



**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: Discovery Sports Club
714 Discovery Street
Victoria, BC

Case: EH05-040

For the Licensee: C. Louis Webster

For the Branch: Sonja Okada

Enforcement Hearing Adjudicator: Edward W. Owsianski

Date of Hearing: August 5, 2005

Place of Hearing: Victoria, BC

Date of Decision: August 17, 2005

Introduction

The Discovery Sports Club (the Club) consists of 700 members from a number of Victoria area rugby, cricket and soccer teams. The Club has its own building in the City of Victoria with a liquor licensed area for the use of its members and their guests. It holds Liquor Primary Licence No. 088939. The maximum hours of sale are 10:30 a.m. to 12:30 a.m., Monday to Thursday, 11:00 a.m. to 1:00 a.m. Friday and Saturday and 11:00 a.m. to Midnight on Sunday. It has a licensed capacity of 65 patrons. It is subject to the terms and conditions contained in the publication 'Guide for Liquor Licensees in British Columbia' ("the Guide").

Alleged Contravention and Recommended Enforcement Action

The branch's allegations and recommended enforcement action are set out in the Notice of Enforcement Action (NOEA) dated June 1, 2005.

The branch alleges that on December 10, 2004, the licensee contravened Section 43(2)(b) of the *Liquor Control and Licensing Act* by permitting an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied. The recommended enforcement action is a \$7000 monetary penalty.

Schedule 4 at Item 11 of the *Liquor Control and Licensing Regulation* provides a range of penalties for a first contravention of this type, a licence suspension for four to seven days and/or a monetary penalty of five thousand (\$5000) to seven thousand (\$7,000) dollars.

The licensee agrees that the contravention took place as alleged. However, disputes that a \$7000 monetary penalty is warranted in this case.

The relevant section of *Liquor Control and Licensing Act* is as follows:

- 43** (2) A licensee or the licensee's employee must not permit
(b) an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied.

Issue

1. Is the recommended penalty appropriate in the circumstances?

Exhibits

The following Exhibit was presented:

1. Book of Documents

Evidence - The Liquor Control and Licensing Branch

A liquor inspector testified that he is the inspector responsible for the geographical area in which the Discovery Sports Club is located. The Club is licensed for members and their guests and although it is licensed for a full range of hours, seven days a week, the club normally operates under the liquor licence for fewer hours and is often closed on some nights.

He received a Licensed Premises Check form (Exhibit 1, tab 4) and an Occurrence Report (Exhibit 1, tab 5) from the Victoria Police Department indicating that on Friday December 10, 2005, police officers were called to the Club at approximately 11:10 p.m. as a result of a fight occurring in the licensed area. The altercation had ceased prior to their attendance and most of the parties involved had dispersed. One of the combatants remained and was found to be intoxicated and suffering from a serious head wound. Further investigation by the police revealed that a private party was being held at the Club that night during which an altercation occurred between two of the guests resulting in one being seriously injured with cuts to his head after being struck with a broken beer bottle. The inspector spoke with one of the police officers in

attendance on that night who confirmed the details in the report and advised that in addition to the victim there were other intoxicated persons at the establishment. He advised the inspector that the manager of the Club was aware of the intoxicated state of the victim, had cut him off from further liquor service but allowed him to remain in the establishment. The altercation started following obscene comments made by the victim to one of the women guests.

The inspector issued Contravention Notices (CNs) to the establishment for permitting an intoxicated person to remain (Exhibit 1, tab 3) and selling liquor to intoxicated persons (Exhibit 1, tab 11). A decision was subsequently made that there was insufficient evidence to proceed on the contravention alleging the sale of liquor to intoxicated persons.

The inspector testified that he is responsible for maintaining the branch records for the establishment. He reviewed those records prior to making a recommendation that the branch proceed with enforcement action (his Enforcement Action Recommended report is found at Exhibit 1, tab 2). The records indicate previous problems with the operation of the establishment:

- February 12, 2005 – CN issued for allowing liquor to be removed from the establishment and selling liquor to non-members (Exhibit 1, tab 12).
- September 20, 2003 – CN issued for not having a floor plan available, permitting intoxicated persons to remain, failing to comply with Responsible Beverage Service requirements and allowing liquor to be removed from the establishment (Exhibit 1, tab 2 at page 2). This resulted in a Compliance Meeting being held with the Club president and bar manager to assist them to operate the establishment properly (Exhibit 1, tab 13).

The inspector agreed during cross-examination that his concern is primarily with instances of intoxicated patrons occurring at the club within the past two years. Up to

that time the Club maintained a good rapport with the branch and Victoria Police Department.

The inspector testified that in making his recommendation for the maximum monetary penalty of \$7000.00 he considered the seriousness of the contravention the resulting severe injury to the victim and the potential for even more serious consequences arising out of the incident. He felt that a significant penalty was necessary to bring the message home to this licensee. It was his opinion that a monetary penalty was necessary; a licence suspension would not be effective due to the variable hours and days of operation of the liquor licence by the Club.

Evidence - The Licensee

The Club representative testified that he is a long-term member of the Club, has been the president, a member of the executive and managed the clubhouse. The Club is an umbrella organization for several rugby, cricket and soccer teams with a total of 700 members. The liquor licence is not operative seven day a week. During the summer and fall it is typically used following meetings on Monday and Wednesday nights when there may be 8 –10 persons present who may have a drink apiece. Thursday nights it operates after practices from about 7:00 p.m. for a few hours. Fridays it operates from 5:00 p.m. to 10:30/11:00 p.m. Saturdays it is active after the games commencing at approximately 4:30 p.m. until 1:00 a.m. Sundays it operates from Noon to 9:00/9:30 p.m.

He testified that the gross income from liquor sales for the business year 2004-5 was \$63,000 with a net income of approximately \$30,000. The entire operation of the Club runs at a deficit and is subsidized from dues and office rentals. The Club is in the position of seriously having to consider whether it is financially viable to continue operation. The viability may depend upon whether a fine is imposed as a result of the hearing. Even the minimum fine of \$5,000 may result in the demise of the Club.

He testified that the incidents described by the inspector as occurring in September 2003 took place during the tenure of the previous bar manager. They resulted in a Compliance Meeting with the branch and the problems identified were addressed by the Club. A new bar manager was hired in September 2004 who was on duty at the time of this contravention, December 10, 2004. The bar manager proved to be incapable of dealing with problems that arose and as well, it was determined that he was not cooperating with the police. He was subsequently fired in February of this year. The current bar manager has previous experience working at the Club. To prevent problems, the practice of hiring security for special events has been reinstated.

LICENSEE SUBMISSIONS

The licensee representative submitted that the Club has held a liquor licence for many years without creating significant problems. It is only recently that serious problems have arisen and the Club has taken steps to deal with them and prevent reoccurrence. A financial penalty within the five to seven thousand dollar ranges will have a crippling effect on the Club. A licence suspension for the maximum seven day period will have an impact and will be effective in sending a clear message to members that they all have a responsibility for the operations of the Club.

Findings and Decision

The licensee has admitted the contraventions. I find that the contravention, as alleged, has occurred.

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 licence or rescind or amend existing terms and conditions;
- impose a monetary penalty; and
- 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 minimums set out in Schedule 4 of the *Regulation*.

There is no record of prior contraventions, offences or enforcement actions of the same type for this licensee or this establishment within the year preceding these incidents (“compliance history”). Pursuant to *Liquor Control and Licensing Regulation*, Schedule 4, Section 1(1)(b), the branch has treated the allegations as first contraventions.

There were, however, previous Contravention Notices issued to the licensee. The branch did not pursue enforcement action; however, it did follow up with a Compliance Meeting in an attempt to assist the licensee in bringing the operation of the establishment into compliance. I have given weight to this compliance history not as proof of previous contraventions, but as proof that the branch has told the licensee in the past of its concerns and has attempted to assist the licensee in achieving compliance.

The purpose of the branch in bringing about enforcement action and in determining the appropriate penalty is to encourage voluntary compliance. Having considered the evidence, I am satisfied that a penalty for the contravention is necessary to ensure future voluntary compliance.

The branch in making its recommendation on penalty has considered the seriousness of the circumstances surrounding the contravention and has recommended the maximum penalty for a contravention of this type. It has recommended a monetary penalty

because of concerns that a licence suspension may not be effective given the irregular days and hours of operation of the liquor licence by the Club.

Having considered all of the evidence I am satisfied that the maximum seven day suspension penalty is the appropriate penalty in the circumstances.

ORDER

For the contravention of Section 43(2)(b) of the *Act*, permitting an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied, I order that Liquor Primary Licence No. 088939 be suspended for seven (7) business days commencing Friday, September 23, 2005, until the suspension is completed. "Business Day" means a day on which the licensee's establishment would normally be open for business (Section 67(1) of the Regulation to the Liquor Control and Licensing Act.)

Since I do not know whether the establishment would normally be open seven (7) days per week as of September 23, 2005, 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 Victoria Police Department from the close of business Thursday, September 22, 2005, until the licensee has demonstrated to the branch's satisfaction that the licensed establishment has been closed for seven (7) successive business days. A sign notifying the public and the Club members of the suspension shall be placed in a prominent location in or at the establishment by a liquor inspector or police officer.

Original signed by

Edward W. Owsianski
Enforcement Hearing Adjudicator

August 17, 2005

cc: Victoria Police Department

Liquor Control and Licensing Branch, Victoria Office
Attention: Gary Barker, Regional Manager
Vancouver Island/Okanagan/Kootenays

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