contrary to the primary purpose' is one of the most serious contraventions in the *Act*. In the penalty schedule it attracts the highest penalties. Section 11 of the Regulations (see Appendix A) requires that the primary purpose for a food primary licence establishment is the

"service of food during all hours of its operation" and that

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“liquor must not be served unless the establishment is open for service of a varied selection of food items, including both appetizers and main courses, or their equivalent.”

Based on all the evidence, I find that the licensee had food available in the walk-in coolers and had intended to produce trays of food on a regular basis throughout the evening.

The licensee argues that the intention of this contravention does not apply to banquet facilities that operate an event for a short period; this is not a situation where a restaurant has commenced to operate as a bar or cabaret; and the list of indicators in the regulation and the policies, are directed to what one would normally find in a restaurant.

The main difficulty with the licensee’s submissions is that even with a banquet facility, there is a requirement that the primary purpose is to serve food, because the licence is a FPL – food primary. I find that the primary purpose here was not the service of food but rather the service of liquor, in a party-, cabaret-, lounge-atmosphere. Of the total 550 patrons, only 155 had meals, the rest may have had finger food, and the kitchen was closed by 12:30 A.M. The licensee’s evidence is that except for the branch shutting the event down early, the kitchen would have remained open until 2:00 A.M. Nonetheless, on the evidence, that would not have altered the basic character of this event from ‘liquor primary’ to ‘food primary.’

This event presents a mix of functions. A function that could be accommodated under a LPL – with the primary focus on liquor service and finger food as an incidental - occurred in the Tantra. The sit down buffet style dinner occurred in the banquet room, under the food primary licence. The event in the area known as the Atrium is not accommodated under either licence.

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I can appreciate the branch's concern in bringing the allegation of 'operating in a manner that is contrary to the primary purpose'. It is not clear to me even now which licence the licensee might have thought it was using for this event. The event was tagged on to the Tantra and was advertised as the Tantra (Exhibit No. 8). The number of patrons was double that permitted in the 3<sup>rd</sup> floor licensed areas.

The licensee did not offer any explanation for why they might have thought it legal to add all the licensed areas together, or to present the type of event they did, except to refer to past years. The owner/manager said that the event the previous year was similar, but there were not as many patrons. From this, and based on the evidence, I understand him to say that dancing was permitting and there might have been a flow of patrons between the two floors. He said he discussed it with the R.C.M.P. and had their agreement on the plan. He did not specify whether there had been dancing on the 3<sup>rd</sup> floor, or whether everyone on the 3<sup>rd</sup> floor had a meal, so I do not know whether the R.C.M.P. had approved that part of the plan.

The licensee submitted that the intention of this contravention is directed to a course of action over a period of time, not to a three hour period on one occasion. In the *Urban Well* case, which I understand is before the B.C.S.C. on judicial review; I said the following, at page 40:

Licensee's Counsel submitted that a restaurant cannot be said to be 'operating outside class' on a single occasion. I disagree. What the *Regulations* address is the definition of a dining establishment that is 'primarily engaged in the service of food during all hours of its operation'. An establishment could change from 'primarily engaged in the service of food' during the course of an operating day. I find there is no merit to the licensee's submission that it involves more fundamental changes.

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The licensee submitted that I erred in this finding and urged me to make a different finding on this occasion.

This case is much different from *Urban Well*. There, the licensee operated a restaurant, but in my findings, veered from the primary purpose during the course of the evening. In this case, the licensee only uses the Food Primary Licence for banquets and corporate events. It is apparent from Exhibit No. 13 that those usually include meal service and that food service is a primary income generator. The licensee argues that veering from this path for one event does not constitute the contravention.

What are the transgressions here that might point to 'operating in a manner that is contrary to the primary purpose'? There is dancing. There is using the unlicensed area which is under administrative suspension. There is serving liquor when the kitchen was not able to produce meals. There is overcrowding the licensed areas. Overall, there is advertising and hosting an event that clearly did not fall into the primary purpose of service of food.

Are there circumstances that mitigate against finding that the licensee 'operated in a manner that is contrary to the primary purpose'? This was not just an isolated incident of veering into a different primary purpose for a few hours. The licensee planned what they must have known would be the biggest New Year's Eve party in North Vancouver. Certainly, it was the biggest in their years of operation. The number of patrons invited to buy tickets was well in excess of what either the LPL or the FPL would normally handle. The licensee knew that they would need to maintain control of patrons and capacities, within the licensed areas.

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There is no evidence that the licensee sought approval from the R.C.M.P. or from the branch. After 14 years in business, I find that this licensee would, or should, have known that what was being planned was outside the scope of the Food Primary Licence.

I find that the branch has established the licensee committed the contravention of 'operating in a manner that is contrary to the primary purpose' on these facts.

*Is 'operating in a manner that is contrary to the primary purpose' a compendious contravention?*

I have found that the licensee contravened as alleged on overcrowding and liquor being removed, as well as "primary purpose." Should there be separate findings of contravention for all three? Or are the first two integral elements of the third?

The licensee's plan for this event was based on combining the capacities for all the areas and having the event occur in three venues. The banquet room was set up with a focus on eating. The Atrium was set up without tables and chairs, without a focus on eating, and with a dance floor.

Although the licensee recognized the need to control capacities, there were no concrete plans put in place to keep patrons in the banquet room. Patrons were given the impression that they could move between all three venues and the staff allowed them to do that, even though it was contrary to their instructions concerning capacity and carrying drinks. The result was serious overcrowding in the Atrium and on the stairwell. Another result was patrons moving through public areas with drinks. In my view, neither of those was an integral part of the plan.

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Simply put, the event as planned could not occur without dancing, or music. It could have occurred without overcrowding and without permitting patrons to remove liquor from the licensed areas. It still may not have been legal, but it could have been planned as three separate venues, with established capacities.

I find that the overcrowding and removal of liquor are separate contraventions from 'operating in a manner that is contrary to the primary purpose of the licence'.

### **Penalty**

I have found that the licensee committed the contraventions of overcrowding, permitting liquor to be removed, and operating in a manner that is contrary to the primary purpose of the licence.

Pursuant to section 20(2) of the *Act*, having found that the licensee has contravened the *Act*, the regulations and/or the terms and conditions of the licence, I have discretion to order one or more of the following enforcement actions:

- impose a suspension of the liquor licence for a period of time
- cancel a liquor licence
- impose terms and conditions to a license or rescind or amend existing terms and conditions
- impose a monetary penalty
- order a licensee to transfer a license

Imposing any penalty is discretionary. However, if I find that either a licence suspension or monetary penalty is warranted, I am bound to follow the minimums set out in Schedule 4 of the *Regulations*.

The range of penalty for a first contravention of 'operating in a manner that is contrary to the primary purpose' is 10 to 15 day licence suspension, or \$7,500 to

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\$10,000 monetary penalty. The branch's recommended penalty of \$10,000 is the maximum of the range.

The range of penalty for a first contravention of overcrowding is 1 to 3 day licence suspension, or \$1,000 to \$3,000 monetary penalty. The branch's recommended penalty of \$7,000 is greater than the range, recognizing the discretion granted to the general manager under section 68(2) of the Regulations.

The range of penalty for a first contravention of permitting liquor to be removed is 1 to 3 day licence suspension, or \$1,000 to \$3,000 monetary penalty. The branch's recommended penalty of \$3,000 is the maximum of the range.

### ***Penalty Submissions***

The licensee submitted that the proposed penalties are grossly over what is normal and what would be justified for this type of event. The profit and loss statements show that it was not a profitable event.

The licensee conceded that patrons travelled from the buffet banquet room to the Atrium with their drinks. However, the licensee submitted that it was a short hallway, in an area that was not open to the public, and submitted it was a minor violation that should not attract any penalty.

The licensee admitted being over the licensed capacities, but submitted that the penalty should not exceed the \$1,000 minimum in the Schedule (No. 14). The licensee submitted that the proposed penalty for overcrowding far exceeds any penalty meted by the branch to other licensees. The licensee reviewed a number of decided cases and submitted that \$7,000 in this case would be "blatantly unequal, inconsistent, and lacking in integrity".

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The licensee stressed that the branch has not alleged that the capacity was beyond the occupant load and, therefore, has not alleged nor led evidence of any fire or safety issues. There was no evidence of the occupant load capacities. The licensee noted that although the branch witnesses expressed concerns about safety, they were not aware of the occupant load capacities and were not aware of the number, or locations, of the exits. The hotel is combined with a shopping concourse, which was closed on this night. The licensee submitted that had there been an emergency, all of the concourse area was available which means there was considerable exiting capacity. [this paragraph also appears in my statement of the licensee's submission on the contraventions, at page 24]

For the contravention of operating contrary to primary purpose, the licensee submitted that \$10,000 is too extreme. Additionally, the licensee argued that imposing penalties for this contravention, plus the other two, would essentially penalize the licensee for the same activity twice.

The licensee referred extensively to my reasoning in the *Urban Well* case and to the Liquor Appeal Board's decision in *Small House Ventures Inc. dba Lucky Bar* [2002] B.C.L.I. No. 5, Appeal No. L-0111. In *Urban Well*, I found that "imposing separate penalties for multiple contraventions that occurred at the same time does not amount to double penalties". I also found that by operation of section 53(3) – now section 66(3) - of the Regulations, all suspensions were to be imposed consecutively. The licensee submitted that the *Urban Well* case is distinguishable because there were a number of contraventions on a number of occasions, whereas this is a one-time occurrence. The licensee also submitted that in *Lucky Bar*, the Liquor Appeal Board (LAB) cautioned against penalizing a licensee twice for the same contravention. Additionally, given that the branch is recommending severe penalties for each contravention, it is not necessary to impose a penalty for the section 20 contravention, especially where the contraventions occurred at the same time.

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***Penalty Decision***

I have taken into consideration that the licensee and its staff were cooperative with the police and the branch personnel. Additionally, these are the first proven contraventions of this nature for this licensee. That is a mitigating factor and sometimes could lead to a conclusion that it is not necessary to impose an enforcement penalty. I have also taken into consideration that the branch's primary goal in enforcement action is achieving voluntary compliance. Factors that the branch has considered in determining the appropriate penalty include the licensee's history, the seriousness of the contravention, and the threat to public safety.

I find that the overcrowding in this instance was severe. I do not accept the licensee's submission that there was no evidence on safety issues. I am mindful of the LAB's comments in *Lucky Bar* concerning the need for evidence on safety issues. In this case, there was an experienced R.C.M.P. constable, the branch's regional manager and the liquor inspector, all of whom expressed their concerns about the danger to patron safety from the sheer numbers, the dangerous situation around the exterior stairwell from overcrowding and the proximity of the water, the problems that would be posed if there was an emergency and patrons had to evacuate, and the problem posed attempting to deal with the altercation and the injured patron. On the licensee's side, there was evidence of additional stairwells inside the hotel and the mall. I have already noted that I accept the licensee's witnesses as being more knowledgeable of the layout. However, I do not accept their assurances that there was no danger or safety issue. The degree of overcrowding presented a dangerous situation. When the enforcement officers tried to clear the stairwell, the manager reported that the situation became tense and potentially volatile. The licensee was not able to control that number of patrons. That in itself creates a dangerous situation which speaks to the severity of the overcrowding. The R.C.M.P. brought in 14 officers to monitor the dispersal of patrons.

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I have taken into consideration that this is a first contravention. I accept the licensee's submission that the totality of the penalties can be considered in deciding whether to go beyond the range. Given the severity of this contravention and the penalties I am levying for the other two contraventions, I find that an appropriate penalty is the maximum of the range, \$3,000.

Concerning removal of liquor, I have considered the licensee's submissions in comparison to other cases and find that the appropriate penalty for this contravention is the minimum of the range, \$1,000. Although there are always public safety issues associated with liquor being removed and taken into a public area, in this case, the public areas were closely associated with the event venues and there was no obvious attempt to walk away from the venues with drinks.

Concerning the contravention of operating in a manner that is contrary to the primary purpose of the licence, I find that there are no mitigating circumstances. The licensee was deliberate in planning this event. It was clearly beyond the Food Primary Licence. However, this is a first contravention and I find that the minimum penalty \$7,500 is appropriate.

In sum, I find the appropriate penalties for these contraventions total \$11,500.

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**Order**

Pursuant to section 20(2) of the *Act*, concerning licence No. 111302, I order Lonsdale Quay Hotels Inc. to pay monetary penalties as follows:

- a) for the contravention of overcrowding on December 31, 2002, contrary to section 12 of the *Act*, a monetary penalty of \$3,000;
- b) for the contravention of permitting liquor to be removed from the establishment on December 31, 2002, contrary to section 42(4) of the *Regulations*, a monetary penalty of \$1,000; and
- c) for the contravention of operating in a manner that is contrary to the primary purpose of the licence, contrary to sections 20(1)(d) and 16 of the *Act* and section 11(1) of the *Regulations*, a monetary penalty of \$7,500.

and I order Lonsdale Quay Hotels Inc. to pay monetary penalties no later than January 16, 2004.

*Original signed by*

DATE: December 10, 2003

Enforcement Hearing Adjudicator

cc: R..C.M.Police North Vancouver Detachment

Liquor Control and Licensing Branch, Vancouver Regional Office  
Attention: Wendy Jones, A/Regional Manager

Liquor Control and Licensing Branch, Victoria Office  
Attention: Peter K. Jones, Advocate

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## APPENDIX A

### Applicable Statutory Provisions

#### *Liquor Control and Licensing Act, RS Chap. 267*

##### Licences

- 12** (1) The general manager, having regard for the public interest, may, on application, issue a licence for the sale of liquor.
- (2) The general manager may, in respect of any licence that is being or has been issued, impose, in the public interest, terms and conditions
- (a) that vary the terms and conditions to which the licence is subject under the regulations, or
  - (b) that are in addition to those referred to in paragraph (a).
- (3) Without limiting subsection (2), the terms and conditions referred to in that subsection may
- (a) limit the type of liquor to be offered for sale,
  - (b) designate the areas of an establishment, both indoor and outdoor, where liquor may be sold and served,
  - (c) limit the days and hours that an establishment is permitted to be open for the sale of liquor,
  - (d) designate the areas within an establishment where minors are permitted,
  - (e) approve, prohibit or restrict games and entertainment in an establishment,
  - (f) exempt a class or category of licensee from requirements with respect to serving food and non-alcoholic beverages in an establishment,
  - (g) vary seating requirements in the dining area of an establishment,
  - (h) vary requirements with respect to the location of an establishment,
  - (i) exempt a class of licensee from requirements with respect to marine facilities where liquor is sold,
  - (j) specify the manner in which sponsorship by a liquor manufacturer or an agent under section 52 may be conducted and place restrictions on the types of events, activities or organizations that may be sponsored,
  - (k) specify requirements for reporting and record keeping, and
  - (l) control signs used in or for an establishment.
- (4) Nothing in subsection (2) or (3) authorizes the general manager to impose terms and conditions that are inconsistent with this Act or the regulations.
- (5) A licence expires on the date specified on it as the expiry date.
- (6) The general manager may, on application by a licensee, amend the terms of, renew or transfer a licence.
- (7) If the general manager, following application, refuses to issue, amend the terms of, renew or transfer a licence, the general manager must give to the applicant or licensee written reasons for the decision.
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**Entertainment**

**50** (1) If entertainment is permitted under the regulations or the terms and conditions of a licence, a municipality or regional district may restrict or prohibit any or all of the types of entertainment permitted.

(2) Without limiting section 12, the general manager may, at the time of the issue of a licence or at any time during the term of the licence, impose as a condition of it the restrictions and limitations that the general manager considers necessary on any type or form of entertainment performed or carried on in the establishment for which the licence is issued.

***Liquor Control and Licensing Regulation, B.C. Reg. 244/2002*****Food primary licences**

**11** (1) A food primary licence in respect of an establishment may be issued, renewed or transferred if the primary purpose of the business carried on in the establishment is the service of food during all hours of its operation.

(2) The following terms and conditions apply to a food primary licence:

- (a) minors are allowed in the establishment;
- (b) liquor must not be served unless the establishment is open for service of a varied selection of food items, including both appetizers and main courses, or their equivalent;
- (c) subject to limitation by the general manager, hours of liquor service must start no earlier than 9:00 a.m. and end no later than 4:00 a.m. the next day.

(3) The general manager may consider, in determining whether the primary purpose of the business carried on in the establishment is or will be the service of food during all hours of its operation, any or all of the following:

- (a) kitchen equipment;
- (b) furnishings and lighting;
- (c) menu;
- (d) type and hours of entertainment and games offered by the licensee;
- (e) advertising;
- (f) hours of operation;
- (g) financial records;
- (h) the ratio of receipts from food sales to receipts from liquor sales in the establishment;
- (i) any other relevant consideration that may assist in the determination.

**Consumption of liquor in licensed establishments**

**42** (1) A person must not consume liquor in a licensed establishment unless that liquor has been purchased from or served by the licensee of that licensed establishment.

(2) A licensee must not allow consumption in the licensed establishment of liquor that was not purchased from or served by the licensee.

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(3) A licensee, and the employees of the licensee, must not consume liquor while working in the licensed establishment.

(4) All liquor sold or served in a licensed establishment must be consumed there, and the licensee must not allow liquor, other than the following, to be taken from the licensed establishment:

(a) a bottle of wine that is unfinished by a patron and sealed by the licensee before being taken by that patron from the licensed establishment;

(b) liquor that is sold for consumption off premises in accordance with the Act, this regulation and the terms and conditions of the licence.

(5) A licensee who seals an unfinished bottle of wine in accordance with subsection (4) (a) must inform the patron of the requirements of section 44 of the Act.

(6) This section does not apply to a U-Brew or U-Vin.

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