



**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:	613952 B.C. Ltd. dba Atlantis Club 1320 Richards Street Vancouver, BC
Case Number:	EH03-086 & 096
Appearances:	
For the Licensee	Yung Truong Dennis P. Coates, Q.C.
For the Branch	Peter K. Jones, Advocate
Enforcement Hearing Adjudicator	Edward W. Owsianski
Date of Hearing	November 24, 2003
Place of Hearing	Via Teleconference
Date of Decision	March 3, 2004

**Ministry of Public
Safety and Solicitor
General**

Liquor Control and
Licensing Branch

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INTRODUCTION

The licensee, 613952 B.C. Ltd., operates the Atlantis Club located at 1320 Richards Street, Vancouver, BC.

It holds Liquor Primary Licence (LPL) No. 146969 with hours of operation Monday to Saturday from 7:00 P.M. - 2:00 A.M. and on Sunday from 7:00 P.M. - 12:00 Midnight. The maximum patron capacity is 350.

The Occupancy Load (OL) Permit for the establishment as identified on the official floor plan allows for an occupancy load of 466.

ALLEGED CONTRAVENTION AND RECOMMENDED PENALTIES

The Liquor Control and Licensing Branch alleges that:

1. on February 23, 2003, the licensee contravened section 12 of the *Liquor Control and Licensing Act* (the *Act*) by permitting more persons in the licensed establishment than the patron capacity set by the general manager, and the number of persons in the licensed establishment was more than the occupant load;
2. on March 16, 2003, the licensee contravened section 12 of the *Act* by permitting more persons in the licensed establishment than the patron capacity set by the general manager, and the number of persons in the licensed establishment was more than the occupant load.

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 more persons in the licensed establishment than the patron capacity set by the general manager, and the number of persons in the licensed establishment is more than the occupant load the penalty range is a four (4) to seven (7) day licence suspension and a five thousand (\$5,000) to seven thousand (\$7,000) monetary penalty for a first contravention.

In this case, the branch is recommending a five (5) day licence suspension for the alleged contravention occurring on February 23, 2003, and a seven (7) day suspension for the alleged contravention occurring on March 16, 2003. It recommends the suspensions be served starting on a Saturday and continuing on successive business days until completed.

Section 12 of the *Act* is as follows:

Licences

12 (1) The general manager, having regard for the public interest, may, on application, issue a licence for the sale of liquor.

(2) The general manager may, in respect of any licence that is being or has been issued, impose, in the public interest, terms and conditions

(a) that vary the terms and conditions to which the licence is subject under the regulations, or

(b) that are in addition to those referred to in paragraph (a).

(3) Without limiting subsection (2), the terms and conditions referred to in that subsection may

(a) limit the type of liquor to be offered for sale,

(b) designate the areas of an establishment, both indoor and outdoor, where liquor may be sold and served,

(c) limit the days and hours that an establishment is permitted to be open for the sale of liquor,

(d) designate the areas within an establishment where minors are permitted,

(e) approve, prohibit or restrict games and entertainment in an establishment,

(f) exempt a class or category of licensee from requirements with respect to serving food and non-alcoholic beverages in an establishment,

(g) vary seating requirements in the dining area of an establishment,

(h) vary requirements with respect to the location of an establishment,

(i) exempt a class of licensee from requirements with respect to marine facilities where liquor is sold,

(j) specify the manner in which sponsorship by a liquor manufacturer or an agent under section 52 may be conducted and place restrictions on the types of events, activities or organizations that may be sponsored,

(k) specify requirements for reporting and record keeping, and

(l) control signs used in or for an establishment.

(4) Nothing in subsection (2) or (3) authorizes the general manager to impose terms and conditions that are inconsistent with this Act or the regulations.

(5) A licence expires on the date specified on it as the expiry date.

(6) The general manager may, on application by a licensee, amend the terms of, renew or transfer a licence.

(7) If the general manager, following application, refuses to issue, amend the terms of, renew or transfer a licence, the general manager must give to the applicant or licensee written reasons for the decision.

ISSUES

The licensee admitted that the contraventions occurred, but disputed the recommended penalties.

1. Definition of "occupant load" in the *Regulations to the Act*.
2. Whether the recommended penalties are appropriate.

EXHIBITS

1. Notice of Enforcement Action (NOEA) dated June 6, 2003, amended July 2, 2003
2. NOEA dated July 21, 2003
3. Documents and Correspondence regarding Business Licence and Liquor License Suspensions of Atlantis Cabaret
 - Tab 1. Facsimile Transmittal Pages
 2. Letter dated April 17, 2003, from City of Vancouver to Atlantis Cabaret
 3. City of Vancouver Suspension Order for business licence of Atlantis Cabaret
 4. LCLB Notice of Suspension for Liquor Primary License of Atlantis Cabaret
 5. City of Vancouver Inspection Report

EVIDENCE

The evidence is contained in the NOEA's (exhibits 1 & 2) sent by the branch to the licensee.

The NOEA of June 6, 2003, as amended July 2, 2003, states that on February 23, 2003, at approximately 12:10 A.M. two (2) Vancouver City police officers responded to a complaint of overcrowding at the establishment. Upon arrival the doorman for the establishment advised the officers that his "patrons in" counter read 747 and the "patrons out" counter, 49, thus indicating 698 patrons in the establishment. The officers each counted 550 patrons. One of the officers indicated that it was difficult

to walk or move in the establishment due to overcrowding and felt that the environment was not safe for patrons in the event of an emergency.

The NOEA of July 21, 2003, states that on March 16, 2003, an inspection was conducted of the establishment by a team of liquor inspectors, City Property Use Inspectors, a Fire Prevention Officer and a City Police Officer. Upon their arrival the doormen for the establishment advised them that the “patrons in” counter read 947 and the “patrons out” counter, 393, thus indicating 554 patrons in the establishment. The members of the inspection team made individual counts of the patrons ranging between 473 and 577. The overcrowding was described as extreme; it was difficult to count the number of persons inside as the floor was very congested.

SUBMISSION ON PENALTY

Counsel in his submission referred to the following cases:

- Wheelhouse Inn, decision of the Liquor Appeal Board, December 21, 2001
- Lucky Bar, decision of the Liquor Appeal Board, May 23, 2002

Counsel submitted that these contraventions are based on a flawed definition of “occupant load” in section 1 of the *Regulations* and as such there is no authority for the penalty provisions found in Schedule 4 of the *Regulations* upon which the recommended penalties are based.

The relevant provisions of the *Regulations* are as follows:

Definitions

1 (1) In this regulation:

“**occupant load**” means the least number of persons allowed in an establishment under

- (a) the Provincial building regulations,
 - (b) the *Fire Services Act* and British Columbia Fire Code Regulation, and
 - (c) any other safety requirements enacted, made or established by the local government or first nation for the area in which the establishment is located;
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SCHEDULE 4
ENFORCEMENT ACTIONS

OVERCROWDING

15. Permitting more persons in the licensed establishment than the patron or person capacity set by the general manager and the number of persons in the licensed establishment is more than the occupant load.

Period of Suspension Days - 4-7 10-14 18-20

Monetary Penalty - \$5 000 - \$7 000

Counsel argued that a literal interpretation of the wording in the definition of “occupant load” would create an absurd result. The “least” number of persons would mean the smallest number possible, which, if literally applied would be either one or zero thus creating an absurd result. Consequently, the definition of “occupant load” is flawed and as such there is no authority to impose a penalty.

Counsel submits that the recommended penalty of a five (5) day license suspension for the February 23, 2003, contravention is punitive rather than preventative. In other decisions of the general manager for this type of contravention it is rare that a penalty beyond the minimum is imposed. Further, as the licensee received no prior warnings or complaints a warning letter would be sufficient.

With regard to the March 16, 2003, contravention, counsel submitted that the branch has already suspended the liquor license for this incident. Counsel referred to the materials found at Exhibit No. 3, which include an Inspection Report from the City of Vancouver Licence and Inspections Department, for an inspection of the establishment on March 16, 2003, which identified problems at the establishment including that of overcrowding. This led to a two (2) day suspension of the City Business Licence from May 5 to 7, 2003, and a suspension of the liquor license by the branch for the same dates. Counsel submitted that the branch in pursuing a further seven (7) day suspension is excessive and punitive. To penalize the licensee twice for the same contravention is unfair and unreasonable. Further, the branch recommended penalty of a seven (7) day suspension is based on the close proximity in time from the

contravention of February 23, 2003, and is again penalizing the licensee twice for the same contravention. Counsel referred to the reasons in the Lucky Bar case; “the suspension should not be increased for any one infraction simply because there have been other infractions. To do so, penalizes the licensee twice for the one infraction.” Counsel also referred to the reasons in the Wheelhouse case; “Rather than treat each violation separately, because they were adjudicated together and because the discipline is being imposed all at once, we think that the length of suspension should be determined on the totality of the violations.”

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*.

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.

Counsel has argued that the definition of "occupant load" is flawed and as such there is no authority to impose a penalty under Schedule 4 of the *Regulations* for these contraventions. I cannot agree with counsel's position. I do not agree with counsel's assertion that the "least" number of persons, means the smallest number possible thus leading to an absurdity. The principles of statutory interpretation require that the words be given meaning in keeping with the intent of the statute and that they not bring about absurd consequences. In my view, the "least" number of persons should be interpreted as meaning the lowest number of persons that can be in the establishment in keeping within the limits of the provisions in paragraphs a, b or c of the definition. For example, if the Provincial Building Regulations as referred to in paragraph (a) in the definition, allowed a maximum of 350 persons in an establishment, and *The Fire Services Act* and British Columbia Fire Code Regulation as referred to in paragraph (b) of the definition, allowed a maximum of 375 persons in the establishment, and local government safety requirements as referred to in paragraph (c) of the definition, allowed a maximum of 400 persons in the establishment, the occupant load would be the "least" number of persons, i.e. the lowest number of persons, which in this example is 350, not one or zero, as submitted by counsel. In conclusion, I am satisfied that the penalty provisions at Schedule 4 (15) apply.

In considering whether suspension penalties are warranted in the circumstances of this case I note that there is no record of prior contraventions, offences or enforcement actions of this type for this licensee or this establishment within the year preceding this incident ("compliance history"). Therefore, these contraventions are considered as first contraventions for the purposes of the Penalty Schedule.

Overcrowding as these contraventions are commonly referred to can have a serious affect on public safety and community standards. Exceeding the maximum licence capacity can have a negative impact on neighbourhoods and communities including late night disturbances, parking and traffic flow problems. Exceeding the occupant load capacity can affect the safety of the patrons and employees of the establishment in the event of an emergency. In the circumstances of these contraventions I am satisfied that a suspension penalty is necessary to ensure future voluntary compliance.

On February 23, 2003, the evidence is that the occupant load was exceeded by approximately 84 persons, it was difficult to move inside the establishment and there was a safety concern in the event of an emergency occurring. In the circumstances a penalty greater than the minimum four (4) day suspension is warranted. I am satisfied that a five (5) day suspension penalty is appropriate.

On March 16, 2003, the evidence is that the occupant load was exceeded by a similarly significant number of persons; the area was congested, moving about difficult. In the circumstances a penalty greater than the minimum four (4) day suspension is warranted. I am satisfied that a five (5) day suspension penalty is appropriate.

I do not accept counsel's argument that the branch suspension of the liquor license for a two (2) day period from May 5 to 7, 2003, was for the same contravention. The Notice of Suspension found in Exhibit 3, tab 4, clearly states that the suspension is pursuant to section 20(1)(e) of the *Act*. Section 20(1)(e) states as follows:

Action against a licensee

20 (1) In addition to any other powers the general manager has under this Act, the general manager may, on the general manager's own motion or on receiving a complaint, take action against a licensee for any of the following reasons:

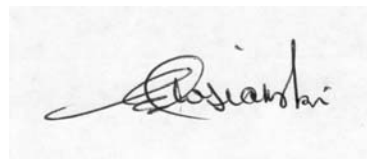
(e) the suspension or cancellation of a municipally, regionally, provincially or federally granted licence, permit or certificate that the licensee is required to hold in order to operate the licensed establishment.

Here, the City of Vancouver suspended the Business Licence necessary to operate the establishment for a two (2) day period which lead to the branch suspension of the liquor license for the same period.

ORDER

Pursuant to section 20(2) of the *Act*, concerning Liquor Primary Licence No.146969, I order as follows: I suspend the liquor licence for ten (10) business days starting as of the close of business Friday, April 9, 2004, and continuing on successive business days until the suspension is completed. "Business Day" means a day on which the licensee's establishment would normally be open for business (section 54(1) of the Regulations to the *Act*).

Since I do not know whether the establishment would normally be open seven (7) days per week as of April 9, 2004, I do not know what the business days will be. To ensure that this order is effective, I direct that the liquor licence be held by the Branch or the Vancouver Police Department from the close of business Friday, April 9, 2004, until the licensee has demonstrated to the Branch's satisfaction that the licensed establishment has been closed for ten (10) successive business days. A suspension sign notifying the public shall be placed in a prominent location by a Liquor Inspector or Police Officer.



Edward W. Owsianski
Enforcement Hearing Adjudicator

Date: March 3, 2004

cc: Vancouver City Police

Liquor Control and Licensing Branch, Vancouver Office
Attention: Wendy Jones, A/Regional Manager,

Liquor Control and Licensing Branch, Victoria Office
Attention: Peter K. Jones, Advocate
