



**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:	C.P. White Holdings Inc. dba Plan B Nightclub 1318 Broad Street Victoria, B.C. V8W 2A9
Case:	EH06-044
For the Licensee	Gregory N. Harney, Paul F. Waller and Christopher P. White
For the Branch	Shahid Noorani
Enforcement Hearing Adjudicator	Edward W. Owsianski
Date of Hearing	July 26, 2006
Place of Hearing	Victoria, B.C.
Date of Decision	August 28, 2006

INTRODUCTION

The licensee, C.P. White Holdings Inc. operates an establishment known as Plan B Nightclub. It is located at 1318 Broad Street, Victoria, B.C. It holds Liquor Primary Licence No. 113949, which is the subject of this decision. The hours of sale are from 7:00 p.m. to 2:00 a.m. seven days per week. The licence permits a maximum capacity of 292 persons in the licensed area. The licence is subject to the terms and conditions contained in the publication 'Guide for Liquor Licensees in British Columbia'.

ALLEGED CONTRAVENTION AND RECOMMENDED ENFORCEMENT ACTION

The Liquor Control and Licensing Branch's (the branch) allegations and recommended enforcement action are set out in the Notice of Enforcement Action (the "NOEA") dated March 22, 2006. The branch alleges that on February 19, 2006, the licensee contravened Section 44(3) of the *Liquor Control and Licensing Regulation* by allowing persons to consume liquor in the licensed establishment beyond one half hour after the time stated on the licence for the hours of liquor service. The proposed penalty is a five (5) day suspension of the liquor licence (Item 26, Schedule 4 of the *Liquor Control and Licensing Regulation*).

Schedule 4 of the *Regulation*, provides a range of licence suspensions and monetary penalties for each contravention.

For the contravention of Section 44(3) of the *Regulation* the penalty range at item 26 of the Schedule is a four (4) to seven (7) day licence suspension and/or a five thousand (\$5,000) to seven thousand (\$7,000) monetary penalty for a first contravention.

The licensee admits that the contravention occurred but disputes the recommended penalty.

Section 44(3) of the Regulation states as follows:

Time

44(3) Unless otherwise authorized by the general manager, a licensee must not allow a person to consume liquor in the licensed establishment beyond 1/2 hour after the time stated on the licence for the hours of liquor service.

ISSUE

1. What penalty, if any, is appropriate?

EXHIBITS

1. Book of Documents

EVIDENCE - THE LIQUOR CONTROL AND LICENSING BRANCH

Witness #1, a branch compliance and enforcement officer (C & E Officer) testified that he has been employed as a C & E Officer for the past few years. During the course of his employment he has conducted several hundred inspections of licensed establishments. He is familiar with this establishment and the terms and conditions of its liquor licence. The licence (Exhibit 1, tab 6) is subject to the terms and conditions found within the "Guide" in effect at the time of the inspection (Exhibit 1, tab 7). Liquor sales are to cease at 2:00 a.m. with an additional one half hour period for consumption. No consumption of liquor is permitted after the one half hour period (i.e. 2:30 a.m.) and all patrons are to be cleared from the establishment by that time.

He testified that during the evening and early morning hours of February 18/19, 2006, he was working with a City of Victoria police officer conducting inspections of licensed establishments. They attended at this establishment at approximately 3:15 a.m. to inspect for after-hours operation. They proceeded to the back door where he could hear loud voices emanating from inside. They knocked on the door for approximately five minutes prior to gaining entry. Inside, in the bar area, he counted 18 persons present with others leaving. He estimated a total of approximately 25 persons present.

Several persons were observed drinking what appeared to be liquor. Three males were seated at a table drinking from bottles of a popular brand of beer, two males seated at the bar said that they were drinking an American whiskey. Others had drinks that appeared to be liquor, the contents of which were unknown.

The bartender upon observing the C & E Officer and the police officer began shouting for everyone to give him all of the liquor. This created some panic among some of the persons who were in the process of leaving. The three males seated at the table commenced to leave the establishment, the two at the bar remained. The bartender told the C & E Officer that all persons present were staff. He was not co-operative and referred the C & E Officer to the manager. The C & E Officer was told by someone else perhaps a staff member that the three males were not staff. He and the police officer spoke with the three, obtained their identities and confirmed that they were not staff members. The C & E Officer obtained the identity of the two male staff seated at the table.

At approximately 3:30 a.m. he encountered the licensee inside the establishment near his office and advised him of his observations. The licensee said, "We've been caught". The C & E Officer was satisfied that that the establishment was now clearing out and at approximately 3:35 a.m. left with the police officer to make other inspections. He made notes of his observations at the time of the inspection, with some additions following his arrival at home at 4:20 a.m. (Exhibit 1, tab 3). A contravention notice for failing to clear patrons and allowing the consumption of liquor beyond one half hour was subsequently prepared and mailed to the licensee (Exhibit 1, tab 2).

On March 18, 2006, he met with the licensee to confirm the name of the bartender on duty at the time of the incident and to advise the licensee that the branch would be proceeding with enforcement action on the after-hours consumption, but would not pursue the contravention of allowing patrons to remain after-hours. The licensee advised him that he was not present when the officers arrived but was on his way home when summoned to return by his business partner. The C & E Officer testified that he had no reason to disbelieve, him but did note that the licensee was only five minutes

away from the establishment when he was summoned to return and that the after-hours consumption had been going on for some time previous. (Notes at Exhibit 1, tab 4). He met with the bartender and advised him of the need for co-operation and that enforcement action was in process (Notes at Exhibit 1, tab 5).

He prepared and forwarded a NOEA for the contravention of permitting after-hours consumption of liquor. He recommended a five (5) day suspension penalty. He was concerned that the consumption was well beyond the 30-minute period permitted, a number of staff as well as the manager were present and several staff were consuming liquor. He believed that these were not just a few stragglers, but that the bar had remained open in full service and a strong message had to be sent to the licensee, staff and the community.

EVIDENCE - THE LICENSEE

Witness #2 testified that he has been the manager of the establishment for a while and was present at the time of the inspection. The establishment was closed, doors locked and the sound system turned off. The only lights remaining on were in the lounge area. The night had been a busy one with the establishment operating at its capacity. There had been approximately 25 staff on duty of which nine or ten remained to collect their share of the tip pool distributed once the bartenders completed cashing out. Three non-staff males remained, waiting for a female bartender. Thus, there were a total of 12 – 13 persons on the premises.

At the time the officers arrived he was in the washroom and was summoned by a staff member. Prior to going into the washroom he did notice the three non-staff males sitting with beer on their table. He knew that they were waiting for a female friend to complete her duties. He did not see them consuming the beer and made the assumption that staff would clear the table. He saw the two staff members seated at the bar but did not see them consuming liquor. The licensee was not present he had left shortly before, at approximately 3:00 a.m.

He testified that after-hours consumption is not permitted and the incident will not be repeated. Staff has been advised of this at past meetings and it has been strongly reinforced since the incident. The three non-staff males were permitted to remain on the premises waiting for their friend to complete her duties. This practice had been permitted as a result of a female staff member being accosted as she returned alone to her vehicle one night after the establishment had closed. It has since been discontinued and male staff members escort female staff to their vehicles.

Witness #3 testified that he is the principal of the corporate licensee, which has held the liquor licence since October 2005. He understands the terms and conditions of the licence. Other than this incident, the establishment has not received a contravention since he has held the licence. He testified that he was present February 18/19, 2006. At the end of the night, he shut down the electronic billing system and met with the bartenders to supervise the cashing out procedures. This was completed shortly after 3:00 a.m. following which he departed leaving the bartenders to complete the tipping-out process with staff. On the way home he was contacted by cell phone and told that the C & E Officer wished to speak with him. He returned immediately, arriving at approximately 3:20 a.m. spoke with the C & E Officer and provided him with the liquor licence as requested. The establishment was not noisy. Those persons remaining were sitting quietly.

He testified that after hours consumption is not permitted. Staff is aware of this and it has again been brought to their attention at staff meetings. He was not aware what was occurring in the lounge area of the establishment at the time of his departure as he left via the front door. The operation of the establishment is the responsibility of the manager. He, as the owner, looks after the money at the end of the night.

Licensee Submissions

Counsel submitted that the contravention occurred as a result of a serious error on the part of the manager. The recommended penalty of a five (5) day suspension is inappropriate and unreasonable in the circumstances. It will create hardship for the 40

persons employed at the establishment. A financial penalty will create sufficient deterrent. The circumstances of the contravention are that the officers were making a routine check of the establishment. They were not drawn by noise indicating that it remained in operation. There were 13 persons on the premises, not 18, of whom 10 were staff waiting for their share of the tips and three were friends of a female staff member. It was not an after-hours party. The contravention has been admitted by the licensee and is the first time that a contravention has occurred since the licensee has held the licence.

Counsel drew our attention to previous decisions where financial penalties were levied as being appropriate.

DECISION

I find that on February 19, 2006, the licensee contravened Section 44 (3) of the *Liquor Control and Licensing Regulation* by allowing persons to consume liquor in the licensed establishment beyond one half hour after the time stated on the licence for the hours of liquor service.

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 licence or rescind or amend existing terms and conditions;
 - impose a monetary penalty;
 - order a licensee to transfer a licence.
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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 *Regulation*. I may impose higher penalties when it is in the public interest to do so. I am not bound to order the penalty proposed in the Notice of Enforcement Action.

There is no record of prior proven contraventions, offences or enforcement actions of the same type for this licensee or this establishment within the year preceding these incidents. Pursuant to *Liquor Control and Licensing Regulation*, Schedule 4, Section 1(1)(b), the branch has treated the allegation as a first contravention.

The branch's primary goal in bringing enforcement action is achieving voluntary compliance. Some factors that are considered in determining whether a penalty should be imposed and the nature of the penalty are whether there is a past history of warnings by the branch and/or the police, the seriousness of the contravention, the threat to the public safety and the well being of the community.

In the circumstances, I am satisfied that a penalty is necessary to ensure future voluntary compliance. Here, two of the persons consuming liquor after-hours were employees, the manager was present, knew or should have known what was occurring, yet took no action. Other employees made no effort to alert the manager to the problem or to point out to the persons drinking that after-hours consumption of liquor was prohibited.

For the contravention of Section 44(3) of the *Regulation* the penalty range at item 26 of the Schedule is a four (4) to seven (7) day licence suspension and/or a five thousand (\$5,000) to seven thousand (\$7,000) monetary penalty for a first contravention. Given the complicity of some employees to the contravention and the absence of action by others I am satisfied that a licence suspension is appropriate. It should serve to bring home the importance of operating within the requirements of the law to the licensee, management, and staff of this establishment.

In the circumstances of this case, I am satisfied that the minimum four (4) day suspension is warranted and appropriate.

ORDER

Pursuant to Section 20(2) of the *Act*, concerning Liquor Primary Licence No. 113949, I suspend the liquor licence for a total of four (4) days starting as of the close of business Friday, September 29, 2006, and continuing on successive business days until the suspension is completed. "Business Day" means a day on which the licensee's establishment would normally be open for business (Section 67(1) of the *Regulation to the Liquor Control and Licensing Act*.)

Since I do not know whether the establishment would normally be open seven (7) days per week as of September 29, 2006, I do not know what the "business days" will be. To ensure that this order is effective, I direct that the liquor licence be held by the branch or the Victoria Police Department from the close of business Friday, September 29, 2006, until the licensee has demonstrated to the branch's satisfaction that the licensed establishment has been closed for four (4) business days. A suspension sign notifying the public shall be placed in a prominent location by a branch C & E Officer or a police officer.

[ORIGINAL SIGNED]

Edward W. Owsianski
Enforcement Hearing Adjudicator

Date: August 28, 2006

cc: Victoria Police Department

Liquor Control and Licensing Branch, Victoria Regional Office
Attention: Gary Barker, Regional Manager
Vancouver Island/Okanagan/Kootenay

Liquor Control and Licensing Branch, Surrey Regional Office
Attention: Shahid Noorani, Branch Advocate
