



**DECISION OF THE
GENERAL MANAGER
LIQUOR CONTROL AND LICENCING BRANCH
IN THE MATTER OF
A hearing pursuant to Section 20 of
*The Liquor Control and Licensing Act RSBC c. 267***

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| Licensee: | 641486 B.C. Ltd. dba Johnnie Fox's Irish Snug 1033 Granville Street Vancouver, BC V6Z 1L4 |
| Case: | EH13-080 |
| For the Licensee: | William A. Greer |
| For the Branch: | Peter Mior |
| Enforcement Hearing Adjudicator | George C.E. Fuller |
| Date of Hearing: | Written Submissions |
| Date of Decision: | July 17, 2013 |

INTRODUCTION

The Corporate Licensee, 641486 B.C. Ltd., (the "Licensee") owns and operates an establishment known as Johnnie Fox's Irish Snug, at 1033 Granville Street, Vancouver, BC. The Licensee holds Food Primary Licence Number 301324 (the "Licence"). The authorized representative of the Licensee is William A. Greer.

According to the terms of its Licence, the Licensee may sell liquor from 9:00 am to 1:00 am, Sunday, Monday, Tuesday, Wednesday, Thursday and from 9:00 am to 2:00 am Friday and Saturday. The Licence is, as are all liquor Licences issued in the Province, subject to the terms and conditions contained in the publication "Guide for Liquor Licensees in British Columbia" (the "Guide").

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Liquor Control and Licensing Branch's (the "Branch") allegations and proposed penalty are set out in the Notice of Enforcement Action (the "NOEA") dated April 24, 2013.

The Branch alleges that on April 6, 2013 the Licensee contravened Section 6(4) of the *Liquor Control and Licensing Regulation* (the "Regulation") by overcrowding beyond person capacity more than occupant load. The proposed enforcement action outlined in the NOEA is a \$5,000 monetary penalty. This proposed monetary penalty falls within the penalty range set out in item 15, Schedule 4, of the Regulation, for a first contravention of this type.

The Licensee does not dispute that the contravention occurred. However, it disputes the proposed penalty. The Branch and the Licensee agreed that the hearing would take place by way of written submissions.

RELEVANT STATUTORY PROVISIONS

Capacity

6(4) It is a term and condition of the Licence that there must not be, in the Licensed establishment at any one time, more persons than the person capacity under subsection (1) or (3).

ISSUES

1. Did the contravention occur?
2. If so, has the Licensee established a defence to the contravention?
3. If the contravention is proven, what penalty, if any, is appropriate?

EXHIBITS

The following documents were submitted and were considered:

- Exhibit 1 – the Branch's book of documents, Tabs 1 to 12 inclusive.
- Exhibit 2 – undated letter to the Branch from William Augustus Greer, the representative of the Licensee's establishment.

EVIDENCE – THE BRANCH

As previously noted, the Licensee does not dispute that the contravention occurred as alleged and, therefore, it is deemed to accept the facts as put forward by the Branch with respect to the issue of whether the contravention occurred. The Licensee has, however, made submissions in respect to the appropriateness and fairness of the penalty which the Branch has recommended. Accordingly, the evidence may be summarized as follows.

On April 6, 2013, Liquor Inspectors A and B, Regional Manager C and Regional Inspector D were working a night shift for the purpose of conducting routine inspections of both liquor primary and food primary establishments to determine whether they were complying with their respective Licences. At 11:00 pm Regional Manager C noted that the Licensee's establishment was extremely crowded and Inspector A concurred with that assessment. Inspector A then approached a male employee who was standing at the door and asked him if he knew what the count of patrons was inside the restaurant. This male informed Inspector A that he did not know what the count was. Inspectors A and B and Regional Inspector D then entered the establishment and all three conducted separate counts. The establishment was so crowded that Inspector A found it difficult to navigate through the crowd. It was not possible to move through the establishment without having to physically squeeze between standing patrons.

At the conclusion of the count, Inspector A counted 71 patrons, excluding staff and 73 with staff. Inspector B, who conducted his count by sight without a counter, noted 66 patrons, without any staff. Regional Manager C, who also conducted the count without a counter, counted 68 patrons, excluding staff. Upon the conclusion of the count, Regional Manager C spoke with the Licensee's manager and informed her that the establishment would be receiving a contravention notice for overcrowding beyond the person capacity. The counts which were conducted determined that the Licensee on this occasion exceeded its patron occupant load by at least 14 persons, or by 25%.

SUBMISSIONS – THE BRANCH

The Branch says that the elements of the contravention have been proven and that the recommended penalty is appropriate and necessary in order to ensure future voluntary compliance, by this Licensee, with respect to Section 6(4) of the Regulation.

The Branch further submits that 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. Exiting from a building safely during a fire is difficult in a place where liquor is served, loud music is playing and lighting is dim. The public interest and community standards are also relevant to the contravention of overcrowding.

Finally the Branch submits that a penalty of \$5,000 is the minimum set penalty for a first contravention of overcrowding and this should be sufficient to bring the Licensee into voluntary compliance.

SUBMISSIONS – THE LICENSEE

The Licensee submits that, because the establishment operates on a small scale of 54 seats, that either a \$5,000 monetary penalty or a suspension could hurt the business beyond repair.

The Licensee submits that this type of contravention will not occur again as the offending manager has now been replaced.

The Licensee submits that it would prefer a maximum fine of \$1,500 which is substantial given the small scale of the Licensee's establishment. This reduced amount would be affordable and would be paid immediately.

ANALYSIS AND DECISION

Contravention

The Licensee has admitted to the contravention. Having considered all of the evidence and the submissions filed in these proceedings, I find that on April 6, 2013 the Licensee contravened Section 6(4) of the Regulation and the terms and conditions of its Licence by overcrowding beyond person capacity more that occupant load.

Due Diligence

The Licensee is entitled to a defence to the contravention, if it can be shown that it was duly diligent in taking reasonable steps to prevent the contravention from occurring.

The Licensee must not only establish the existence of procedures to identify and deal with the problems, it must ensure that those procedures are consistently acted upon and problems are dealt with accordingly.

In the instant case, although the Licensee has stated that it has taken measures to ensure that this contravention will not happen again, it has led no specific evidence as to what those measures are, except for the termination of the manager on duty. The post-contravention termination of the manager in this case does not establish that the Licensee took reasonable steps to prevent the contravention from occurring in the first place, and it does not show how the Licensee will prevent such incidents from occurring in the future.

In these circumstances, I have concluded that the Licensee is not entitled to the benefit of the defence of due diligence.

PENALTY

Pursuant to Section 20(2) of the Act, having found that the Licensee has contravened the Act, the Regulation or the terms and conditions of the Licence, I have discretion to order one or more of the following enforcement actions:

- Take no enforcement action
- 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 Regulation. 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.

The Branch's primary goal in bringing enforcement action and imposing penalties is to achieve voluntary compliance with the Act, the Regulation, and the terms and condition of the Licence. Among the factors that are considered in determining the appropriate penalty is whether there is a past history of warnings by the Branch and/or the police, the seriousness of the contravention, the threat to public safety and the well-being of the community.

Item 15 of Schedule 4 of the Regulation, sets out penalties for first contraventions of Section 6(4) of the Regulation, a licence suspension of four to seven days and/or a monetary penalty of between \$5,000 and \$7,000. The Branch has recommended a monetary penalty of \$5,000, which is the minimum monetary penalty for this particular contravention.

As previously noted, the Licensee has requested that the monetary penalty of \$5,000 be reduced to a monetary penalty of \$1,500, otherwise the business could be, "potentially, hurt beyond repair." The Licensee has not, however, provided any cogent evidence in support of this supposition. At the very least, the Licensee should have provided documentation in the form of financial statements demonstrating that the Licensee's establishment was in dire financial straights, thus corroborating that the Licensee's fears were realistic. In the absence of such evidence, I am not prepared to grant the Licensee's request.

The Licensee here requested a "warning," no penalty, or a \$1,500 monetary penalty. With respect to "no penalty" I have the discretion to make that order; however, in this case I have concluded that the penalty is necessary in order to bring this Licensee into compliance. With respect to the licensee's plea for a reduced monetary penalty to \$1,500, I would point out that under the Legislation I am bound to at least impose the minimum set out in the Regulation. Therefore, I am unable to order a \$1,500 monetary penalty due to the fact that the minimum stated in the Regulation is \$5,000.

The Licensee indicated in his written submissions that a licence suspension would be unacceptable as well, otherwise I might have been able to exercise my discretion to order a suspension instead of the monetary penalty. Furthermore, the Licensee did not provide any evidence to support the notion that a monetary penalty would cause undue hardship to the business. Having found that a penalty is warranted under the circumstances, a minimum monetary penalty that I am able to order is \$5,000.

ORDER

Pursuant to Section 20(2) of the Act, I order that the payment of \$5,000 by the Licensee to the General Manager of the Liquor Control and Licensing Branch on or before August 19, 2013.

Signs satisfactory to the General Manager showing that a monetary penalty has been imposed will be placed in a prominent location in the establishment by a Liquor Control and Licensing Branch Inspector, or a police officer.

Original signed by

George C.E. Fuller
Enforcement Hearing Adjudicator

Date: July 17, 2013

cc: Liquor Control and Licensing Branch, Vancouver Regional Office
Attn: Donna Lister, Regional Manager

Liquor Control and Licensing Branch, Vancouver Regional Office
Attn: Peter Mior, Branch Advocate