



**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 R.S.B.C. 1996, c. 267

Licensee:	Full House Entertainment Inc. dba Red Onion Night Club 162 Barlow Avenue Quesnel, BC
Case:	EH05-028
For the Licensee:	Al Hodgins
For the Branch:	Sonja Okada, Advocate
Enforcement Hearing Adjudicator:	Sheldon M. Seigel
Date of Hearing:	May 5, 2005
Place of Hearing:	Quesnel, BC
Date of Decision:	May 20, 2005

INTRODUCTION

The licensee operates a nightclub known as the Red Onion Night Club in Quesnel, BC. The Red Onion operates under Liquor Primary Licence No. 209494. The hours of operation are 7:00 p.m. to 2:00 a.m. Monday through Saturday, and 7:00 p.m. to Midnight, Sunday. It is subject to the terms and conditions contained in the publication *A Guide for Liquor Licensees in British Columbia* ("the Guide").

ALLEGED CONTRAVENTIONS

The branch's allegations and recommended actions are set out in the Notice of Enforcement Action dated March 10, 2005.

No.	Contravention name	Section of Act/regulation and term and condition of the licence	Date and time of alleged contravention	Recommended enforcement action
1	Fail to clear patrons within 1/2 hours after liquor service hours, Reg. s. 44(1)(a)	Reg. s. 44(1)(a)	Jan 23, 2005 3:20 AM	1 day suspension
2	Refuse to permit entry to peace officer, s. 67(3)	s. 67(3)	Jan 23, 2005 3:20 AM	15 day suspension

Schedule 4 of the *Liquor Control and Licensing Regulation (Regulation)* provide a range of penalties for a first contravention of this type, and in each of the contraventions listed, the penalty recommended is within the range provided.

The licensee disputes the alleged contravention.

PRELIMINARY MATTERS

The licensee sought to enter as an exhibit, extracts from its Log Book. The purpose of the exhibit was to establish a course of interaction as between the police officers involved and the licensee. The licensee alleged inappropriate police conduct.

The branch objected to the introduction of this evidence on the basis that the entries related to days other than the date on which the subject allegations occurred, and were therefore irrelevant to the determination of contravention.

I ruled that the evidence would be allowed. The interaction of the police officer involved and the licensee on the night of the alleged contravention is central to the issue of Section 67(3) of the *Act*. In order to make findings of fact on allegations of conduct during that event, the proposed evidence may be useful to provide context to the *viva voce* evidence. As the authors of the Log Book entries were not available for cross examination, I determined that the exhibit would be used as evidence of what was recorded on those occasions, rather than of the truth of the entries.

RELEVANT STATUTORY PROVISIONS

LIQUOR CONTROL AND LICENSING ACT

[RSBC 1996] CHAPTER 267

67 (1) A peace officer who, on reasonable and probable grounds, believes that liquor is, anywhere or on anyone, unlawfully possessed or kept, or possessed or kept for unlawful purposes may, subject to subsection (2), enter or search, or both, for the liquor where the peace officer suspects it to be, and may seize and remove liquor found and the packages in which it is kept.

- (2) For the purposes of this section, a peace officer may without a warrant
- (a) search any person, and
 - (b) enter or search, or both, anywhere except a residence.
- (3) A person commits an offence if the person
- (a) obstructs or attempts to obstruct an entry or search by a peace officer under this section, or
 - (b) refuses or fails to admit immediately a peace officer demanding entry anywhere under this section.

LIQUOR CONTROL AND LICENSING REGULATION

B.C. Reg. 244/2002

- 44 (1) Unless otherwise authorized by the general manager,
- (a) liquor primary licensees and liquor primary club licensees must ensure that patrons are cleared from the licensed establishment within 1/2 hour after the time stated on the licence for the hours of liquor service, and

Excerpts from the Guide:

Liquor Primary Licence, Terms and Conditions, *A Guide for Liquor Licensees in British Columbia*

- You are responsible for making sure your employees follow BC's liquor laws and the terms and conditions of your licence, even when you are not on site. (p. 3)
 - You are prohibited from selling liquor- or using your establishment for any other purpose- between the time you close and 6 a.m. (p. 7)
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- All patrons must leave your establishment within half an hour of liquor service ending... (p. 7)
- You must give liquor inspectors and police officers immediate access to all areas of your establishment on request. It is a serious contravention to refuse or delay providing access to an inspector or police officer. (p. 24)

ISSUES

1. Did the licensee contravene Section 67(3) of the *Act*, and/or Section 44(1)(a) of the *Regulation*?
2. If so, is the recommended penalty appropriate in the circumstances?

EXHIBITS

- Exhibit No. 1: Set of notes from the licensee's Log Book (licensee)
- Exhibit No. 2: Book of Documents (branch)
- Exhibit No. 3: Packet of photographs (licensee)

EVIDENCE

A constable of the R.C.M. Police Quesnel Detachment testified that he was on duty in the early hours of January 23, 2005, when he heard music coming from the vicinity of the Red Onion. He was parked in his patrol car with an auxiliary constable. He heard music and drove down the alley, which contained several bars and clubs. He parked his patrol car. He and the auxiliary constable exited the car and followed the music to the door of the Red Onion. The constable testified that when he first heard the music, he was 200-250 feet away from the club door. It was approximately 3:15 a.m.

The constable pounded loudly on the door with his fist, and there was no response from inside. He then took out his baton and used it to pound on the wooden part of the door and the metal doorframe. He continued to do so for ten minutes, without a reply from inside. He testified that the sound of the baton was very loud.

After approximately ten minutes, the music was turned down and someone asked, "Who is it?" from behind the door. The constable replied: "It's the Police. Open the door. R.C.M.P." Then the constable heard a voice say: "It's the police, it's the police." The music was turned up again, and the constable knocked for approximately five minutes more.

The constable and the auxiliary constable then went around the building to look for another entrance. They went to the opposite side of the building where there is another door, and they knocked there. They went to the adjacent businesses; a café and a liquor store, believed to be in common ownership and knocked there. After five minutes, they returned to the main door.

The constable resumed knocking with his baton. He heard a voice say; "They're back. They're back." After about five more minutes, the door was opened. The individual identified himself as the head bouncer. The bouncer had no response to why the door was not answered.

The constable identified himself and his auxiliary constable and indicated that he was there to do a Licensed Premise Check (LPC). He observed approximately ten people in the bar. He interviewed each of those present and asked what they were doing there an hour and twenty minutes after closing. Four of the individuals identified themselves as patrons. One was a bartender who was not on the bar list that night. The remainder were employees.

The constable identified his notes of the event and the LPC he issued in Exhibit No. 2.

He did not telephone the Red Onion as he did not have his cell phone, and he did not know of the doorbell that was on the doorframe. He testified that it was coloured the same as the doorframe.

The auxiliary constable testified. He indicated that he was a volunteer on the "Ride Along" program and was to provide "another set of eyes and ears". His testimony was consistent in all material ways with the constable.

The branch called the liquor inspector. He introduced the evidence contained in the branch's Book of Documents. He confirmed the terms of the licence and that by reference the *Guide* provided additional terms to those listed on the face of the licence.

The inspector noted that the licence requires that the licensee be responsible for knowing and complying with the *Act* and *Regulation* in addition to those terms in the *Guide*.

He noted that the closing time on Saturday night/Sunday morning was 2:00 a.m.

The Inspector also testified that he toured the premises with the club manager after the alleged incidents. He made a note of the number of stairs from the door where the police were knocking, down to the main floor of the club (fifteen), the door construction (solid wood), and the distance from the bottom of the stairs to the closest corner of the bar (20 feet). He formed an opinion that a reasonable person would have heard someone pounding on those doors at that distance with an 18 oz. cold hardened-steel baton.

The licensee provided evidence through its spokesman, the club manager. He testified that he was ill on the night in question and had put his bartender in charge of the club. She had not managed the club in this manner before. He gave her instructions on the operation of the club that night, and he hired security people to help her close up at the end of the shift.

He stated that the bartender was inexperienced at management and did not know of the half-hour past closing "clear-out rule".

He testified that the club has a generally good rapport with the police and would not under any circumstances refuse to allow entry to the police. He also testified that since that day, he has had trouble with the R.C.M. Police officer who conducted the LPC. The history of that difficulty is in the notes in Exhibit No. 1.

He demonstrated with the aid of the licensed premise floor plan in Exhibit No. 2, the great distance from the bar area to the door where the R.C.M. Police constable was knocking, and with the aid of photos (Exhibit No. 3) showed the presence of a door-bell on the exterior frame of that door. He also described a video security system which monitors, among other things, activity outside the door at which the R.C.M. Police constable was knocking.

The bartender testified for the licensee. She said that she did not serve alcohol after 2:00 a.m., and nobody was drinking after 2:30 a.m. She testified that the music was loud. She heard a bang and went to the office to look in the video monitors. She saw nobody at the door so she went back to cleaning. When she heard the banging again, she again went to the monitor and this time saw the police constable. She went to grab the key to the door-, which locks by deadbolt from the inside-, and the key was not where it was supposed to be. She called out to the staff to help her find the key. She finally found the key on the back counter. She passed it to the bouncer to let the police in.

She testified that there were people in the bar who were not really staff members, but helping to clean up at the time of the police entry. Present were one staff trainee, the security contractor, and the doormen.

The bartender also testified that she knew the bar was supposed to be emptied of patrons after hours and that police were to be admitted at all times.

She confirmed that when she was interviewed by the liquor inspector, she did not mention anything about failing to find the key in a timely fashion.

SUBMISSIONS

The licensee suggested that the police might have had an ulterior motive for doing the LPC. It would have been difficult to hear the music from where the constable said he heard it, and the auxiliary constable did not testify as to hearing it.

The doors are solid and there is considerable distance down the stairs and to the bar. It would be difficult for the sounds of the bar to make it outside, and it would be difficult for the sound of someone knocking on the door to be heard inside while there was music playing.

The night in question represented an unusual circumstance, as the bar was usually managed by the club manager. He was absent due to illness. The bartender in charge had never been in charge before, and did her best.

The knocking could not be heard over the music while staff was cleaning up. Any patrons in the establishment were friends, the security contractor, or hanging around and not drinking. Some might have been helping out the bartender with her cleaning on that night because she had unusual responsibilities.

ANALYSIS AND DECISION

I have reviewed the contents of Exhibit No. 1, and find that the evidence is not relevant or useful to the findings to be made in this hearing.

Contravention 1:

Both the *Regulation* and the *Guide* clearly provide the foundation for this contravention. I accept the evidence of the R.C.M. Police constable and I find there were patrons in the licensed premise more than one half hour after closing. This is a clear contravention of the *Regulation*. Indeed there were patrons in the licensed premise after 3:00 a.m., which is more than one hour after closing. I note that the evidence does not speak to any demonstrated hurry to end the night, or disband the gathering even at that late time.

Management put an inexperienced bartender in charge of the premises. The bartender did not know the rules relating to clearing out the bar after hours or in the alternative did not adhere to those rules. It is clearly established in the *Act*, *Regulation*, and *Guide*, that the licensee is responsible for ensuring that the rules are satisfied.

Contravention 2:

The liquor Inspector was not qualified as an expert and therefore, I do not accept his opinion regarding the sound of the baton, and whether the occupants of the club would have heard it or not.

I accept the R.C.M. Police constable's testimony that he did not know of, or see the doorbell, or he would have used it. And I accept as reasonable the constable's testimony that he did not have a cell phone on his person with which

he could have conveniently called the Red Onion to advise that he was at the door.

I find that the constable did hear music from his car, and that his actions in attempting to gain access to the licensed premise were reasonable.

It is the licensee's responsibility to allow immediate access to any police officer. I find on the evidence that the licensee did not allow immediate access to the constable on January 23, 2005.

It is possible that the employees did not at first hear the knocking on the door. It is possible that they looked at the monitor only after the constable and his auxiliary constable left the door to seek alternative access to the establishment. It is possible that the employees then struggled to find a misplaced key once they confirmed that the police had returned. It is also possible that the voices that the constable and auxiliary constable heard could have occurred in the context of this scenario, but I find it is not likely.

Moreover, I find that a licensee is not able to hide behind self-induced ignorance. The licensee cannot barricade its staff inside the establishment, turn up the music (having the effect of prohibiting contact from the outside), and then escape the obligation to provide timely entry to the police. The licensee had control over the circumstances. The licensee had control over the music. The licensee had video monitoring of the outside of the main door. I find that the police were not allowed timely entry to the licensed premises.

The licensee has a clear obligation stated both in the *Act* and in the *Guide*, to allow the police immediate or timely access. This did not occur.

I have found that persons were in the premises at 3:15 a.m., contrary to the *Act* and *Regulation*. This is more than an hour beyond closing. The police would

necessarily take interest in such activity. I find that music was playing loudly enough to attract the attention of a patrolling officer. The staff inside the establishment were either unwilling to provide immediate or timely access to the police, or were unable to do so due to circumstances completely within their control.

I find the contravention to have been proven as alleged.

PENALTY

Pursuant to Section 20(2) of the *Act*, having found that the licensee has contravened the *Act*, the *Regulation* 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 licence

Imposing any penalty is discretionary. If I decide that the contravention(s) did occur and that enforcement action is appropriate, I may accept the penalty recommended in the Notice of Enforcement Action, impose a higher penalty, impose a lesser penalty or impose no penalty. However, if I find that either a licence suspension or monetary penalty is warranted, I am bound to follow the minimum set out in Schedule 4 of the *Regulation* to the *Act*.

There is no record of prior contraventions, offences or enforcement actions of the same type for this licensee or this establishment within several years preceding

these incidents (“compliance history”). Pursuant to *Liquor Control and Licensing Regulation*, Schedule 4, Section 1(1)(b), the branch has treated the allegations as first contraventions.

The purpose of the branch bringing about enforcement action and determining an appropriate penalty is to encourage voluntary compliance. Compliance is required to ensure the overall goal of public safety. I have no doubt that this licensee will not have these same problems again. However, the refusal to permit entry in a timely fashion to a police officer is a contravention of significant proportions. The import of timely access may in the future become critical to the safety of patrons or employees of the establishment, as well as the proximate community.

I find the recommended suspensions appropriate with respect to each contravention.

ORDER

Pursuant to Section 20(2) of the *Act*, I order a suspension of the Primary Liquor Licence No. 209494 for a period of sixteen (16) days to commence as of the close of business on Saturday, June 25, 2005, and to continue each succeeding business day until the suspension is completed. "Business day" means a day on which the licensee's establishment would normally be open for business (Section 67 of the *Regulation*).

I direct that the Liquor Licence No. 209494 for the Red Onion Night Club be held by the branch or the R.C.M.Police Quesnel Detachment from the close of business on Saturday June 25, 2005, until the licensee has demonstrated to the satisfaction of the branch that the Red Onion Night Club has been closed for sixteen (16) business days.



Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: May 20, 2005

cc: R.C.M.Police Quesnel Detachment

Liquor Control & Licensing Branch, Victoria
Attention: Gary Barker, Regional Manager
Vancouver Island/Okanagan/Kootenays

Liquor Control and Licensing Branch, Vancouver Regional Office
Attention: Sonja Okada, Branch Advocate
