



**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:	Palomino's Rock'n Horse Cabaret Ltd. dba Evolution 502 Discovery Street Victoria, BC V8T 1G8
Case:	EH05-024
For the Licensee:	Peter K. Jones
For the Branch:	Shahid Noorani
Enforcement Hearing Adjudicator:	Sheldon M. Seigel
Date of Hearing:	November 28, 2005
Place of Hearing:	Victoria
Date of Decision:	December 1, 2005

INTRODUCTION

The licensee operates a liquor primary establishment in Victoria, known as Evolution Nightclub and holds Liquor Primary Licence No. 167968.

The Branch (the branch) issued a Notice of Enforcement Action (NOEA) relating to three contraventions, which allegedly occurred on the business day of Wednesday, December 1, 2004.

The branch withdrew two of the alleged contraventions prior to the commencement of the hearing.

ALLEGED CONTRAVENTIONS

The branch alleges that on December 1, 2004, the licensee contravened Section 43(2)(b) of the *Liquor Control and Licensing Act (Act)* by permitting an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied.

ISSUE

The issue is whether the licensee contravened Section 43(2)(b) of the *Act*, and if so, if the penalty recommended by the branch is appropriate.

EXHIBITS

Exhibit No. 1 Branch's Book of documents

Exhibit No. 2 Licensee's package of materials

EVIDENCE

The branch called a Compliance and Enforcement officer (C&E officer). He testified as to the history of the licensee and the chronology of events relative to the processing of the enforcement action taken by the branch with respect to the allegation in issue. He also identified the documents contained in Exhibit No. 1, but for the police notes.

The branch also called a constable of the Abbotsford Police Department. He testified as follows:

- He is experienced at policing where intoxication and drugs are involved.
 - He is a qualified Breathalyser technician.
 - He is trained in assessing intoxication.
 - He has been involved in more than 200 Licence Premise Checks (LPCs), and in each one there were persons who were intoxicated to varying degrees.
 - He attended at Evolution on the business day of December 1, 2004.
 - He was operating as part of a sting operation called Den City.
 - The team attended in plain clothes and operated under cover.
 - The objective of the team's attendance at Evolution was to locate and purchase drugs in the establishment, in particular Crystal Methamphetamine.
 - His specific task was to operate as a "cover man" to watch out for the safety of the other under cover officers.
 - While in the establishment, he observed two females on the dance floor. They were dancing together. One of them appeared "extremely exuberant". She stumbled while dancing on three occasions. Her friend helped to prevent her from falling. Once off the dance floor, the female was steady on her feet and did not require assistance to stand or to walk.
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- He watched her on and off for fifteen minutes. In that time the constable concluded that the female was intoxicated and he believed that if she had presented as such at the door, she would have been denied entry.
 - He was never closer than fifteen feet from her.
 - The room was busy and darkened, with coloured lights over the dance floor.
 - He also noticed another female. She was falling asleep on one of the large speaker cabinets on the floor. She was dressed in dark clothes and make-up (Goth-style). She was sitting with her eyes closed and her arms around her knees. She occasionally put her head on her arms. He also watched her off and on for fifteen minutes.
 - He noticed this female on the dance floor also. She moved slowly and somewhat uneasily.
 - He was never closer than fifteen feet from the second female.
 - At one point during his observation, he saw this female drinking a coloured substance.
 - At no time did the constable see any staff member approach either of the females.
 - He identified his notes in Exhibit No. 1, and indicated that he composed them at a safe-house after he left Evolution.
 - The constable testified that he could not see either of the females' eyes due to his distance, and the lighting in the establishment.
 - He did not speak to either of the females.
 - He did not observe any odour of alcohol or slurred speech or dishevelled appearance or staggering (but for the imbalance of one female on the dance floor).
 - He could not say whether the females were using drugs, or were affected by personality issues, or were impaired by something other than alcohol.
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ANALYSIS AND DECISION

The branch presented insufficient evidence on which I could conclude on a balance of probabilities that any patron in the establishment was intoxicated, as is required to find a contravention of Section 43(2)(b) of the *Act*.

I find that the constable who testified for the branch was not in a position to evaluate whether the patrons that he observed were or were not intoxicated.

The constable was in the establishment for a limited period of time. His focus was properly directed elsewhere, in accordance with his professional mandate on that occasion. He observed only one of the females drinking anything, and the identity of that substance was not adequately explored.

He testified as to observations that I find to be less than conclusive of intoxication. He conducted none of the tests usually associated with identifying intoxication, and he quite properly acknowledged that the behaviours he witnessed might have been the result of a medical condition, personality irregularity, or impairment of an origin other than intoxication.

The contravention has not been proven.

Original signed by

Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: December 1, 2005

cc: Victoria Police Department

Liquor Control and Licensing Branch,
Vancouver Island/Okanagan/Kootenay
Attn: Jim Booth, A/Regional Manager

Liquor Control and Licensing Branch
Attn: Shahid Noorani, Branch Advocate
