



**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: 606353 B.C. Ltd.  
dba Moe's Nite Club  
2828 30<sup>th</sup> Avenue  
Vernon, BC V1T 8S3

Case: EH06-129

For the Licensee: Cameron and Jody Wilkinson,  
licensees

For the Branch: Shahid Noorani, Advocate

Enforcement Hearing Adjudicator: M. G. Taylor

Date of Hearing: Written Submissions

Date of Decision: January 12, 2007

## INTRODUCTION

The licensee, 606353 B.C. Ltd. has operated Moe's Nite Club since approximately September 15, 2004. Effective April 1, 2005, the Liquor Control and Licensing Branch (the "branch") issued Liquor Primary Licence (LP) No. 041487 on a transfer from a previous licensee.

In accordance with the terms of the licence the permitted hours of operation are 7:00 p.m. to 2:00 a.m. every day. The licensed capacity is 195 persons in area 01 and 82 patrons in area 02. The licence is subject to terms and conditions listed on the face of the Liquor Primary Licence and those contained in the Liquor Control and Licensing Branch's (the "branch") Guide for Liquor Licensees (the 'Guide').

## ALLEGED CONTRAVENTION

By Notice of Enforcement Action (NOEA) dated November 1, 2006, the Liquor Control and Licensing Branch alleged that on April 2, 2006, the licensee contravened Section 44(3) of the *Liquor Control and Licensing Regulation*, B.C. Reg. 244/2002 (the "*Regulation*") by allowing patrons to consume alcohol beyond ½ hour after the time stated on the licence for the hours of liquor service.

The branch's recommended enforcement action is a four (4) day suspension of the liquor licence (item 26 of Schedule 4 of the *Regulation*).

## RELEVANT STATUTORY PROVISIONS

### ***Liquor Control and Licensing Regulation, B.C. Reg. 244/2002***

#### **Time**

**44** (1) Unless otherwise authorized by the general manager,

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(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

(b) food primary licensees must ensure that liquor is taken from patrons within 1/2 hour after the time stated on the licence for the hours of liquor service, unless the liquor is a bottle of wine that is sealed in accordance with section 42 (4)(a).

(2) Unless otherwise authorized by the general manager, if a licensee has been issued a licence, other than a food primary licence, in respect of an establishment, the licensee must not allow patrons to enter the licensed establishment during the hours when liquor service is not allowed by the licence.

(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.

(4) A person must not consume liquor in a licensed establishment beyond the time allowed for consumption under subsection (3) in that licensed establishment.

(5) A reference to time in this regulation or in a licence is a reference to the local time observed at the place of the licensed establishment.

## **ISSUE**

The licensee admitted that the contravention occurred as alleged but contested the branch's proposed penalty arguing that the circumstances, a private party at which alcohol was not being sold, do not warrant such a severe penalty.

The only issue, therefore, is the determination of what penalty, if any, is the appropriate penalty.

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**EXHIBITS**

Exhibit No. 1	Notice of Enforcement Action, November 1, 2006
Exhibit No. 2	Report from Registrar's pre-hearing conference, November 16, 2006
Exhibit No. 3	Branch's Documents provided to the licensee, November 21, 2006
Exhibit No. 4	Licensee's written submission, December 4, 2006
Exhibit No. 5	Branch advocate's written submission, December 11, 2006
Exhibit No. 6	Email from licensee, December 19, 2006

**PENALTY**

Given the licensee's admission of the contravention, I find that the branch has established that the contravention pursuant to *Regulation* section 44(3) occurred.

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.

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 am not bound by the maximums and

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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 ("compliance history"). Pursuant to *Liquor Control and Licensing Regulation*, Schedule 4, Section 1(1)(b), the branch has treated the allegation as a first contravention. The range for a first contravention is four (4) to seven (7) day licence suspension, and \$5,000 to \$7,000 monetary penalty (Schedule 4, Item 26).

## **FACTS**

At approximately 4:57 a.m. on April 2, 2006 (business day of April 1), the Vernon RCM Police were summoned to Moe's Nite Club. Upon arrival they heard music and laughter from inside. The licensee granted them entrance to the night club and explained that it was a private party for his son and that he was not selling liquor. The officer informed him that was not permitted by the terms of the liquor licence. According to the officer, there were between 15 and 20 adults in the premises consuming alcohol and dancing. The officer advised the licensee that it was necessary to shut the party down immediately; the patrons and the licensee were cooperative with the police. The officer wrote a Police Licensed Premises Check (LPC) alleging service of liquor after hours.

The licensee stated that April 2, 2006, was his son's 19<sup>th</sup> birthday and some of his old friends, whom he had not seen for a couple of years, came to the bar to celebrate. The licensee allowed them to stay after hours and gave them two drinks each, with the exception of the designated driver who was drinking water. The licensee stated that he also was drinking water.

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The licensee disagreed with the RCMP estimate of the number of people. He stated there were approximately 10 people, including himself. A couple were dancing, two were sitting at a side bar and approximately four were in the smoking room.

On receipt of the LPC, the Branch's compliance and enforcement officer contacted the RCMP and attempted to contact the licensee. On August 2, 2006, the branch issued a Contravention Notice (CN).

## **SUBMISSIONS**

The licensees submitted that it would be a considerable financial hardship for the business and the employees to be shut down for four days. They submitted that it would be extremely hard to pay the lease payment if they were shut down. Many of the staff totally rely on the income from this employment and live from paycheque to paycheque. At the beginning of December 2006, the premises was flooded and had to be closed, for the second time in less than a year. The licensees submitted that another closure "could quite seriously bankrupt us."

The licensees submitted that this is the first time they have been cited for any problem since they opened. They did not know that they could not give liquor to patrons after hours. It was a special occasion and they were providing liquor, not attempting to generate revenue.

The licensee submitted that there have been notorious incidents in the other bars in Vernon involving service to minors and that ambulances and RCMP have had to be called. There have been brawls at two of the bars. These other bars have not had any enforcement actions. Only Moe's Nite Club has not had:

"mini riots or any problems with under agers whatsoever because I am dead set against under agers being in our bar. That is the reason why we hired 4 extra doormen. We constantly have 18 year olds trying to get past

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our doormen and their excuse is that [other bars] let them in why can't we? They have even offered our doormen bribes that adamantly turned them down as they know their job is on the line and they also know we would turn them over to the authorities.”

In summary, the licensees submitted that the purpose of a temporary suspension is to teach a lesson and they have already learned theirs. Since this incident, even though they did not know the branch was pursuing enforcement action, they have complied with all the liquor rules and standards. They submitted that they understand the need for rules and want to comply.

### **ANALYSIS AND DECISION**

The branch's primary goal in bringing enforcement action and in determining the appropriate penalty is to encourage voluntary compliance. The record indicates that this is a first contravention for this licensee and the branch has proposed the minimum penalty. As noted above, if I find that either a licence suspension or monetary penalty is warranted, I am bound by the minimums. There are two penalty provisions for licensees providing liquor after hours – for liquor primary licences and food primary licences – both of which have minimum penalties of four (4) to seven (7) day suspension or \$5,000 to \$7,000 monetary penalty. This indicates the legislature's view of how serious the contraventions are.

Included in the branch's documents, Exhibit No. 3, is the interview form completed by the branch and the licensees on April 27, 2005. That document indicates that the branch reviewed all the terms and conditions of the licence with the licensees. Also included is an excerpt from the branch's Guide and I refer specifically to page 7 which clearly states that “you are prohibited from selling liquor – or using your establishment for any other purpose – between the time you close and 6 a.m.”

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I accept the licensee's statement that this was a celebration of his son's birthday. However, I find that the fact that the police arrived at almost 5:00 a.m. suggests that this 'party' was more than just a few friends staying after closing time. The information contained in the NOEA states that the RCMP were summoned to the establishment. I have no further information on how or why they were called - whether that was a call from a neighbour. One obvious reason for a regulation requiring bars to close at the time stipulated is to ensure that neighbours are not bothered by noise and early morning revellers.

The information contained in the NOEA includes a statement that the branch's liquor inspector attempted unsuccessfully to contact the licensee and then issued the Contravention Notice (CN) in August 2006. There was no statement from the licensee about this. It is an unusually long time for the branch to delay issuing a CN following a contravention. Without evidence to the contrary, I accept the branch's inference that it was because of attempting to contact the licensee to investigate further.

I can appreciate the licensee's contention that it is not equitable for this licensee to be penalized through enforcement action when other bars in Vernon have not been penalized for serious contraventions. However, I have no evidence about those contraventions other than the licensee's hearsay evidence. Although equity in treatment could be a consideration to the branch's program, each contravention would still have to be considered on its own circumstances. Without substantiation that the branch is unfairly targeting this licensee, I find that there is little weight to be given to this submission.

I find that the licensee's contention that the financial burden of a penalty would result in severe financial straights for the employees and the business is not a compelling reason not to impose enforcement action. The purpose of either a licence suspension or a monetary penalty is to bring home to the licensee and

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the employees the severity of the contravention and to achieve future voluntary compliance.

I find that the evidence demonstrates that the patrons were still consuming liquor at 5:00 a.m., fully three hours after closing time and two and half hours after all liquor was to have been removed and patrons removed. Although the licensee contends that he was not aware that he could not give away liquor after hours, I find that ignorance of the law is not an acceptable excuse, I note the branch went over the rules and regulations during the initial interview, and I note the requirement is clearly stated in the Guide.

Imposing a penalty is not required for every contravention. There are circumstances here that militate both for and against a penalty. The fact that the party did not shut down until the RCMP attended at approximately 5:00 a.m. indicates to me that the breach was quite considerable. However, I am also satisfied that there are some factors that support the licensee's contention that a penalty is not required. The uncontradicted evidence is that this was a 19<sup>th</sup> birthday party and that the licensee was not selling liquor. The branch has not had past concerns with this licensee about after-hours service. The licensees have asked for special consideration because of financial repercussions from two instances of flooding.

I have weighed all of the evidence and the submissions. Although this is a very serious contravention, I am satisfied that the licensees appreciate the seriousness and are sincere in saying that they intend voluntary compliance. Given that this was a special private occasion and not an instance of the licensees staying open to continue selling liquor, I find that an enforcement penalty is not required.

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**ORDER**

Pursuant to Section 20(2) of the *Act*, respecting Liquor Primary Licence No. 041487, I am satisfied that enforcement action is not required.

[ORIGINAL SIGNED]

M.G. Taylor  
Enforcement Hearing Adjudicator

Date: January 12, 2007

cc: R.C.M. Police Vernon Detachment

Liquor Control and Licensing Branch, Vancouver Regional Office  
Attn: Gary Barker, Regional Manager

Liquor Control and Licensing Branch  
Attn: Shahid Noorani, Branch Advocate

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