



**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:	Keran Holdings Ltd., dba Celebrities 1022 Davie Street Vancouver, BC V6E 1M3
Case:	EH09-136
For the Licensee:	Dennis Coates, QC
For the Branch:	Peter Mior
Enforcement Hearing Adjudicator:	Sheldon M. Seigel
Date of Hearing:	March 31, 2010
Place of Hearing:	Teleconference
Date of Decision:	April 16, 2010

INTRODUCTION

Celebrities is a Liquor Primary establishment operating in Vancouver under Liquor Primary Licence No. 026385. The licence stipulates that the hours of liquor sales are from 9:00 a.m. to 3:00 a.m. seven days per week and that the licensed capacity is 385 patrons. The licence is subject to terms and conditions, including those contained in the *Guide for Liquor Licensees in British Columbia (Guide)*.

By Notice of Enforcement Action (NOEA), dated December 21, 2009, the Liquor Control and Licensing Branch ("Branch") alleged that on November 11, 2009, the Licensee contravened section 6(4) of the *Liquor Control and Licensing Regulation*, B.C. Reg. 244/2002 (*Regulation*), by permitting more persons in the licensed establishment than the person capacity set by the general manager and the number of persons in the licensed establishment was more than the occupant load.

The branch proposes a four (4) day suspension of the liquor licence in accordance with Schedule 4, item 15 of the *Regulation*, for contravening the *Act* and *Regulation*.

The licensee acknowledges that the contravention occurred as alleged and concedes the appropriateness of a penalty. The only issue is the nature and magnitude of the penalty.

A hearing was conducted by teleconference call in accordance with the wishes of the licensee.

RELEVANT STATUTORY PROVISION***Liquor Control and Licensing Regulation, B.C. Reg. 244/2002*****Capacity****6 (1) Before the general manager**

- (a) approves the issuance of a licence,
- (b) approves a structural alteration of or a change to the size of any area of a licensed establishment,
- (c) approves a transfer of a licence under section 21 (3) of the Act, or
- (d) approves an application for an increase in the person capacity of a licensed establishment,

the general manager must set the person capacity of the establishment, having regard to the public interest and the views of a local government or first nation if provided under section 10 or 53 of this regulation.

(2) Once the general manager has set the person capacity of an establishment in accordance with subsection (1), the general manager must refuse to issue, amend or transfer a licence for that establishment if the occupant load of the establishment is not equal to the person capacity.

(3) Despite subsection (2), if the occupant load of an establishment is less than the person capacity of the establishment set under subsection (1), the general manager may issue, amend or transfer the licence for that establishment after reducing the person capacity to equal the occupant load.

(4) It is a term and condition of a licence that there must not be, in the licensed establishment at any one time, more persons than the person capacity set under subsection (1) or (3).

(5) This section does not apply to a U-Brew, U-Vin, licensee retail store, distillery, brewery or a winery without a winery lounge endorsement.

ISSUE

The only issue is the whether a penalty is appropriate, and if so, the nature and extent of the penalty to be imposed for the admitted contravention.

EVIDENCE

The liquor inspector testified that two police officers were in attendance at Celebrities on the evening of November 11, 2009, and that the officers each conducted a count of the patrons. The counts totalled 489 and 512 patrons. The inspector pointed to the *Regulation* that stipulates a range of penalty for a first contravention of this type of 4-7 days suspension and/or a monetary penalty of \$5,000- \$7,000. He said that a 4-day suspension is appropriate for the following reasons:

- He met with the resident manager of the establishment in 2005 and discussed overcrowding.
- He is sure from his contact with management that they know that overcrowding is a public safety issue.
- He understands that when the police informed the manager of the overcrowding situation that existed on November 11, 2009, the manager displayed a “cavalier attitude.”
- He does not believe that a fine would reflect the impact of the public safety issue.
- A suspension would affect the staff “and they are the ones who had counters and they will be without this work and they will therefore get the impact of the penalty more than a \$5,000 fine for the establishment.”

The inspector testified that this establishment was alleged to have been overcrowded beyond person capacity once before, and on that occasion he recommended a monetary penalty. He explained his earlier recommendation by saying that at that time he was a novice inspector and probably chose an unusually lenient penalty. In retrospect, he would have recommended a suspension for the earlier allegation. That allegation did not result in enforcement action being pursued.

SUBMISSIONS

The branch submits that the minimum suspension specified by the *Regulation* is both conventional and appropriate. The overcrowding was by a significant number of patrons, and this should have been clear to management at the premises on November 11, 2009. Overcrowding is a significant public risk, particularly in the event of a mishap, or the need to have emergency services in attendance.

The branch also argued that a monetary penalty of the scope provided by the *Regulation* for a first offence would not be a significant enough penalty to provide a deterrent to the potential for future overcrowding because this is a sizeable establishment with large revenues.

The licensee seeks a \$5,000 monetary penalty and submits that is appropriate in the circumstances. The licensee points to an historic event at which overcrowding was alleged at the establishment. The same liquor inspector recommended a monetary penalty at that time. The licensee says that by recommending a suspension on the current occasion, the inspector is effectively treating this contravention as a second contravention, though it does not meet that definition in the *Regulation*.

The licensee agrees that the club is a large one, and a \$5,000 monetary penalty would have a smaller impact than a suspension. He argues, however, that the smaller penalty is the appropriate one. The licensee also argues that even the smaller (monetary) penalty would have a significant deterrent effect as the establishment would, by virtue of the finding of a contravention, have “graduated” out of the category of “first contravention” if any subsequent contraventions were to occur.

In response to the suggestion that this contravention is being treated as anything other than a first contravention, the branch points out that the historic recommendation for overcrowding was the result of an inexperienced inspector, and the recommended four day suspension is appropriate for a first contravention.

ANALYSIS AND DECISION

I accept the uncontroverted evidence that on November 11, 2009, the licensee contravened section 6(4) of the *Regulation* by permitting more persons in the licensed establishment than the person capacity set by the general manager and the number of persons in the licensed establishment was more than the occupant load.

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 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 by the minimums set out in Schedule 4 of the *Regulations*. I am not bound by the maximums and 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 contraventions, offences or enforcement action of the same type for this licensee or this establishment within the year prior to this contravention. Accordingly, pursuant to the *Regulation*, Schedule 4, Item 15, the range of penalties for a first contravention is a four (4) to seven (7) day suspension and/or a monetary penalty of \$5,000-\$7,000.

The branch submits that a four-day suspension is warranted for the contravention.

The licensee recommends a monetary penalty of \$5,000.

Licensees that exceed their capacity by overcrowding are operating contrary to the public interest. Specifically, they are operating contrary to the principles of public safety and community standards.

The issue of public safety is most apparent when the overcrowding exceeds the occupant load. Getting out of a building safely during a fire or other threat is difficult in a place where liquor is served, loud music is playing, and lighting is dim. The risk of death or serious injury is greater when the building is overcrowded.

The public interest in maintaining community standards is also relevant to the contravention of overcrowding. The maximum capacity established for a liquor-primary licence is the result of community input during the licensing process. The maximums are set out so as to reduce the risk of negative impacts on neighbourhoods and communities. These negative impacts include late night disturbances, parking problems and traffic flow problems. Allowing licensees to exceed their approved capacity effectively negates this community input and puts undue pressure on community resources.

I am satisfied that the branch proceeded on the allegation as though it was a first contravention and I find that a four-day suspension is appropriate. I note that the licensee agreed that a \$5,000 would be minimal relative to a suspension. I find that the effect of the contravention raising the threshold for further contraventions of this type is not a sufficient deterrent to allow a minimal monetary penalty in this case.

Although I accept most of the evidence of the liquor inspector as reasonable, I do not accept his view that punishment that directly impacts the licensee's staff should be a factor in determining penalty in this case. The licensee is answerable to the branch for its compliance with the *Act* and *Regulation*.

I find that a licence suspension of four (4) days is the appropriate penalty.

ORDER

Pursuant to section 20 (2) of the *Act*, I order the suspension of Liquor Primary Licence No. 026385 for a period of four (4) days, to commence as of the close of business on Monday, May 17, 2010, 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 Liquor Primary Licence No. 026385 is to be held by the branch or the local Police Department from the first day of the suspension until the licensee has demonstrated to the branch's satisfaction that the suspension has been served.

Original signed by

Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: April 16, 2010

cc: Vancouver Police Department
Liquor Control and Licensing Branch, Vancouver Office
Attn: Donna Lister, Regional Manager
Liquor Control and Licensing Branch, Vancouver Office
Attn: Peter Mior, Branch Advocate