



**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

Licensee:	Parkside Inn (Delaney's)
Case Number:	EH02-117
Appearances:	
For the Licensee	Wayne Ferguson Glen Harris
For the Branch	Mark Matoul
Enforcement Hearing Adjudicator	Suzan Beattie
Date of Hearing	April 22, 2003
Place of Hearing	Surrey, B.C.
Date of Decision	May 12, 2003

**Ministry of Public
Safety and Solicitor
General**

Liquor Control and
Licensing Branch

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INTRODUCTION

The licensee, Newton Hotels Ltd. doing business as Parkside Inn, is located at 7300 King George Highway, Surrey, B.C. In October 2002, the licensee held an "A" Pub Licence No. 5559 for the sale and consumption of all types of liquor and for off-premises sales.

The hours of the liquor licence are 12:00 Noon to 2:00 A.M. Monday to Sunday.

ALLEGED CONTRAVENTION AND RECOMMENDED PENALTIES

The Liquor Control and Licensing Branch alleges that on October 31, 2002, the licensee contravened sections 12 and 50 of the *Liquor Control and Licensing Act* by permitting dancer prohibited acts, contrary to the *Act*.

Schedule 4 of the *Liquor Control and Licensing Regulations*, provides a range of licence suspensions and monetary penalties for each contravention. For the contravention of sections 12 and 50, the penalty range is 4 to 7 days or \$5,000.00 to \$7,000.00 for the first contravention. In this case, the branch is recommending a minimum four (4) day suspension. The suspension will be served starting on a Thursday and will continue on successive business days until completed.

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

12 Licences

- (3) Without limited subsection (2), the terms and conditions referred to in that subsection may
 - (e) Approve, prohibit or restrict games and entertainment in an establishment
-

50 Entertainment

- (1) If entertainment is permitted under the regulations or the terms and conditions of a licence, a municipality or regional district may restrict or prohibit any or all of the types of entertainment permitted.
- (2) Without limiting section 12, the general manager may, at the time of the issue of a licence or at any time during the term of the licence, impose as a condition of it the restrictions and limitations that the general manager considers necessary on any type or form of entertainment performed or carried on in the establishment for which the licence is issued.

ISSUES

1. Whether the licensee contravened sections 12 and 50 of the *Liquor Control and Licensing Act*.
2. If so, are the recommended penalties appropriate in the circumstances?

COMPLIANCE HISTORY

There is no record of prior contraventions, offences or enforcement actions for this licensee ("compliance history") or for this establishment. However, the branch file shows three warning letters dated October 23, 1995, October 23, 1998, and September 2, 1999, regarding dancer prohibited acts, contrary to the *Liquor Control and Licensing Act*.

EXHIBITS

The branch and the licensee presented the following exhibits:

Exhibit 1

Book of Documents

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|-------|---|
| Tab 1 | Liquor Licence No. 5559 |
| Tab 2 | Notice of Enforcement Action dated December 4, 2002 |
| Tab 3 | Contravention Notice No. A013797 |

- Tab 4 Schedule 1, outlining licence history
- Tab 5 Compliance and Enforcement Policy re: Prohibited Acts
- Tab 6 Guide for Liquor Licensees in British Columbia re: Prohibited Acts
- Tab 7 LCLB Decision, Case EH01-07

Exhibit 2 Delaney's Exotic Showroom List of Rules for Dancers

EVIDENCE, SUBMISSIONS AND FINDINGS ON CONTRAVENTIONS

Evidence

The Notice of Enforcement Action outlined how, during a routine inspection, the liquor inspector noticed two female entertainers touch each other, perform in a sexually explicit manner, and simulate sexual intercourse, contrary to the provisions of the *Act*.

The licensee agreed with the facts as outlined in the Notice of Enforcement Action and admitted the contravention.

Findings

I find, based on the evidence before me and the licensee's admissions, that the licensee contravened sections 12 and 50 of the *Act* on October 31, 2002.

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 minimum set out in Schedule 4 of the *Regulations*.

Submissions

The licensee argues that I should exercise my discretion and not order any penalty. In the alternative, it argues a monetary penalty is appropriate.

The licensee points first to its thirty year history and experience in managing strippers and exotic dancers. It agrees it has received three warning letters regarding dancer-prohibited acts: October 23, 1995; October 23, 1998; and September 2, 1999.

On the evening in question, October 31, 2002, the licensee's manager was ill and left work early. The supervision of the two entertainers was left to the Cabaret manager to oversee.

As a result of the Contravention Notice, the licensee has drafted explicit rules and procedures. Failure of the entertainers to follow the rules results in financial penalties. The rules are also posted in the DJ booth so, in the event the manager is not present, the DJ can supervise their performance.

Decision

Schedule 4 of the *Liquor Control and Licensing Regulations*, provides a range of licence suspensions and monetary penalties for each contravention. For the contravention of permitting dancer prohibited acts, the penalty range is 4 to 7 days or \$5,000.00 to \$7,000.00 for the first contravention. In this case, the branch is recommending a four (4) day suspension, the minimum penalty for this contravention.

The *Regulations* provide for a graduated scale of penalties for contraventions of the *Act*. The graduated nature of the penalties is necessary for the consistent and vigorous enforcement of the provisions in the *Act* and *Regulations*.

The branch's primary goal in determining the appropriate penalty along the scale is achieving voluntary compliance. 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.

I acknowledge the licensee's long history and experience of managing strippers and exotic dancers. I note that there was three years between the warnings issued for dancer-prohibited acts in 1995 and 1998. The next warning occurred one year later in 1999. There have been no issues with respect to dancer-prohibited acts in the last three years. Nonetheless, I find that the licensee is aware that the *Act*, *Regulations* and *Guide for Liquor Licensees in British Columbia* contain rules concerning the conduct of strippers and exotic dancers. As a result, I am not prepared to exercise my discretion and order no penalty.

The next question raised by the licensee is whether a monetary penalty would be appropriate. Monetary penalties are available in certain circumstances for first contraventions. In this case, even though there is a period of a year or more between the contraventions, the licensee has received warning letters. These warning letters

however have not been successful in achieving the licensee's voluntary compliance. I find this is not an appropriate case for a monetary suspension.

The licensee explains that its manager was ill and left work. It is the duty of the licensee to maintain a regular and daily operating environment in its licensed establishment in any predictable circumstance, including when staff becomes ill and replacements must be found. The licensee is responsible in all circumstances for managing and controlling the behaviour of the strippers or exotic dancers in order to ensure the safety of its staff, other patrons, and the community. The serious nature of this responsibility in the case of dancer-prohibited acts is underlined by the severity of the minimum suspension penalty.

I acknowledge and applaud the licensee's actions, since the contravention notice, to draft, publish and enforce internal rules and penalties for its entertainers. However, I do not consider these actions as mitigating circumstances.

As a result, after considering the totality of the licensee's submissions, I conclude the minimum four (4) day penalty is appropriate.

ORDER

Pursuant to section 20(2) of the *Act*, concerning the Class "A" Pub Licence #5559, I order as follows:

For the contravention of sections 12 and 50 of the *Liquor Control and Licensing Act* on October 31, 2002, I order the licence suspended for four (4) days. I order the licence suspension to take effect as of the close of business on Wednesday, June 25, 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 Wednesday, June 25, 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 "A" Pub Licence #5559, be held by the branch or the Surrey Detachment of the R.C.M. Police from the close of business, Wednesday, June 25, 2003, until the licensee has demonstrated to the branch's satisfaction that the licensed establishment has been closed for four (4) business days.

The suspension sign notifying the public shall be placed in a prominent location by a liquor inspector or police officer. A member of the R.C.M. Police Surrey Detachment 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: May 12, 2003

cc: R.C.M. Police Surrey Detachment

Liquor Control and Licensing Branch, Surrey Regional Office
Attention: Michael J. Clark, Regional Manager

Liquor Control and Licensing Branch, Victoria Office
Attention: Marc Matoul, Branch Advocate
