



**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, R.S.B.C. 1996, c. 267

Licensee:	Andrei Enterprises Ltd. dba Garage Sports Bar & Grill 1450 – 8260 Westminster Hwy. Richmond, BC
Case:	EH04-068
Appearances:	
For the Licensee	Jefferson N. Froh Campbell Froh May & Rice
For the Branch	Peter Mior, Advocate
Enforcement Hearing Adjudicator	Edward Owsianski
Date of Hearing	Written Submission August 26, 2004
Date of Decision	September 28, 2004

INTRODUCTION

[1] At the time of the alleged contravention Andrei Enterprises Ltd. held Liquor Primary Licence No. 166200. The hours of sale were 11:00 A.M. to Midnight, Sunday through Thursday and 11:00 A.M. to 1:00 A.M. Friday and Saturday. The patron capacity and Building Occupancy Load was 65 in area 1 and 20 on the patio. The establishment was located in Richmond, BC.

ALLEGED CONTRAVENTION AND RECOMMENDED ENFORCEMENT ACTION

[2] The Liquor Control and Licensing Branch in a Notice of Enforcement Action (NOEA) dated June 21, 2004, has alleged that on May 1, 2004, the establishment was overcrowded beyond the patron capacity, more than the occupant load, contrary to Section 12(2) of the *Liquor Control and Licensing Act* (the Act) and Section 71(2)(b) of the *Regulation to the Act* for which a four (4) day suspension commencing on a Saturday is recommended.

[3] Schedule 4 of the *Liquor Control and Licensing Regulation*, provides a range of licence suspensions and monetary penalties for each contravention. For this contravention the penalty range is a four (4) to seven (7) day licence suspension and/or a five thousand (\$5,000) to seven thousand (\$7,000) monetary penalty for a first contravention.

Section 12(2) of the Act states as follows:

Licences

12.(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).

Section 71 of the Regulations to the Act states as follows:

Licence categories, terms and conditions and endorsements

71 (1) A category of licence referred to in Column A of the following table and held by a licensee immediately before December 2, 2002

- (a) is converted on December 2, 2002 to the category of licence set out opposite that licence in Column B, and
 (b) subject to subsection (2), is on December 2, 2002 subject to the terms and conditions of the category of licence set out opposite in Column B:

Column A

A licence, other than for a club
 C, D, E, F or I licence
 A licence for a club
 B licence
 B licence with a designated food optional area

 Winery licence
 Winery licence with an endorsement for a consumption area
 Winery licence with a picnicking endorsement

 G or H licence
 Agent's licence
 Distiller's licence
 Brewer's licence
 U-Brew licence
 U-Vin licence
 Private special occasion licence
 Family private special occasion licence
 Public special occasion licence

Column B

Liquor primary licence
 Liquor primary licence
 Liquor primary club licence
 Food primary licence
 Food primary licence with a lounge endorsement
 Winery licence
 Winery licence with a winery lounge endorsement
 Winery licence with a picnicking endorsement
 Licensee retail store licence
 Agent's licence
 Distiller's licence
 Brewer's licence
 U-Brew licence
 U-Vin licence
 Private special occasion licence
 Private special occasion licence
 Public special occasion licence

(2) The following apply to a licence converted under subsection (1) unless and until rescinded or amended by the general manager:

- (a) the terms and conditions imposed on the licence by the general manager under section 12 and 12.1 of the Act in effect immediately before December 2, 2002;
 (b) the hours of liquor service and the patron or person capacity of the licensed establishment in effect immediately before December 2, 2002;
 (c) endorsements on the licence in effect immediately before December 2, 2002, except an endorsement on a winery licence for a consumption area.

BACKGROUND

[4] A pre-hearing teleconference was held on July 13, 2004, during which the establishment was represented by one of the principals of the corporate licensee. He admitted that the contravention took place, however requested the opportunity of

a hearing to dispute the recommended penalty. It was agreed that a hearing would take place via teleconference on August 11, 2004.

[5] On August 11, 2004, the principal of the corporate licensee informed the Adjudicator that he had declared personal bankruptcy and was no longer able to speak for the licensee. He stated that the other principal of the corporate licensee had left the country, not expected to return, and that the establishment had been sold to a third party who is making application for the transfer of the liquor licence.

[6] On August 12, 2004, a letter was sent to the Registered Office of the corporate licensee outlining the nature of the contravention and the current standing to the matter. The licensee was given the opportunity to make written submission to the Adjudicator to be received no later than August 30, 2004.

[7] On August 26, 2004, written submission was received from the solicitors for the corporate licensee. They advised that the licensee sold its interest in the licensed establishment to a third party on June 8, 2004, who has made application for the transfer of the liquor license. The corporate licensee and its principals are no longer associated with the establishment. The solicitors requested that the Branch refrain from imposing a suspension or monetary penalty. To impose a licence suspension or a cancellation of the liquor license would unfairly punish the new owners of the establishment who were not involved in any way with the establishment when the contravention took place on May 1, 2004.

ISSUE

Is the recommended penalty an appropriate penalty in the circumstances?

EXHIBITS

1. Book of Documents
 2. Solicitors' letter of August 26, 2004.
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EVIDENCE

[8] The circumstances surrounding the contravention are found in the NOEA of June 21, 2004, (exhibit 1, tab 2). On May 1, 2004, at approximately 11:40 P.M. members of the R.C.M. Police Richmond Detachment attended at the establishment in response to a noise complaint. A count of persons in the establishment revealed approximately 120 persons in the main area and approximately 29 persons on the patio. The liquor licence permits 65 patrons in the main area and 20 on the patio. The building occupancy load is 65 persons in the main area and 20 persons on the patio.

DECISION AND REASONS

[9] Having considered all of the evidence I find that on May 1, 2004, the licensee contravened Section 12 (2) of the *Act* and 71(2)(b) of the *Regulation* by failing to comply with a term and condition of the licence by permitting overcrowding beyond patron capacity, more than the occupant load.

[10] Pursuant to section 20(2) of the *Act*, having found that the licensee has contravened the *Act*, the *Regulation* 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 license or rescind or amend existing terms and conditions
- impose a monetary penalty
- order a licensee to transfer a license

[11] 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 *Regulation* to the *Act*.

[12] The purpose of the branch in bringing about enforcement action is to encourage voluntary compliance. The Branch has recommended a four (4) day liquor license suspension, the minimum license suspension for this type of contravention. In considering whether a penalty is warranted in 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, this contravention is considered as a first contravention for the purposes of the Penalty Schedule.

[13] There was however, a recent instance where the Branch brought the issue of overcrowding to the attention of the licensee. On April 17, 2004, liquor inspectors attended at the establishment at approximately 11:00 P.M. and counted approximately 95 persons in the main area and 6 persons on the patio. A contravention notice was issued and a compliance meeting held with one of the principals of the licensee on April 27, 2004, where it was made clear that the establishment must employ door staff with counters on busy nights to ensure that the establishment remained within its licensing and building occupancy limits. Despite this caution to the licensee the overcrowding contravention of May 1, 2004, occurred.

[14] Overcrowding 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 problems. Exceeding the occupant load capacity can affect the safety of the patrons and employees of the establishment in the event of an emergency.

[15] The solicitors for the licensee have argued that a licence suspension or cancellation would be unfair to the new owners of the establishment who were not involved with the operation of the establishment at the time of the contravention. With this I agree. I am concerned however; that in the circumstances of this case a penalty is necessary to encourage voluntary compliance. To allow licensees who are on the verge of selling or otherwise disposing of their interests in a licensed

establishment to operate in contravention of the law without sanction would be poor public policy. I therefore impose the minimum monetary penalty of five thousand dollars (\$5,000.00) on the licensee, Andrei Enterprises Ltd.

ORDER

[16] Pursuant to section 20(2) of the *Act*, I impose a monetary penalty of five thousand dollars (\$5,000.00) on Andrei Enterprises Ltd. to be paid no later than November 1, 2004.

Original signed by

Edward W. Owsianski
Enforcement Hearing Adjudicator

Date: September 28, 2004

cc: R.C.M. Police Richmond Detachment

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

Liquor Control and Licensing Branch, Surrey Office
Attention: Peter Mior, Branch Advocate
