



**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**

<b>Licensee:</b>	Loose Moose Tapas Bar & Grill Inc.
Case Number:	EH02-80
<b>Appearances:</b>	
For the Licensee	David Houston
For the Branch	Peter Jones
Enforcement Hearing Adjudicator	Suzan Beattie
Date of Hearing	December 3 & 4, 2002
Place of Hearing	Vancouver, B.C.
Date of Decision	March 31, 2003

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**Ministry of Public  
Safety and Solicitor  
General**

Liquor Control and  
Licensing Branch

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## INTRODUCTION

The licensee, Loose Moose Tapas Bar & Grill, is located at 724 Nelson Street, Vancouver, B.C. It holds a Class "B" Dining Lounge Licence #214148 for the sale and consumption of all types of liquor with meals.

The hours of the liquor licence are Monday to Sunday from 12:00 Noon to 2:00 A.M. The liquor licence dated November 29, 2001, shows a maximum capacity for area 1 of 58 patrons.

## ALLEGED CONTRAVENTION AND RECOMMENDED PENALTIES

The Liquor Control and Licensing Branch alleges that on April 8, 2002, the licensee contravened section 43(2)(b) of the *Liquor Control and Licensing Act* by permitting an intoxicated person to remain, contrary to the *Act*.

The branch recommends a suspension of the liquor licence for four (4) days, to be served starting on a Sunday and continuing on successive business days until completed, for the alleged contravention of section 43(2)(b).

The branch further alleges that on May 25, 2002, the licensee contravened section 10(2) of the *Liquor Control and Licensing Regulations* by permitting the licensee or employees to consume liquor in premise, contrary to the *Regulations*.

The branch recommends a monetary penalty of \$1,000.00 (one thousand dollars) for the alleged contravention of section 10(2).

The branch further alleges that on May 25, 2002, the licensee contravened section 36(2)(b) of the *Liquor Control and Licensing Act* by permitting unlawful activities/conduct, contrary to the *Act*.

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The branch recommends a suspension of the liquor licence for ten (10) days, to be served starting on a Saturday and continuing on successive business days until completed, for the alleged contravention of section 36(2)(b).

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

### **43 Drunkenness**

- (2) A licensee or the licensee's employee must not permit
  - (b) an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied.

### **10 Employees**

- (2) No employee of a licensee shall consume liquor while working on the licensed premises.

### **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.

## **ISSUES**

1. Whether the licensee contravened section 43(2)(b) and/or section 36(2)(b) of the *Liquor Control and Licensing Act* and/or section 10(2) of the *Liquor Control and Licensing Regulations*.
2. If so, are the recommended penalties appropriate in the circumstances?

## **COMPLIANCE HISTORY**

There are no prior proven contraventions, offences, or enforcement actions ("compliance history") for this licensee or this establishment.

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**WITNESSES**

The branch called four police officers as witnesses. The licensee called its doorman and its general manager as its witnesses.

**EXHIBITS**

The branch and the licensee presented the following exhibits:

**Exhibit 1****Hearing Brief**

- Tab 1 Notice of Enforcement Action (Amended) dated August 12, 2002, identifying alleged contraventions
- Tab 2 Licensed Premise Check Report Number A079803 and Contravention Notice Number A002507 in reference to Permitting an Intoxicated Patron to Remain in the establishment on April 8, 2002.
- Tab 3 Licensed Premise Check Report Number A030978 and Contravention Notice Number A002509 in reference to Permitting Unlawful Activities/Conduct in the establishment, and Licensee or Employees Consuming Liquor in the establishment on May 25, 2002.
- Tab 4 Enforcement Action Recommended dated July 8, 2002, in reference to Contravention Notice Number A002507, as noted above.
- Tab 5 Enforcement Action Recommended dated July 30, 2002, in reference to Contravention Notice Number A002509, as noted above.
- Tab 6 Liquor Licence Number 214148 issued to the establishment on November 29, 2002, expiring on October 31, 2002.
- Tab 7 Official Floor Plan of the establishment on file with the Liquor Control and Licensing Branch.

**Exhibit 2****Book of Documents**

- Tab 1 Vancouver City Police General Occurrence Report No. 2002-7707 in reference to Overcrowding – Licensed Capacity on April 8, 2002.
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- Tab 2 Vancouver City Police General Occurrence Report No. 2002-115378 in reference to Permitting Unlawful Activities/Conduct in the establishment on May 25, 2002. Though the date refers to May 26, 2002, this was in the early morning hours and the business date is May 25, 2002, being the business date of opening the establishment.
- Tab 3 Vancouver City Police General Occurrence Report No. 2202-115429, which provides a further commentary on Vancouver City Police General Occurrence Report Number 2002-115378.
- Tab 4 Two witness statements (one unsigned) from David Benjamin Easterday/Doorman Loose Moose Tapas Bar & Grill in reference to Overcrowding-Licensed Capacity on April 8, 2002, and Permitting Unlawful Activities/Conduct in the establishment on May 25, 2002.
- Tab 5 Information "By Indictment" Province of British Columbia dated May 26, 2002, in reference to David Benjamin Easterday and Jordan Charles Montgomery unlawfully trafficking in a controlled substance, to wit: cocaine on or about May 26, 2002.
- Tab 6 Vancouver Police Department General Occurrence Report No. 2002-115378 – cocaine trafficking – (unsigned) author: Hallam, Michael. Identification of document Vancouver Police Department C12306 Leung, Peggy.
- Tab 7 Disclosure response to request from David Benjamin Easterday received from the Department of Justice dated May 30, 2002, enclosing the following documents:
1. Information Number 131705-ID (1 page)
  2. Report to Crown Counsel - #02-115378 (5 pages)
  3. Prosecutor's Information Sheet – Occurrence Number 2002-115378 (24 pages)
  4. Photocopy of "H" Envelope #H 154152 (1 page)
  5. Police notes of PC 2109 (3 pages)
  6. Police notes of PC 1699 (3 pages)
  7. Police notes of PC 1665 (2 pages)
  8. Report to Justice, dated May 26, 2002 (1 page)
  9. Addendum/ccq response from PC Hallam (1 page) and from PC Steele (1 page) – added June
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**EVIDENCE, SUBMISSIONS AND FINDINGS ON CONTRAVENTIONS*****Alleged permitting an intoxicated person to remain, contrary to section 43(2)(b)*****April 8, 2002****Evidence**

On April 8, 2002, the Police Officer attended the establishment on a routine inspection. While conducting a quick head count he observed two patrons, a male and a female who were, in his opinion, extremely intoxicated. These patrons were being assisted by friends. The Officer testified that he spoke to the doorperson about these patrons when he issued the Licence Premise Check #079803.

I pause to note that the Licence Premise Check #079803 acknowledged by the doorperson, referred to a contravention of selling to intoxicated persons (section 43(1)) rather than permitting an intoxicated person to remain (section 43(2)(b)) as stated in the Notice of Enforcement Action. Second, the Licence Premise Check refers to “two males unable to stand as member entered bar”.

The Police General Occurrence Report filed with this incident states: “PCs observed two extremely intoxicated patrons in the establishment. PCs issued LPC for overcrowding and over service.” The allegation of overcrowding was agreed to by the licensee and a waiver signed.

Returning to the evening of April 8, 2002, the Officer testified that, if the patrons had not had friends to assist them, he would have booked them as he felt they were not able to care for themselves. The Officer outlined his extensive experience inspecting licensed premises and his awareness of the indicators of intoxication.

On cross-examination, the Officer stated he did not take notes on the evening and relied on his Licence Premise Check to refresh his memory. To the best of his recollection, it

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was a male and a female, as testified in direct examination and not two males as noted on his Licence Premise Check. He believed he and the doorman observed these patrons for approximately 5 minutes. He was uncertain if they started to leave as they saw him arrive. In any event, as they were in the process of leaving the establishment there was no action that needed to be taken by the doorman.

The doorman's testimony differed from the Officer's. He recalled the officer bumping into patrons but was not able to say whether someone stumbled or appeared intoxicated. The doorman disagreed with the Officer's recollection that they both observed any patrons for approximately 5 minutes.

### **Submissions**

The licensee submits that, given the Licence Premise Check provided with the Notice of Enforcement Action as well as the statements in the Notice of Enforcement Action, it was in a difficult position of attempting to meet the branch's case. First, in the Licence Premise Check, the officer referred to "two males who were unable to stand due to intoxication." Then, the branch's disclosure of the General Occurrence Report indicated, "two patrons extremely intoxicated". At the hearing, the Officer recalled it was a male and female.

As a result of the confusion in the Officer's testimony, the licensee argues this contravention should be dismissed.

### **Findings**

I agree with the licensee on this point. Considering the totality of the evidence before me, I am not able to find, on a balance of probabilities that a contravention of section 43(2)(b) permitting an intoxicated person to remain, occurred.

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***Alleged permitting of licensee or employees to consume liquor in premise, contrary to section 10(2)***

***Alleged permitting of unlawful activities/conduct, contrary to section 36(2)(b)***

**May 25, 2002**

### **Evidence**

The second and third Officers testifying established that they were in an undercover operation and entered the establishment at approximately 11:00 P. M. on May 25, 2002. They spoke with the doorman, who was wearing an identification nametag, while waiting in line to enter the establishment.

The second Officer testified that they were in the licensed premise specifically watching for violations of the *Liquor Control and Licensing Act*. Amongst themselves, they discussed the possibility of buying illegal drugs. In the undercover operation, the purchase was to be from somebody associated with the establishment who could tie the illegal drugs to the establishment's permitting illegal activities within its premises. They were not, in this undercover operation, targeting patrons of the establishment.

The third Officer testified that he spoke with the doorman and asked if he could get some "stuff" to party with. The term "stuff" is a slang term used generally for narcotics. The doorman directed the Officer to an individual and called out to the individual, "Hey, can you help my friends out here?".

The individual asked what the two undercover Officers wanted to purchase. The individual did not have Ecstasy but asked if they wanted cocaine. When the undercover Officers indicated they were interested, the individual directed them to get a drink and said he would meet them at the back of the bar. The third Officer asked the individual if he would like a drink and, when he agreed, purchased alcoholic beverages for all three of them.

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The second Officer testified that he used his own money for the drug purchase. He exited out the back of the establishment, used his cellular telephone to contact the Acting Road Sergeant and gave him the serial numbers of his money. While using his telephone, this Officer noted that there was no doorperson controlling the back door. The bathrooms are beside the back door and patrons frequently exited to the back lane and returned into the establishment.

The individual then returned to the officers. At his suggestion, he and the second Officer exited the bar through the back door, and into the lane directly behind the establishment. The second Officer received a "flap" from the individual, unfolded it and observed a white powder consistent with cocaine. He handed the individual his money and placed the "flap" in his pocket. He and the individual had a short conversation about the individual's tattoos. They then re-entered the establishment.

During the drug purchase, the third Officer remained in the establishment at the back of the bar. The second Officer and the individual joined him at the bar and the three engaged in small talk. The third Officer said he saw the individual consume his alcoholic drink. The second Officer saw him take the drink but did not believe he consumed the drink.

The third Officer explained that he assumed the individual was an employee because, while the officers were in the establishment, he noted the individual watching and manning the line-up at the door. The individual physically had his hand blocking the entrance and was overheard telling two female patrons "don't worry ladies, you are next". At this time, the doorperson was near the front entrance socialising with patrons and not watching the door.

The individual did not have identification or a nametag. Under cross-examination, the second Officer stated that, as part of the general conversation, he understood that the individual had been an employee until one week prior to the incident. The individual stated to the second Officer he was not an employee on the evening in question. It was the second Officer's impression that the individual had been a doorperson. The third

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Officer, under cross-examination, believed the individual indicated to the second Officer that he did work at the establishment.

The General Manager testified that the individual was never an employee. The doorperson testified that the individual is a barfly who attends a number of bars. He recalled being asked by the Officers, on the evening of May 25, 2002, where they could get some "stuff". The doorperson testified that no one had asked him for "stuff" in his prior employment as a doorperson. The doorperson assumed the Officers were asking for marijuana. The door person stated that he made an offhand remark to the individual to get rid of the Officers.

The doorperson testified that the individual was not an employee. He ventured that the individual was attempting to pick up the women in the line-up and that was why he was standing at the door. The doorperson was dismissed as a result of the events of May 25, 2002.

### **Submissions**

The licensee submits first, with respect to the allegation that an employee was consuming liquor on the premises, that there was no evidence that the individual was an employee. Rather, the licensee argues there was every indication he was not an employee including the fact that the individual himself admitted he was not an employee and that he had no name tag. There was nothing to indicate that the individual was there under any implied authority of the licensee.

Turning to the allegation of permitting unlawful activity, the licensee accepts that it must not authorize or permit any unlawful conduct or activity in its establishment. However, it contends it has no obligation to prevent such unlawful or illegal activity. The licensee argues that doorpersons and other employees cannot be transferred by the *Act* into crime fighters. When the doorperson referred the Officers to the individual, he did so to simply get rid of the Officers and not because he thought for a moment that the individual was dealing in drugs.

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In any event, the illegal activity that took place did so in the alley outside the establishment. The licensee argues there is no request for drugs by name except for the phrase "stuff" and that the transaction that did take place was outside the establishment. The licensee argues that the branch cannot hold it accountable for what happens outside in the back alley.

## Findings

Dealing first with the allegation of permitting an employee to consume liquor in the premises, I find the individual in question was not an employee of the licensee on May 25, 2002. It follows that this allegation is dismissed.

Turning now to the allegation of permitting unlawful activities or conduct in the licensed establishment. 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 the licensee permitted, in its licensed establishment, any unlawful activities or conduct, I will deal first with the licensee's argument there were no requests for drugs by name.

On this issue, I prefer the evidence of the two Officers that the phrase "stuff" in the context it was used on May 25, 2002, refers generally to narcotics. I was not persuaded by the doorman that he had not been asked for "stuff" before and at best assumed it may be marijuana. I find on this point that the doorman did understand the request and as a result did suggest the individual to the Officers.

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Next, the licensee argues it is not accountable for the actions of its patrons that take place outside its establishment in the alley. In essence, the licensee submits that, as the alleged purchase of cocaine was made outside its establishment, it cannot be found to have permitted the illegal activity.

The argument, on its face, has merit. However, on the facts of this case, I find that the licensee did permit illegal activity in its establishment.

I have found that the doorperson did know he was being asked about purchasing drugs and did refer the Officers to the individual. On a balance of probability, I find that the Officers did have a discussion with this individual while in the establishment and did arrange to purchase a drug while in the establishment.

On the evidence before me, the licensee, through the conduct of its doorperson, did permit unlawful activity in its premises. The doorperson allowed something to go on not caring whether an offence was being committed or not, or shut his eyes to the obvious when he referred the Officers to the individual. I also find as a fact that the exchange of money for drugs took place in the alley outside the establishment. The question is whether the location of the ultimate drug purchase outside the establishment is sufficient to defeat this allegation. I find, on the facts before me, it is not.

On these facts, I have found the licensee permitted unlawful activity on its premises by the actions of its doorperson. The unlawful activity is not defeated because the ultimate purchase took place immediately behind the establishment. I also note the licensee's argument that it has no obligation to prevent unlawful or illegal activity. I disagree. A licensee has an obligation to take positive action to manage and control its establishment.

As a result, I find a contravention of section 36(2)(b) occurred.

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## **PENALTY SUBMISSIONS AND DECISION**

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 to follow the minimums set out in Schedule 4 of the *Regulations*.

### **Submissions**

I agree with the licensee and find no contravention of section 43(2)(b) or section 10(2) occurred.

I have found a contravention of section 36(2)(b) occurred on May 25, 2002. The licensee submits that the contravention was of a minor and trivial nature and that I should exercise my discretion and not impose a penalty. It points out there is no compliance history for this licensee.

### **Decision**

It is the licensee's responsibility to manage and control the behaviour of its employees and its patrons in order to ensure the safety of its staff, other patrons and the community. The serious nature of this responsibility is underlined by the severity of the

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minimum suspension penalty. I do not agree with the licensee's assessment that, in the circumstances of this case, the contravention was of a minor or trivial nature.

I have considered the licensee's submissions and find there are no mitigating circumstances. I conclude that the minimum ten (10) day licence suspension is the appropriate penalty.

## ORDER

Pursuant to section 20(2) of the *Act*, concerning the Class "B" Dining Lounge Licence #214148, I order as follows:

The contravention of section 43(2)(b) of the *Liquor Control and Licensing Act* on April 28, 2002,, is dismissed;

The contravention of section 10(2) of the *Liquor Control and Licensing Regulations* on May 25, 2002, is dismissed.

For the contravention of section 36(2)(b) of the *Liquor Control and Licensing Act* on May 25, 2002, I order suspension of the licence for ten (10) days.

In summary, I order suspension of the licence for a total of ten (10) days to commence as of the close of business on Friday, May 16, 2003, and to continue each succeeding "business day" until the suspension is completed.

Since I do not know whether the establishment would normally be open 7 days per week as of Friday, May 16, 2003, I do not know what the "business days" will be. To ensure that this order is effective, I direct that the liquor licence, Class "B" Dining Lounge Licence #214148, be held by the branch or the Vancouver Police Department from the close of business Friday, May 16, 2003, until the licensee has demonstrated to the branch's satisfaction that the licensed establishment has been closed for 10 (ten) business days.

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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.

*Original signed by*

Suzan Beattie  
Enforcement Hearing Adjudicator

Date: March 31, 2003

cc: Vancouver Police Department

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

Liquor Control and Licensing Branch, Vancouver Regional Office  
Attention: Peter Jones, Advocate

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