



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: The Plaza Cabaret Ltd.
881 Granville Street
Vancouver, BC V6Z 1K7

Case Number: EH02-05/19

Appearances:

For the Licensee Dennis Coates, Q.C.

For Branch Peter Jones

Enforcement Hearing Adjudicator Suzan Beattie

Date of Hearing April 30, 2002, May 1 & 2, 2002, and
July 8 & 9, 2002

Place of Hearing Vancouver, B.C.

Date of Decision October 31, 2002

INTRODUCTION

The licensee, Plaza Cabaret Ltd., is located at 881 Granville Street, Vancouver, B.C. It holds Class "C" Cabaret Liquor Licence #188794 with hours of operation Monday to Saturday from 7:00 P.M. to 2:00 A.M., and Sunday from 7:00 P.M. to 12:00 Midnight.

The maximum capacity of the liquor licence is 275. The licensee applied for a person capacity increase to 414 persons. The building occupancy load is also 414 persons.

ALLEGED CONTRAVENTION AND RECOMMENDED PENALTIES

The branch alleges that on November 9, 2001, the licensee contravened section 36(2) (b) of the *Liquor Control and Licensing Act* by permitting unlawful activities or conduct, contrary to the *Act*.

For the alleged contravention of section 36(2)(b), the branch is recommending a suspension of the liquor licence for ten (10) days, starting on a Friday, and continuing on successive business days until completed.

The Liquor Control and Licensing Branch also alleges that on January 12, 2002, the licensee contravened section 4(7) of the *Liquor Control and Licensing Regulations* by allowing overcrowding beyond the Building Occupancy Load (BOL), contrary to the *Regulations*.

For the alleged contravention of section 4(7), the branch is recommending a suspension of the liquor licence for four (4) days, starting on a Saturday, and continuing on successive business days until completed.

The branch further alleges that on January 12, 2002 the licensee contravened section 12 of the *Liquor Control and Licensing Act* by permitting patrons to consume liquor outside the red-lined area.

For the alleged contravention of section 12, the branch is recommending a monetary penalty of \$1,000.00 (one thousand dollars).

As well, the branch alleges that on January 19, 2002, the licensee contravened section 38(3)(b) of the *Liquor Control and Licensing Act* by allowing overcrowding beyond the licence capacity, contrary to the *Act*.

For the alleged contravention of section 38(3)(b), the branch is recommending a suspension of the liquor licence for three (3) days, starting on a Saturday, and continuing on successive business days until completed.

In total, the branch recommends a seventeen (17) day suspension penalty and a \$1,000.00 (one thousand dollar) monetary fine.

The relevant statutory provisions of the *Liquor Control and Licensing Act and Regulations* state:

36 Prohibition against gambling

- (2) A person holding a licence or the person's employee must not authorize or permit in the licensed establishment
 - (b) any unlawful activities or conduct, or

4 Establishments

- (7) The licensee and the licensed establishment shall at all times comply with the British Columbia Building Code or the Vancouver Building Bylaw, as the case may be, and with the regulations under
 - (a) the *Fire Services Act*, and
 - (b) the *Health Act*.

12 Licences

- (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
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38 Unlawful sale of liquor

- (3) A licensee must not sell liquor except
- (b) in accordance with this Act, the regulations and the terms and conditions of the licence.

ISSUES

1. Whether the licensee contravened section 36(2)(b) of the *Liquor Control and Licensing Act*, section 4(7) of the *Liquor Control and Licensing Regulations* and/or sections 12 and 38(3)(b) of the *Liquor Control and Licensing Act*.
2. If so, what are the appropriate penalties in the circumstances?

COMPLIANCE HISTORY

There is no “compliance history” as defined in section 1(4) of the *Regulations* for the licensee or the establishment. The branch records indicate a number of Licence Premise Checks for overcrowding issued by the Vancouver Police Department. In 1999, three License Premise Checks were issued. In 2000, another three Licence Premise Checks were issued as well as two warning letters for overcrowding by the branch. In 2001, a contravention notice was issued as a result of a Licence Premise Check from the Vancouver Police Department.

WITNESSES

The branch called two police constables and a regional manager. The licensee’s witnesses included [], two co-owners, a security consultant, a polygraph examiner, and an individual experienced in the liquor policy review process.

EXHIBITS

The branch and the licensee presented the following exhibits:

Exhibit 1**Hearing Brief**

- Tab 1 Notice of Enforcement Action letter dated January 22, 2002.
- Tab 2 Contravention Notice No. A013635, as identified on the above referenced Notice of Enforcement Action letter.
- Tab 3 Notice of Enforcement Action letter dated February 26, 2002.
- Tab 4 Contravention Notice No. A00077 (Permitting unlawful activities or conduct) and Contravention Notice No. A000224 (Overcrowding beyond licence capacity), as identified on the above referenced Notice of Enforcement Action letter.
- Tab 5 Building Occupant Load – City of Vancouver Office of the Fire Chief.
- Tab 6 Liquor Licence Number 188794 issued to The Plaza Cabaret Ltd.
- Tab 7 Floor plan of establishment on record with the Liquor Control and Licensing Branch.
- Tab 8 Documentation referred to in Notice of Enforcement Action letter dated January 22, 2002 under the hearing “Additional Documentation – see Schedule 1).
- Exhibit 2 Written Submission from licensee’s counsel regarding similar issues with a different establishment
- Exhibit 3 Fax from Peter Jones dated March 8, 2002 submitting disclosure information
- Exhibit 4a Verax Consulting Inc. Curriculum Vitae for []
- Exhibit 4b Letter dated November 28, 2001 from Verax Consulting Inc. to [] re polygraph examination of []
- Exhibit 5 Liquor Licensing Committee Enforcement Hearing – Excerpt (Evidence Constable [] and Constable []) dated April 30, 2002
- Exhibit 6 Controlled Drugs and Substances Act
- Exhibit 7 Handwritten note from an employee dated November 26, 2001.
- Exhibit 8 Letter dated June 29, 1999 from Dennis Coates, Q.C. to Ron Hollingsworth, Inspector.
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- Exhibit 9 Memo dated July 2, 2002 from [], Meeting Coordinator to Interested Parties regarding the City response to Provincial person capacity increase process.
- Exhibit 10 Plaza Night Club Nightly Report dated January 13, 2002.
- Exhibit 11 Letter dated March 29, 2002 from [] to the City of Vancouver Licenses and Inspections Department.
- Exhibit 12 Part A: Summary of Recommendations provided by Transformation Solutions dated May 20, 1999.
- Exhibit 13 The Plaza Club Employee Manual.
- Exhibit 14 Memo dated October 11, 2001 from The Plaza Club management to all staff.
- Exhibit 15 Enforcement Action Recommended letter dated January 15, 2002
- Exhibit 16 Enforcement Action Recommended letter dated February 1, 2002

EVIDENCE, SUBMISSIONS AND FINDINGS ON CONTRAVENTIONS

I will deal with each alleged contravention in chronological order.

NOVEMBER 9, 2001 – ALLEGED PERMITTING OF UNLAWFUL ACTIVITIES OR CONDUCT, CONTRARY TO SECTION 36(2)(B)

Evidence

On November 9, 2001, two constables were working undercover at the establishment making general observations regarding potential liquor infractions. In making these observations, the first constable's partner drew his attention to a distinctive male seated in a booth. The male was interacting with various staff members, including [], waitresses and the DJ. The constables later witnessed this male having a hand-to-hand drug transaction involving three white pills. The male reached under the table, put white pills into another's hand, and then reached under the table again for what was believed to be the money.

**NOVEMBER 9, 2001 – ALLEGED PERMITTING OF UNLAWFUL ACTIVITIES OR CONDUCT,
CONTRARY TO SECTION 36(2) (B)**

Evidence (cont'd.):

The two constables approached the bar and, in conversation with [], asked if he knew where they could score some “E” or ecstasy. The first constable stated ecstasy is an illegal drug. [] indicated it was easily accessible anywhere in the establishment. After prompting, he directed the constable to the male they had witnessed involved in the hand-to-hand transaction in the booth.

The first constable called the sergeant coordinating the undercover project for liquor infractions and received approval to make a drug buy. The two constables left the establishment, met with their cover team, obtained money for the drug buy, and recorded the serial numbers of the money. A second team of constables acting as their back-up within the establishment now joined the first two constables. While briefing the back-up team, the constables witnessed another hand-to-hand transaction involving a white pill conducted by the male in the booth. On this occasion, they did not see any money change hands but did see the white pill.

The first two constables returned to the bar and again engaged [] in conversation. The first constable asked [] for clarification on exactly who they could approach for “E” or ecstasy. [] again, after prompting, identified the male in the booth. The two constables approached the male, sat in his booth, and after general conversation asked if he could hook them up with some “E” or ecstasy. The male agreed, gave the first constable one pill, was paid with the marked money and engaged in a general discussion on the type of ecstasy he provided. The constables then left the booth.

The first two constables met with the back-up team of constables who had witnessed the hand-to-hand transaction. They contacted the sergeant and were advised the arrest

**NOVEMBER 9, 2001 – ALLEGED PERMITTING OF UNLAWFUL ACTIVITIES OR CONDUCT,
CONTRARY TO SECTION 36(2)(B)**

Evidence (cont'd.):

team would follow the male out of the establishment and make the arrest outside. The arrest of [] would be made after closing hours.

The first constable was aware both the male and [] were arrested and charged but not aware whether crown counsel proceeded with the charges. The white pill was placed in an exhibit bag and sent to the RCMP lab for analysis. The arrest team was responsible for retrieving the marked money.

[] testified that the licensee has a “no tolerance” policy to drugs. If he was aware of drugs on the premises, he should tell the doorman who is hired by a private security firm. He recalled the conversation with the two constables. [] admitted he made a mistake. He explained his actions by saying he was just trying to pass off or ignore the constables who were questioning him about opportunities to buy drugs. He felt the first constable was wasting his time. Eventually he did direct the constables to the male patron sitting in the booth. He was aware the male patron was a friend of []. [] was terminated effective April 15, 2002.

At the conclusion of the evening, as [] was walking from the bar area towards the licensee’s office, he was met with police officers who handcuffed him on suspicion of drug trafficking. He was questioned by the police officers, videotaped and released. He was not charged with any crime or contacted again by the police. A co-owner that was present that evening asked [] if he was selling drugs, and he replied he was not. []. [], the co-owners met with their security advisor who recommended

**NOVEMBER 9, 2001 – ALLEGED PERMITTING OF UNLAWFUL ACTIVITIES OR CONDUCT,
CONTRARY TO SECTION 36(2) (B)**

Evidence (cont'd.):

the co-owners hire a polygraph operator. [] agreed to take a polygraph test.

The polygraph examination, administered by an experienced polygraph trainer and operator, was conducted to assist the co-owners in determining whether [] had a guilty mind and in determining whether the co-owners had potential issues with the Employment Standards or Labour Board.

As a result of a standard pre-test interview, three relevant questions were formulated for the polygraph examination. The questions and []'s answers were as follows:

1. Have you ever sold any illegal drugs at the Plaza Cabaret? Answer: No.
2. Have you ever personally benefited from any illegal drug sale at the Plaza Cabaret? Answer: No.
3. Have you ever profited from any illegal drug sale at the Plaza Cabaret?
Answer: No.

Based on this information and on the discussion surrounding the pre-test and polygraph examination, the experienced polygraph trainer and operator formed the opinion that [] was truthful in answering these questions. He also believed [] had never sold illegal drugs or assisted in the sale of illegal drugs while employed at the establishment. [] was re-employed by the licensee shortly after the polygraph test.

**NOVEMBER 9, 2001 – ALLEGED PERMITTING OF UNLAWFUL ACTIVITIES OR CONDUCT,
CONTRARY TO SECTION 36(2)(B)**

Submissions

The licensee made a no evidence motion. It argued there is no evidence that “E” or ecstasy is an illegal drug under the *Controlled Drug and Substances Act*. There is therefore no evidence to substantiate any unlawful activity or conduct.

In the alternative, if I find there is evidence of an unlawful activity or conduct, the licensee argues that the evidence must be decided beyond a reasonable doubt and not on a balance of probabilities.

Finding

I reserved my decision on the licensee’s motion until all evidence was presented and argument concluded. I will deal now with the licensee’s motion. The licensee’s argument is that, because ecstasy is not a substance included in Schedule 1 – Schedule IV of the *Controlled Drug and Substances Act*, there is no evidence of any unlawful activity or conduct. I accept the constable’s uncontradicted evidence that ecstasy is an illegal drug. I find the fact that ecstasy is not listed in the *Controlled Drug and Substances Act*, is not relevant to my deliberations under the *Liquor Control and Licensing Act*.

The licensee next argues that, any evidence of unlawful activity or conduct must be decided beyond a reasonable doubt. I acknowledge that standard of proof applies to criminal court proceedings. This enforcement hearing is not a penal or quasi-criminal proceeding. As a result, the civil standard of a balance of probabilities applies to this proceeding.

**NOVEMBER 9, 2001 – ALLEGED PERMITTING OF UNLAWFUL ACTIVITIES OR CONDUCT,
CONTRARY TO SECTION 36(2)(B)**

Finding (cont'd.):

Turning now to the question of whether the licensee permitted unlawful activity or conduct, I follow the definition of "permit" endorsed by the Liquor Appeal Board in *Ed Bulley Ventures Ltd. (c.o.b. Planet Sports Lounge) v. British Columbia (Liquor Control and Licensing Branch, General Manager)*, June 28, 2001, LAB L-9905 which states at paragraph 61, in part:

The interpretation approved by the courts is as follows: a licensee may be said to permit something where the licensee does not exercise as high a degree of diligence as it should have in the circumstances, or where the licensee shuts its eyes to the obvious or allows something to go on, not caring whether an offence is committed or not.

In answering the question of whether this licensee permitted unlawful activity or conduct, I begin by stating that I acknowledge the evidence of the polygraph operator and the results of the polygraph examination. However, I do not find it assists me in my deliberations under the *Liquor Control and Licensing Act*. The question I must answer is whether the licensee permitted unlawful activities or conduct in the establishment. Under the *Liquor Control and Licensing Act*, a licensee is responsible for the conduct of its employees. In this case, [] engaged in two conversations with the constables involving purchasing the drug ecstasy. He identified the male patron the undercover constables had observed selling drugs. The undercover constables approached the male identified by [], asked for ecstasy and made the drug purchase.

In these circumstances, I find on a balance of probabilities that the licensee permitted unlawful activity or conduct to occur in the establishment on November 9, 2001.

JANUARY 12, 2002 – ALLEGED OVERCROWDING BEYOND THE BUILDING OCCUPANCY LOAD, CONTRARY TO SECTION 4(7)

Evidence

During a multi-agency inspection that commenced at 12:55 A.M. on January 12, 2002, there were a number of counts done by members of the multi-agency inspection team. All of these counts were over the building occupancy load.

Submissions

As a preliminary matter, the licensee argues that the branch has an obligation in terms of proving this contravention. It submits the branch has to specify exactly what the offence is in terms of the *Act* and *Regulations*. It maintains that regulation 4(7) simply says the licensee and the licensed establishment shall at all times comply with the *BC Building Code*, *Vancouver Building By-law*, as the case may be, and with the *Regulations* under the *Fire Services Act* and the *Health Act*.

The licensee submits that, for the branch to simply say “regulation 4(7), overcrowding beyond building occupancy load”, is not sufficient. The licensee argues that the branch must be specific and say it is a violation of the specific sections of the *Fire Services Act*. It suggests there is no specific detail provided in any of the material as it relates to this contravention.

In the alternative, the licensee agreed that these counts taken by the multi-agency inspection team were beyond their building occupancy load.

Finding

I am not persuaded by the licensee’s argument that this allegation fails because regulation 4(7) does not state a specific section in the *BC Building Code* or the *Fire Services Act* or *Regulations* that has been breached. The *Liquor Control & Licensing Act* is the primary legislation on liquor laws in the Province of British Columbia. The *Act*

JANUARY 12, 2002 – ALLEGED OVERCROWDING BEYOND THE BUILDING OCCUPANCY LOAD, CONTRARY TO SECTION 4(7)

Finding (cont'd.):

and the *Regulations*, as subordinate legislation, establish the role of the branch and empower the general manager to supervise the conduct and operation of licensed establishments. I find that regulation 4(7) does provide the required statutory authority for the general manager to supervise the conduct and operation of licensed establishments.

As well, regulation 4(7) gives the licensee sufficient notice to respond in an administrative hearing. It is not necessary to quote specific sections of the *BC Building Code* or the *Fire Services Act* or *Regulations* to inform the licensee of the contravention and to permit a reasonable response.

I find the licensee contravened regulation 4(7) on January 12, 2002.

JANUARY 12, 2002 – ALLEGED CONTRAVENTION OF A TERM AND CONDITION, CONTRARY TO SECTION 12

Evidence

The facts of this alleged contravention were not an issue. As noted above, at approximately 12:55 A.M. on January 12, 2002, a multi-agency inspection was conducted at the establishment. During this inspection, there were approximately 20 patrons in the foyer outside the red-lined area. There were six males in two groups of three each with beer bottles in their hands. There were also an additional two patrons with glasses in their hands. In the women's washroom there were a total of seven females with glasses and/or bottles in their hand.

The liquor inspector met the then general manager and drew his attention to the presence of alcohol in the washroom. The then general manager acknowledged he

JANUARY 12, 2002 – ALLEGED CONTRAVENTION OF A TERM AND CONDITION, CONTRARY TO SECTION 12**Evidence (cont'd.):**

was aware of the alcohol in the washroom and said it was because the washroom attendant was working her first shift.

The co-owners explained the role and responsibility of the private security firm in also checking if patrons are carrying liquor. They also outlined the background rationale for the designated red-lined area, which was to include street-level activities during the day. This explains why the physical configuration of the space coupled with the washroom access makes it difficult for the licensee to comply with this term and condition.

Finding

On the evidence, I find a contravention of section 12 of the *Liquor Control and Licensing Act and Regulations* by permitting patrons to consume liquor outside the red-lined area occurred on January 12, 2002.

JANUARY 19, 2002 – ALLEGED OVERCROWDING BEYOND THE LICENCE CAPACITY, CONTRARY TO SECTION 38(3)(B)**Evidence**

At approximately 23:45 hours on January 19, 2002, another multi-agency inspection team conducted an inspection at the establishment as a follow-up to recent problems of overcrowding. There is an agreement that the licensee was beyond the licensed capacity on January 19, 2002.

Finding

There was a contravention of section 38(3)(b) on January 19, 2002.

NOVEMBER 9, 2001 – ALLEGED PERMITTING OF UNLAWFUL ACTIVITIES OR CONDUCT, CONTRARY TO SECTION 36(2)(B)

Submissions (cont'd.):

As well, the licensee states it terminated the employment of [] effective April 15, 2002. Finally, the licensee referred to its employee manual and the steps it has taken to reinforce its zero tolerance in terms of drugs within the establishment.

Decision

I accept the evidence of the licensee that it has security advisors and has an employee manual that specifically details its zero tolerance to drugs in the establishment.

Immediately after the event, [] I also accept that the licensee has taken steps, after the incident of November 9, 2001, to reinforce its policies and procedures.

However, I find that on November 9, 2001, the licensee's policies were not adhered to or actually followed. [] candidly and correctly acknowledged this fact in the enforcement hearing.

The branch recommends the minimum suspension penalty in Schedule 4 of a ten (10) day suspension. The severity of the suspension penalty underlines the serious responsibility of the licensee to maintain its establishment to ensure the safety of its staff, patrons and the community.

The licensee's acquiescence to the sale of an illegal drug was blatant. The drug dealing was open and obvious and [] assisted the process by identifying the dealer. While the licensee may have taken steps since this occurrence to ensure drug dealing does not occur in future, this does not mitigate against what occurred that night. This was not a mistake or an oversight. It was a blatant contravention of the *Act*. I have

**NOVEMBER 9, 2001 – ALLEGED PERMITTING OF UNLAWFUL ACTIVITIES OR CONDUCT,
CONTRARY TO SECTION 36(2)(B)**

Decision (cont'd.):

considered the licensee's evidence and submissions and conclude that a licence suspension is the appropriate penalty.

Accordingly, I find that the minimum penalty of a ten (10) day licence suspension is appropriate.

**JANUARY 12, 2002 – ALLEGED OVERCROWDING BEYOND THE BUILDING OCCUPANCY LOAD,
CONTRARY TO SECTION 4(7)**

Submissions

The licensee submits that its [] was primarily responsible for controlling the establishment. It says it has taken a number of steps, including [], putting their private security company on notice their contract could be terminated if the patron numbers were not correct, and meeting with the Vancouver City Police.

In summary, the licensee argues it has reacted in a responsible manner.

Decision

I begin by stating that, under the *Liquor Control and Licensing Act*, a licensee is responsible for the conduct of its employees. I also note that I have given weight to the establishment's enforcement history only to the extent it demonstrates that the police and the branch have told the licensee of their concerns regarding overcrowding. This is the first proven contravention for overcrowding beyond the building occupancy load.

JANUARY 12, 2002 – ALLEGED OVERCROWDING BEYOND THE BUILDING OCCUPANCY LOAD, CONTRARY TO SECTION 4(7)

Decision (cont'd.):

When the number of patrons exceeds the building occupancy load, it raises the issue of public safety. Experience has demonstrated that leaving a building safely in the event of a fire or other threat is difficult in an establishment where liquor is served. This is because the lighting may be dim and loud music may be a distraction. The result could be the loss of life or serious injury.

In this case the branch is recommending the minimum suspension penalty for a first contravention. I accept the recommended four (4) day suspension penalty.

JANUARY 12, 2002 – ALLEGED CONTRAVENTION OF A TERM AND CONDITION, CONTRARY TO SECTION 12

Submissions

The licensee points to the Notice of Enforcement Action Recommended and highlights the rationale for the branch imposing a \$1,000.00 penalty is because “there was no control being exercised by the attendant in the washroom until I drew the attention of the manager to the problem.” The licensee says there was control in the balance of the facility.

The licensee argues there should be no penalty imposed for this contravention. It submits that its security firm does have operational control over the red-lined area. It is operationally impossible to adhere to this term and condition of its licence. Further, it states it is caught between the City of Vancouver policy regarding street level activities and the liquor branch policy.

JANUARY 12, 2002 – ALLEGED CONTRAVENTION OF A TERM AND CONDITION, CONTRARY TO SECTION 12**Decision**

I am not persuaded by the licensees' submission on this point. The licensee has established the position of washroom attendant as one operational practise to control the removal of liquor outside the red-lined area. On this occasion, [

] did not properly oversee or supervise the new employee. The fact it was the attendant's first day is not material to my decision.

The range of monetary penalties for contravening a term and condition for a first time is a \$1,000.00 to \$3,000.00 penalty. I accept the branch's recommendation of the minimum penalty of \$1,000.00 (one thousand dollars).

JANUARY 19, 2002 – ALLEGED OVERCROWDING BEYOND THE LICENCE CAPACITY, CONTRARY TO SECTION 38(3)(B)**Submissions**

The essence of the licensee's evidence and submissions is that it was the intent of the 1999 Liquor Policy Review Report recommendation that on the issue of person capacity increase applicants, there would be no enforcement action taken until the capacity increase applications had gone through the process. The licensee's argument is that the commitment is stated in the Compliance and Enforcement Policy and Procedures Manual, which states, in part:

6. No enforcement action recommended – overcrowding more than ten per cent of licence capacity – patron capacity increase applicants.

- (a) If the inspector finds that the percentage of patrons or persons over the licence capacity is more than ten percent, and the number does not
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JANUARY 19, 2002 – ALLEGED OVERCROWDING BEYOND THE LICENCE CAPACITY, CONTRARY TO SECTION 38(3)(B)

Submissions (cont'd.):

exceed the building occupancy load in any given red-lined area, the inspector will not recommend enforcement action if:

- No other contravention was identified at the time of the incident of overcrowding
- The establishment has not been designated as a problem establishment at the time the contravention was identified
- The licensee has applied for a patron capacity increase and the local government staff have advised that the application is likely to be approved, and
- The percentage of overcrowding does not exceed the patron capacity increase that is likely to be approved.

From the licensee's perspective, the item requiring "the local government staff have advised that the application is likely to be approved" is a political process and not a regulatory process.

The licensee maintains that the City of Vancouver has lagged behind the rest of the Province in processing licence capacity increases. By letter dated July 2, 2002, the City of Vancouver stated to interested parties that:

Following the Standing Committee of Council on Planning & Environment meeting on Thursday, June 27, 2002, Vancouver City Council approved the following:

- A. THAT Council approve the public consultation and processing procedure as generally outlined in Administrative Report City Response to Provincial Person Capacity Increase Process dated June 14, 2002, for the following Person Capacity Increase applications:

JANUARY 19, 2002 – ALLEGED OVERCROWDING BEYOND THE LICENCE CAPACITY, CONTRARY TO SECTION 38(3)(B)

Submissions (cont'd.):

- 18) The Plaza Cabaret Ltd.'s (doing business as "Plaza Cabaret") request for the Class "C" Cabaret located at 881 Granville Street.

The licensee suggests that they are allowed to overcrowd beyond their licence capacity as a "one-off" provision to accommodate the capacity increase process. The licensee maintains it is appropriate to issue a contravention notice but not to recommend enforcement action. It follows the licensee argues no penalty should be imposed for this contravention.

Decision

I am not persuaded by the licensee's submission. The Liquor Policy Review Recommendations describe a process for increase capacity applications that includes an examination of local government or municipality impacts if the liquor capacity is increased. Part of a local government or municipality's concern is the best interests of the community.

As the Compliance and Enforcement Policy and Procedures Manual states, no enforcement action will be recommended if (among other considerations) the local government staff have advised that the application is likely to be approved. I do not find that Vancouver City Council's approval of a public consultation and processing procedure meets this test. It follows that I do not accept the licensee's submission that no penalty should be recommended for this contravention.

JANUARY 19, 2002 – ALLEGED OVERCROWDING BEYOND THE LICENCE CAPACITY, CONTRARY TO SECTION 38(3)(B)

Decision (cont'd.):

The range of suspension penalties for overcrowding beyond the licence capacity is one (1) to three (3) days suspension. As this is a first contravention, I find a one (1) day licence suspension is an appropriate penalty.

ORDER

Pursuant to section 20(2) of the *Act*, concerning Class “C” Cabaret Licence #188794, I impose a monetary penalty of \$1,000.00 (one thousand dollars) and suspend the liquor licence for a total of fifteen (15) days, as follows:

For the contravention of section 36(2)(b) of the *Liquor Control and Licensing Act* on November 9, 2001, I order the licence suspended for ten (10) days.

For the contravention of section 4(7) of the *Liquor Control and Licensing Regulations* on January 12, 2002, I order the licence suspended for four (4) days.

For the contravention of section 38(3)(b) of the *Liquor Control and Licensing Act* on January 19, 2002, I order the licence suspended for one (1) day.

I order the licence suspension to take effect as of the close of business on Thursday, November 14, 2002 and continue on successive business days through to the opening of business on Saturday, November 30, 2002.

For the contravention of section 12 of the *Liquor Control and Licensing Act* on January 12, 2002, I impose a monetary penalty of \$1,000.00 (one thousand dollars) to be paid no later than November 29, 2002.

In summary, I order the licensee to pay a total monetary penalty of \$1,000.00 (one thousand dollars) no later than November 29, 2002. I further order the licence suspended for a total of fifteen (15) days. The licence suspension will commence as of the close of business on Thursday, November 14, 2002 and continue through to the opening of business on Saturday, November 30, 2002.

The suspension sign notifying the public shall be placed in a prominent location by a liquor inspector or police officer. A member of the Vancouver Police Department will be requested to attend the premises, take possession of the liquor licence and hold it in safekeeping during the term of the suspension.



Suzan Beattie
Enforcement Hearing Adjudicator

Date: October 31, 2002

cc: Vancouver Police Department

Liquor Control and Licensing Branch, Surrey Regional Office
Attention: Lee Murphy, Regional Manager

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