



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

Licensee:	Rooster's Country Cabaret Ltd. 4 – 19040 Lougheed Hwy. Pitt Meadows, BC
Case:	EH05-014
For the Licensee	R.J. Erdman
For the Branch	Sonja Okada
Enforcement Hearing Adjudicator	Sheldon M. Seigel
Date of Hearing	April 27, 2005
Place of Hearing	Victoria, BC
Date of Decision	September 8, 2005

INTRODUCTION

This hearing was conducted by way of written submissions by agreement of the licensee and the General Manager.

The licensee has acknowledged that on January 23, 2005, the establishment contravened Section 6(4) of the *Liquor Control and Licensing Regulation (Regulation)*.

The recommended enforcement action is a four (4) day suspension of the liquor licence. The only issue is what penalty, if any is appropriate.

ALLEGED CONTRAVENTIONS

The licensee has contravened Section 6(4) of the *Regulation* - Overcrowding beyond person capacity greater than occupant load.

The contravention occurred at 12:05 a.m. on January 23, 2005.

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).
 - s. 63 In this part, "finding of contravention" means in respect of an alleged contravention of a licensee,
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(b) a determination made by the general manager under section 65, that the contravention occurred.

- s. 64(3) The general manager may hold an enforcement hearing to determine whether the licensee committed the alleged contravention and, if so, to determine what enforcement actions are to be taken against the licensee as a result...
- s. 66(1) If, in relation to a contravention, the enforcement actions specified under section 64 (2) (a) or referred to in section 65 (1) include a suspension, the period of the suspension must, subject to subsection (2) of this section, fall within the range established for the contravention under Schedule 4.

ISSUES(S)

The licensee has accepted that it contravened Section 6 (4) of the *Liquor Control and Licensing 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. The issue therefore; is whether a penalty is required under the circumstances of this case and if so what penalty is appropriate.

EXHIBITS

The licensee provided the following:

- List of Rooster's staff working January 22, 2005
- Written submissions of the licensee
- Rooster's Employee Obligation and Rules of Conduct document
- Correspondence indicating that a meeting was held with the doorman on staff on January 22, 2005, resulting in his suspension for 2 weeks
- Copy of the Occupant Load Certificate
- Excerpt from Rooster's Employee Duties and Responsibilities (Doormen)

The branch provided the following:

- Enforcement Action Recommended Report dated February 11, 2005
 - Contravention Notice B003388 dated January 23, 2005
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- Copy of Liquor Primary Licence No. 173568
- Interview sheet dated October 1, 1996
- Warning letter dated November 22, 1996
- Warning Letter dated June 16, 1998
- Licensed Premise Check dated March 28, 1999
- Warning letter dated June 8, 1999
- Warning Letter dated July 11, 2000
- License Premise Check dated August 2, 2001
- License Premise Check dated August 6, 2001
- Contravention Notice A000154 dated March 1, 2002
- LPC A116007 dated March 1, 2002
- Compliance Meeting form C000039 dated April 23, 2002
- Contravention Notice B003388 dated January 23, 2005
- LPC A116127 dated May 27, 2002
- LPC A093001 dated May 8, 2002
- Compliance Meeting form C000227 dated May 30, 2002
- Contravention Notice B002323 dated October 8, 2004
- Compliance Meeting form C003609 dated November 19, 2004
- Contravention Notice B008613 dated February 18, 2005

SUBMISSIONS

The licensee submitted:

- It cooperated fully with the inspector and police constables on the date of the contravention.
 - It wilfully admitted to the contravention.
 - In the past the branch has ordered monetary penalties for such contraventions and accordingly there is precedent for so doing.
 - The licensee would prefer to have a monetary penalty ordered, as that would interfere less with the income of the staff not implicated in this contravention.
 - In an effort to voluntarily comply with the branch's directives, the licensee has in place a Policy Manual for employees (which includes a section directing proper door counts), an Employee Obligations and Rules of Conduct Contract, and a system of disciplinary proceedings for employees who fail to follow the manual and contract.
 - The doorman who was responsible for the errant count on the contravention date was suspended for two weeks as a result of his misdeeds.
 - The licensee has applied (and failed) on two occasions to have the occupant load increased to fire capacity. Fire capacity is greater than the highest count taken in respect of this contravention. As a result, the
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- licensee argues that public safety was not in issue in this overcrowding contravention.
- The count by the police and inspectors may have included licensee staff and band members amounting to twenty-eight (28) persons, which under most of the counts would be within the occupant load.
 - The licensee has a good record of compliance over nine (9) years in business.
 - A \$5,000 monetary penalty would serve the objectives of the branch in securing voluntary compliance.

The branch advocate submitted:

- The contravention is a significant one.
- The suspension recommended is within the range for a first contravention as set out in schedule 4 of the *Regulation*.
- The general manager is not bound by previous decisions but rather maintains the discretion to order penalties within those contemplated by the *Regulation*.
- The licensee's effort to adhere to the terms and conditions of the licence is irrelevant to the issue of penalty, as the contravention has been admitted.
- Public safety is indeed an issue, notwithstanding that the licensee submitted that it has applied on two occasions to have the occupant load increased to an amount greater than the counts taken on the occasion of this contravention. The occupant load is fixed, and was exceeded. Applications for an increase in occupant load are irrelevant.

ANALYSIS AND DECISION

The contravention has been admitted and there is no argument to the contrary. Accordingly, I find the contravention to have occurred. The only issue is penalty.

I find the contravention is a serious one, as are all overcrowding contraventions. There are no insignificant overcrowding contraventions.

The penalty recommended is the minimum suspension for a first contravention, notwithstanding that the licensee has a history, which includes a previous contravention for overcrowding. Therefore, I must conclude that the branch has

already taken into account the positive conduct of the licensee, in selecting the recommended penalty.

I agree with the advocate's submission that the general manager is not bound by previous enforcement hearing decisions. I find, however, that it is appropriate for a licensee to bring such decisions to the attention of an adjudicator sitting as the general manager as it is within the branch's mandate to ensure consistency of enforcement. I find in this case, that while the previous decisions cited by the licensee are useful, they do not convince this adjudicator that something less than the recommended penalty is appropriate.

The licensee argued that the police and inspector may have counted staff and band members in the count. I note that the offence cited is in relation to *person* capacity, not *patron* capacity, and occupant load is not affected by this argument. Further, both police and inspectors are trained to be able to identify proper subjects of a count, staff are by *Regulation* to be identifiable by uniform or name tag, and no evidence was produced which suggests that the counts were anything but in accordance with appropriate methodology.

The branch advocate has indicated that the licensee's effort to adhere to terms and conditions of the licence (conduct) is irrelevant to the issue of penalty as a result of the contravention being admitted. I disagree. I find that the conduct of the licensee is exactly what is at issue in these proceedings, whether in the context of the substantive contravention or the penalty. Further, I find that it is precisely the conduct of the licensee, including past history of contraventions and relationship with the branch, which provides guidance to the general manager as what penalty to recommend or order.

The licensee argued that it had applied for an increased occupant load, which if granted would exceed the number of patrons counted with respect to the contravention. I find that this is irrelevant for the purposes of this contravention.

I have no direct evidence of the increased occupant load the licensee was seeking, and I have no corroborated evidence that, if granted, the new occupant load would be in excess of the counts taken on January 23, 2005. Further, the licensee submitted that its applications were turned down on two occasions. It would be reckless if the general manager were to overlook a contravention- or reduce a penalty- in anticipation of the approval of safety and municipal permits without further information. I have no information as to why the alleged applications were denied and will not rule based on speculation in this regard.

Finally, the licensee indicated that a monetary penalty would be sufficient to bring it into voluntary compliance. The evidence does not support this proposition. Indeed, the licensee has a past proven contravention of a similar nature (CN #A000160 issued May 30, 2002) for which the branch penalized them and the municipality issued a 48 hour business licence suspension. Further, there have been three correspondences and three LPCs issued for overcrowding concerns, and a Compliance Meeting held with the licensee on May 30, 2002, addressing issues of public safety and specifically overcrowding. While I recognise that these letters and LPCs date back a number of years (1996-2001) and occur over a protracted period of time, it is clear that issues of overcrowding cannot have been too far from the corporate awareness of the licensee.

PENALTY

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 the 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
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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*.

The range of penalty for a first contravention of Section 6(4) of the *Regulation* in accordance with item 15 of Schedule 4 of the *Regulation* is four (4) to seven (7) days suspension and/or a monetary penalty of \$4,000-\$7,000.

The recommended penalty is a four (4) day suspension. I feel that penalty is appropriate.

ORDER

Pursuant to Section 20(2) of the *Act*, I order a suspension of the Liquor Primary Licence No. 173568 for a period of four (4) days to commence at the close of business on Friday, October 14, 2005, and to continue each succeeding business day until the suspension is completed. "Business day" means a day on which the licensee's establishment would normally be open for business (Section 67 of the *Regulation*). I direct that the Liquor Licence No. 173568 be held by the branch or the Pitt Meadows R.C.M. Police Detachment, from the close of business on Friday, October 14, 2005, until the licensee has demonstrated to the branch's satisfaction that Rooster's Country Cabaret has been closed for four (4) business days.

Original signed by

Sheldon M. Seigel
Enforcement Hearing Adjudicator
cc: R.C.M. Police Pitt Meadows Detachment

Date: September 8, 2005

Liquor Control and Licensing Branch, Surrey Regional Office
Attn: Mike Clark, Regional Manager

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