



**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:	Sonar Cabaret Ltd. dba Sonar 66 Water Street Vancouver, BC
Case:	EH04-106
For the Licensee:	J. M. Brian Coleman
For the Branch:	Sonja Okada
Enforcement Hearing Adjudicator:	Sheldon M. Seigel
Date of Hearing	April 4, 6 and 26, 2005
Place of Hearing	Vancouver
Date of Decision	May 5, 2005

INTRODUCTION

The licensee operates an establishment, known as the Sonar Cabaret at 66 Water Street in Vancouver's Gastown District. The maximum number of persons allowed in the establishment is 520 in accordance with Liquor Primary Licence No. 038186. The maximum number of persons allowed by the general manager in this case, is the same as the Occupant Load prescribed under the *Liquor Control and Licensing Regulation (Regulation)*.

On May 30, 2004, a fight broke out among some patrons at Sonar. The Vancouver Police Department attended. Sonar staff removed some patrons from the bar. Police took some patrons into custody. Ambulance(s) took some patrons to hospital. Following the fight, other police constables attended and did a Licence Premise Check (LPC) on the premise. As part of the LPC, the constables conducted a count of patrons and determined that there were significantly more patrons in attendance than the maximum allowed in the licensed establishment.

A Contravention Notice was issued alleging overcrowding. Two counts indicated 610 patrons and 637 patrons, respectively.

The licensee disputes that the establishment was overcrowded, and contests the counts.

ALLEGED CONTRAVENTIONS

On May 30, 2004, the licensee allegedly contravened Section 6(4) of the *Regulation* by permitting more persons in the licensed establishment than the person capacity set by the general manager and the number of persons in the licensed establishment was *more than* the occupant load.

RELEVANT STATUTORY PROVISIONS

Liquor Control and Licensing Regulation, B.C. Reg. 244/2002

- s. 1(1) "**person capacity**", in relation to an establishment, means the maximum number of persons allowed by the general manager in the establishment.
- s. 6(4) It is a term and condition of a licence that there must not be, in the licensed establishment at any one time, more persons than the person capacity set under subsection (1) or (3).

ISSUE

The single issue is whether the evidence supports a finding of contravention of Section 6(4) of the *Regulation* for overcrowding.

EXHIBITS

Exhibit No. 1: Book of Documents, submitted by the branch.

Exhibit No. 2: Net Interval Sales Reports (4 pp), submitted by the licensee.

EVIDENCE

The branch called two police constables.

Constable 1 testified as follows:

On May 30, 2004, he was assigned to uniformed liquor detail.

He attended at Sonar with his partner on two occasions that night; once before the fight, and once after. On the first occasion they did no count. It was early and the club was not busy. They noticed some staff members not wearing identity tags, and spoke to management about ensuring that their staff were identifiable. The constable indicated that he would be back later that night.

Later, he was notified by radio that there was a large fight at Sonar. He and his partner ran to the establishment from their nearby position.

They provided emergency cover, outside the club, to the operating officers until the situation was deemed under control. Then they entered the club. They approached Sonar staff and requested a count. There was confusion following the fight. Some staff members were doing crowd control on the street. No staff member could produce a counter. There was broken glass from a window that was knocked out of one of the entrance doors.

Constable 1 did a count with a mechanical counter. Constable 2 did a "validation by visual count." They did a second count immediately following the first. The counts produced figures of 610, and 632, respectively.

Constable 1 testified that the lights were not turned up. Only the usual business lighting was on. "The ambient lighting was dark and typical of night clubs." He testified that it was "business as usual. People were dancing, the music continued."

He confirmed from his notes that the fight was called in at 2:07 a.m. The dispatch call came at 2:11 a.m. He and his partner responded to the dispatch at 2:16 a.m. and attended to emergency cover duties until 2:31 a.m. at which point he cleared from his call and proceeded with the LPC.

Constable 1 indicated that there was lots of confusion; "large numbers of people were being dispersed from the front of the premises."

He testified that both he and his partner were "surprised by the number of persons counted."

Constable 2 testified that he was in training and took no notes whatsoever, relating to either attendance. He had little memory of the counts but confirmed that constable 1 had done the counts and both constables were surprised by the results. Constable 2 followed along and tried to do a visual count but had no prior experience in so doing. He said; "...not sure if business continued as usual. Some people were leaving- I don't think the place was shut down or anything." He confirmed the accuracy of the times indicated in constable 1's notes.

The branch called the liquor inspector who introduced into evidence the documents in Exhibit No. 1.

The licensee called the club manager. He testified that constable 1 spoke to him on the earlier visit about the identification tags and advised that he would be back later in the evening. The manager believed the constable and expected him back because "the police generally do what they say, and [the constable] will be back if he says he will be back. He is that kind of a guy."

He described the tracking of the number of persons in the club, and the responsibility of the (security) staff member who does it. The counting is assigned to one individual and there is a regular contact between he and the door staff to ensure both an accurate count and control of the flow of patrons through the door. There is a warning system when the club gets close to capacity and then the door operates on a "one in, one out" system.

After the fight, the lights were turned up. A patron had smashed the door, and there was glass over the entranceway. The doors were fixed shut and an alternate exit was established. The doors were closed for the night to additional patrons.

The manager testified that the staff member responsible for counting assisted security in dispersing the fight. He was on the floor pulling patrons off each other and lost his counters from his pockets. He was not able to recover them in a timely fashion for the constables during the immediately following LPC.

He said:

"It was 2:30 in the morning. The club was almost closed. Nobody further was allowed in. When [the constable] came in, the lights were up and the crowd was maybe 300. He was irate and made comments about us losing control. He told me there was blood, puke, and broken glass and like it was my fault that it happened. I did a good job of controlling it. It was over in two minutes. I told him we were cleaning it up, the door was broken and we didn't do it- and we were shutting down."

The manager testified that the constable had presented him with the LPC, and advised as to the counts. The manager could not believe it, asked to see the counter, and was denied. He said there were maybe 300 people in the club. The manager did not think that the constable spent more than ten minutes conducting the count.

The manager introduced Exhibit No. 2, which shows the liquor sales by time for the night in question as well as the previous two and following Saturday nights. He concluded that the Exhibit demonstrates that liquor sales were low, and concluded early on May 30, 2004.

The licensee called several staff members who were on duty on May 30, 2004.

They testified as follows:

Bartender:

After the fight, about forty people left. "It had not been that busy anyway and after the fight it was dead." He did not see the constables do a count.

Promoter 1:

He earns his money by cover charges at the door. It is his business to know how many people come and go through the door. It was not a busy night. There were perhaps 400 patrons at maximum that night. After the fight, he personally turned up the lights for the clean-up effort. After the fight the doors were closed and there were perhaps 200 people left in the bar. They were slowly leaving. Nobody else came in.

Promoter 2:

There were below average numbers in the club that night. They had not a particularly good turnout. There was a maximum of 300-400 people in the club at any time during the night. The doors were closed to additional people after the fight, and nobody came in.

Doorperson:

He was alerted when the club reached about 420 persons. This was the usual notice. The club never reached capacity that night. He was in regular contact with the security/counter but there was no urgency, as the club was not very busy. After the fight, he personally shut the doors for the evening. Nobody else came in. The lights had been turned up immediately after the fight so they could clean up the mess. The lights did not go back down. Some patrons lingered but there was only 30 minutes until closing time. The music was turned down and he thought that one or more of the bars had closed up.

Security:

He was in charge of doing the count. It is always his job. He does not leave his post during the night. They never reached capacity that night. He was certain. He notified the doorman when the count was 425. At that time there was no line-up outside and they did not expect to have many more patrons come in. That was well before the fight. When the fight broke out, it was his job to get in there and separate the fighting patrons. He did so. He was on the floor and lost his counters. He kept two; one for the incoming patrons and one for the outgoing patrons. Only moments following his return to his post after removing the fighting patrons, did the constable ask him for the count. He realized then that he did not have his counters. They were not returned to him that night. After the fight, the crowd dispersed and the club was half empty. The lights were on and it was not a very "club like" atmosphere.

SUBMISSIONS

The branch argued that constable 1 is an experienced police officer and had done many LPCs in the past. He used a mechanical counter, counted twice, and obtained counts far in excess of the occupancy load. Constable 2 was in training and provided support and conformation of the data of constable 1. After the fight occurred, the establishment did not completely close down and ask the remaining patrons to leave. There was no firm evidence to indicate occupancy less than that counted by the constables.

The licensee argued that the evidence falls short of what is required to take punitive steps against the licensee. He argued that the evidence does not establish that the club was overcrowded on the night in question. He pointed out that constable 1 may have been "heavy on the thumb" on his count or miscounted as he was "upset with the club and may have embellished his account of the incident." Constable 2 made no notes. The licensee says that is inconsistent with sound police work. There were (ancillary) inconsistencies in

evidence as between the two constables regarding the details of their two attendances.

ANALYSIS AND DECISION

The only evidence of a count exceeding capacity is that of constable 1. Constable 2 was present and involved in the counts but had no recollection, notes or data of his own on which to rely for his testimony.

Both constables testified that they were surprised at the results of the counts.

The two counts appear to have been done in rapid succession, over a period of ten to fifteen minutes.

When constable 1 issued the LPC to the club manager, the manager refused to acknowledge receipt and advised that it was impossible that there were so many people in the facility. Their estimates were divergent by some three hundred patrons. The constable had the opportunity and ability to resolve the dispute over the count at that time, but did not do so.

The constables testified that after the fight it was "business as usual". The licensee, however, called four employees and two independent promoters who consistently testified that after the fight, there was glass and blood on the floor, the lights were up, the entrance door was smashed and locked, the exit was rerouted, crowds had been disbursed from the street, there were police and ambulances outside, and at least two police officers inside. Staff members were cleaning up. At least one bar was closed. Patrons started to leave.

Sonar's normal closing time was to be approximately thirty minutes after the fight ended.

I accept the testimony of the witnesses for the licensee that it was not "business as usual" in Sonar after the fight ended. It defies common sense to accept that under the circumstances, and in light of the floor-plan of the facility, any volume of patrons would remain unaffected by the events of that night. The evidence was that between 40 and 150 patrons left during the fight. If constable 1's count was accurate, that would indicate as many as 770 patrons in the club at the time of the fight.

The evidence of six witnesses for the licensee was consistent, that the club was not at capacity that night before the fight and well under capacity, after the fight. I accept the evidence of these witnesses on this point. In particular, I am impressed by the credibility of the security employee who was that night charged with keeping a count, and advising door staff as Sonar approached capacity.

Further, constable 1 testified that he advised the manager that he would be returning that night. The manager confirmed his recollection of that comment and testified that he fully expected the constable to return. I find it difficult to accept that in these circumstances, the manager would allow the capacity of the club to be exceeded by such a wide margin.

Constable 1's count was not corroborated. It was conducted hastily, and the results surprised both he and his partner. Constable 2 did not do a count or did not make notes or recall doing so.

I find that the totality of the evidence is such that the branch has not met the burden of proof required for a finding of a contravention of Section 6(4) of the *Regulation*.

The alleged contravention has not been proven.

Original signed by

Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: May 5, 2005

cc: Vancouver Police Department – Liquor Coordinator

Liquor Control & Licensing Branch, Vancouver Regional Office
Attention: Doug Dyck, A/Regional Manager

Liquor Control and Licensing Branch, Vancouver Regional Office
Attention: Sonja Okada, Branch Advocate
