



**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:	Brooklyn Tap & Grill Ltd. dba Brooklyn Bar & Grill 250 Columbia Street New Westminster, B.C. V3L 1A6
Case:	EH06-045
For the Licensee:	George Efstathiadis
For the Branch:	James Macdonnell
Enforcement Hearing Adjudicator:	Sheldon M. Seigel
Date of Hearing:	July 13, 2006
Place of Hearing:	Surrey, B.C.
Date of Decision:	July 20, 2006

INTRODUCTION

The licensee operates a restaurant and bar in New Westminster. It is a ^[1] known as the Brooklyn Bar and Grill. The establishment holds Liquor Primary Licence No. 212617.

In the early morning of March 4, 2006 (business day of March 3, 2006), a Compliance and Enforcement officer conducted a licensed premise check (LPC) and counted more patrons than the patron capacity noted on the establishment's licence.

The patron capacity on the licence is identified as 98 patrons in the main room and 20 in the patio.

PRELIMINARY MATTERS

The Liquor Control and Licensing Branch (the branch) recommended a one (1) day suspension and a change in the terms and conditions of the licence to include the requirement that the licensee have two mechanical counters available at the liquor service bar.

The licensee agreed to the imposition of the change in the terms and conditions and advised that it had already implemented the use of two mechanical counters as recommended. The licensee disputed the appropriateness of the one-day suspension.

I advised that as delegate of the general manager for purposes of enforcement hearings, I only have authority to impose that change of terms and conditions in the event that I find a contravention has occurred and that the change is an appropriate penalty.

^[1] Personal information severed pursuant to the Freedom of Information and Protection of Privacy Act.

ALLEGED CONTRAVENTIONS

On March 4, 2006, the licensee allegedly contravened Section 12 of the *Liquor Control and Licensing Act* (the *Act*), by permitting more persons in the licensed establishment than the person capacity set by the general manager, therefore failing to comply with the terms and conditions of the licence.

RELEVANT STATUTORY PROVISIONS

Liquor Control and Licensing Act

Licences

Section 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

ISSUES

1. Did the licensee exceed its patron capacity as alleged?
2. If a contravention is found, what penalty, if any, is appropriate?

EXHIBITS

Exhibit No. 1 Branch's Book of Documents

Exhibit No. 2 Licensee's Book of Documents

EVIDENCE

The Compliance and Enforcement officer (C & E officer) identified the documents in Exhibit No. 1 and testified that he attended at the establishment as described and conducted two counts. The results were counts of 119, and 135 patrons, inclusive of the patio. He also asked what the doorman's count was for the establishment and the doorman indicated that he had no idea. The C & E officer spoke next to the principal of the licensee. The principal advised that by his estimate there were approximately 100 patrons in the establishment. He also advised that an application had been made to increase the occupant load and the patron capacity considerably, and that he did not believe that patron safety was compromised.

The principal of the licensee testified that the business day of March 3, 2006, was a busy night but that the room was completely under control. After the C & E officer advised as to his count, the principal of the licensee asked his patrons to "stand still" so that he could conduct another count. His count, as documented in Exhibit No. 2, totalled 102 patrons in the main room and 18 in the patio. He also said, that the C & E officer advised of the appropriateness of having two mechanical counters and that as a result there are now two counters used at the bar at all times.

The principal of the licensee also testified that prior to the LPC, the licensee had made application to increase occupant load, and that in April 2006 the City of New Westminster approved an increase of occupant load to 150 persons. Shortly after that the licence was changed by the branch to reflect patron capacities of 110 patrons in the main room and 40 in the patio.

SUBMISSIONS

The licensee submitted that its own count was, because of the ability to have the patrons stand still, more accurate than that of the C & E officer. It also submitted that any overage was minimal and was caused by a delay in the processing of paperwork.

ANALYSIS AND DECISION

I find that the evidence discloses that the establishment was beyond its patron capacity.

The licensee must take full responsibility for compliance with the current conditions of its licence. Although I recognize that the licensee believed an increase in its patron capacity was imminent, this does not entitle the licensee to act on its anticipated new capacity. The overage was not large, and it was likely caused by or contributed to by the licensee's lack of an acceptable counting system. That the licensee did not employ mechanical counters was a notable omission. The licensee has since obtained mechanical counters and now uses them regularly.

I find that the contravention has been proven.

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;
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- 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.

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 licensee has agreed to the change in terms and conditions of the licence to include the requirement for mechanical counters as indicated above. I find that to be reasonable and sufficient penalty for the contravention.

In not awarding any further penalty, I have considered the licensee's good compliance history, the nature and degree of the overage, and the likelihood that with the benefit of mechanical counters, future voluntary compliance is likely.

ORDER

I order that Liquor Primary Licence No. 212617 be amended to reflect the addition of the following term and condition:

The licensee will have available during all business hours, two mechanical counters, which shall be kept at the liquor service bar and used to regularly count the patrons in the establishment.

[ORIGINAL SIGNED]

Sheldon M. Seigel
Enforcement Hearing Adjudicator
cc: New Westminster Police Department

Date: July 20, 2006

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

Liquor Control and Licensing Branch, Vancouver Regional Office
Attn: James Macdonnell, Branch Advocate
