



**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:	0705961 BC Ltd. Atlantis Club 320 Richards St. Vancouver, BC V6B 3G6
Case:	EH06-128
For the Licensee	Jonathan A. Van Netten Gowling Lafleur Henderson LLP PO Box 49122 Suite 2300, 1055 Dunsmuir Street Vancouver, British Columbia V7X 1J1
For the Branch	Shahid Noorani
Enforcement Hearing Adjudicator	K. McIsaac
Date of Hearing	Written Submissions
Date of Decision	March 5, 2007

## **INTRODUCTION**

The licensee, 0705961 B.C. Ltd., owns a Vancouver establishment, known as the Atlantis Club, and holds Liquor Primary Licence, No. 146969. The licensee has operated the Atlantis Club since January 6, 2006 and on February 8, 2006, a second company, 0712315 B.C. Ltd. (the same owner), was added as a third party operator.

According to the terms of the licence, the Atlantis Club may operate from 7 p.m. to 2 a.m. Monday to Saturday and 7 p.m. to midnight on Sunday, and is subject to the terms and conditions contained in the publication 'a Guide for Liquor Licensees in British Columbia'. Its licensed capacity is 376 persons.

The licensee and general manager agreed to conduct the hearing by way of written submissions.

## **ALLEGED CONTRAVENTION**

The Liquor Control and Licensing Branch (branch), by a Notice of Enforcement Action (NOEA) dated November 9, 2006, alleged that on July 18, 2006 the licensee contravened section 6(4) of the *Liquor Control and Licensing Regulation (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 branch proposes a penalty of a fourteen (14) day suspension of the liquor licence.

## **RELEVANT STATUTORY PROVISIONS**

See Appendix A

## **ISSUE**

The licensee admits that the contravention took place as alleged but disputes the branch's recommended fourteen (14) day suspension. The licensee proposes a four (4) day suspension. Therefore, the only issue to be decided is what penalty, if any, is appropriate.

## **EXHIBITS**

Exhibit No. 1      Branch's documents as outlined in a letter, dated October 16, 2006, to the licensee, and a Notice of Enforcement Action, dated November 9, 2006, which include the liquor inspector's evidence and reasons for recommended enforcement action and penalty

Exhibit No. 2      Licensee's documents as outlined in a letter dated November 24, 2006 and copies of authorities as listed

## **EVIDENCE**

The branch's evidence is summarized as follows:

On July 17, 2006 the Atlantis Club held a DJ/Hip Hop event. Two police officers attended the club early in the evening and met with the bar manager who confirmed that a concert was being held that night and that only 376 tickets were sold. The police officers advised the manager they would be returning later that evening to ensure there were no problems.

The two police officers returned to the club at 2355 hrs. accompanied by two more police officers. As they approached the front door the officers observed one of the door staff members rapidly clicking a mechanical counter and could hear the clicking of the counter. The police did not observe any people entering

or exiting the club to warrant the number of times the counter was being incremented. The staff member informed the officers there were approximately 370 persons inside the club and that the maximum capacity allowed was 370 persons. The door staff members were not wearing nametags. The officers noted there were approximately 50-70 people in the line-ups outside, all appeared to have tickets.

When police entered the club they observed that it was full. The bar area at the south end of the club was full of patrons to the point that movement was impossible without pushing people aside. From the upper gangway where there was an unobstructed view of the patrons, an officer counted approximately 500-550 people. The officer's second count using a mechanical counter, was approximately 650 people. The agent of the DJ advised the police he had a contract to perform for 477 people. The promoter informed the police that 400 tickets were sold online and that it was their practice to oversell. The manager informed the police that he had attempted to keep numbers down, but he could not help it because the promoter had oversold tickets. One of the police officers observed the rear exit to the club was blocked and that a mass of boxes and other debris could slow exiting traffic dramatically. The police ordered that the club be shut down early for safety reasons.

The licensee's evidence is summarized as follows:

Prior to the licensee acquiring the Atlantis Club, it was frequented by members of local gangs to the point that at first, the licensee was reluctant to enter his own business due to fears for his safety. However he made significant efforts to clean up the establishment including replacing the security staff and making it clear to new staff that they were not to allow known gang members in the club.

Since acquiring the club, the licensee has invested considerable time, energy and money in improving the business practices of the club including replacing the

head of security and all front door staff. He has also replaced all broken skylights to reduce noise, installed a noise control unit on the sound system, established a regime of cleaning inside and outside and is planning to install a high resolution camera to record activity inside and outside the club.

The overcrowding incident on July 17, 2006 occurred during a special performance by a world renowned DJ. The ticket agency sold 326 tickets, 6 of which were subsequently refunded and a limited number of tickets were also available at the door.

The performing DJ came with a large entourage in excess of 100 people. While the licensee was aware that the DJ would have some staff and guests with him, he was unaware that such an extensive entourage would be present on the night of the performance. The size of the entourage was both unexpected and unforeseen and it was this that caused the overcrowding.

## **SUBMISSIONS**

### Branch

The branch submits that after becoming licensed in January 2006, the licensee attended the information session for new licensees. This session contains comprehensive and pertinent information concerning the terms and conditions and responsibilities of a licensee. In April 2006, Vancouver city licensing imposed a two-day suspension on the licensee due to complaints from citizens and information received from the Vancouver Police. The liquor licence was suspended for the same period. The licensee received a Licensed Premise Check ticket and subsequent Contravention Notice for staff drinking and permitting a patron who was removed, to return to the club that evening. These issues were discussed at a compliance meeting.

The branch further submits the establishment has a lengthy and very negative history with the Vancouver Police as well as with the branch. This licensee was informed of this history by the area liquor inspector who advised him that he would need to be very diligent to ensure he and his staff strictly adhered to all the terms and conditions of his licence. On the night of this contravention, the door-staff and management were visited early in the evening by police officers who advised them to watch their capacity and also advised them that they would be returning for further inspection later in the evening. When they returned and conducted an inspection, the police officers found the establishment so overcrowded they felt it was a serious public safety issue and ordered the entertainment stopped and the room cleared. The officers also observed that one of the exits was blocked.

The branch submits that management knowingly overcrowded the room to an extremely dangerous level and created a potentially deadly environment by also blocking an exit. The blatant disregard for the safety of patrons, staff, and any emergency personnel requires a much more severe penalty. Therefore a fourteen (14) day licence suspension is recommended as per Schedule 4 Item #15.

#### Licensee

The licensee submits that neither the circumstances of the contravention nor the compliance history warrant imposing a penalty outside the range mandated by Schedule 4 of the Regulations. He has admitted the overcrowding occurred and has accepted full responsibility for the contravention. As well, every effort has been made to comply with the legislation and steps have been taken to discipline and terminate staff such as demoting the manager who was responsible for managing the club on the night of the incident.

The licensee further submits that a lengthy suspension of the business licence for the incident has already been imposed by the City of Vancouver and since the overcrowding incident there have been no further contravention issues. The overcrowding incident occurred during a special performance of a world renowned performer who brought a significant entourage that was both unexpected and unforeseen. Furthermore, as a new owner, a reasonable period of time should be permitted to develop a compliance history before imposing penalties in excess of those mandated by the Regulations.

The licensee submits the fourteen (14) day suspension proposed by the branch is double the maximum suspension for a first contravention and is unprecedented given previous decisions of the General Manager for similar contraventions by other licensees. Even in intentional cases of overcrowding, the General Manager has imposed a penalty within the range. As the overcrowding incident was unforeseen and inadvertent, a lesser penalty of a four (4) day suspension is appropriate in the circumstances.

## **PENALTY**

Pursuant to section 20(2) of the *Act*, having found that the licensee has contravened the *Act*, the *Regulations* 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
- 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 by the minimums set out in Schedule 4 of the Regulations. However, I am not bound by the maximums and may impose higher penalties when it is in the public interest to do so. I am not bound to order the penalty proposed in the Notice of Enforcement Action.

There is no record of prior contraventions, offences or enforcement action of the same type for this licensee or this establishment within the year prior to this contravention. Accordingly, pursuant to the Regulation, Schedule 4, Item 15, the range of penalties for a first contravention is a four (4) to seven (7) day suspension and/or a monetary penalty of \$4,000-\$7,000.

### **ANALYSIS AND DECISION**

The branch's primary goal in bringing enforcement action and imposing penalties is achieving voluntary compliance. Among the factors that are considered in determining the appropriate penalty is whether there is a past history of warnings by the branch and/or the police, the seriousness of the contravention, the threat to the public safety and the well being of the community.

While I acknowledge that the licensee, as new owner of the club, was faced with an establishment that even he was fearful of entering, discussions with liquor inspectors and a warning from police earlier that evening regarding overcrowding, and the particular circumstances, lead me to conclude the overcrowding of the Atlantis Club was a serious contravention that threatened the safety and well being of those inside the Club and the community.

I am satisfied the licensee and manager in charge of the event were well aware of their obligations under the terms of the licence and aware of the possibility of overcrowding that night. Given the establishment's previous history of

overcrowding, the licensee was advised to be diligent in ensuring he and his staff strictly adhered to all the terms and conditions of his licence and I find that five months was a reasonable time to do this.

As well, the licensee had an opportunity to reinforce his understanding of his legislative obligations when he met with city inspectors and C&E officers to discuss contraventions prior to the concert.

On the evening of the concert, police officers warned the manager to watch the numbers and that they would return later in the evening.

I find the possibility of overcrowding on the night of the concert was reasonably foreseeable and expected. The licensee knew the performer would have staff and guests with him. However there is no indication that inquiries were made prior to the concert as to the number of persons in the DJ's entourage or that any number of persons likely to accompany the DJ were taken into account in the sale of ticket. Given the discrepancy regarding the number of tickets sold, I find it is more probable than not that more tickets were sold than the person capacity under the licence. There is also no indication the manager took steps to reduce the number of persons when it was evident the size of the DJ's entourage put the number of persons in the establishment well over capacity.

I find the contravention particularly serious as the blocked exit and debris along with the overcrowding, created an extremely unsafe environment that was well beyond the community standard for safety. I find that the licensee knew the establishment would likely be overcrowded that night and taking a calculated risk, showed a blatant disregard for the terms and conditions of the licence. I therefore conclude that a four (4) day penalty is insufficient to achieve voluntary compliance.

Does the contravention warrant a higher penalty than the range set out in the Regulation? In considering whether a higher penalty should be imposed the licensee's entire compliance history in respect of the contravention is taken into account as well as the particular circumstances giving rise to the taking of action by the general manager.

The evidence indicates this is the first time the licensee has contravened this section of the Regulation as owner of this establishment or as licensee of any previous establishment. There is no evidence of overcrowding in this establishment since. In considering whether to impose a higher penalty I have also taken into consideration the steps the licensee has taken to replace and discipline staff and that he has taken responsibility for the overcrowding.

In comparing this case to previous decisions of the General Manager, I find the branch's proposal of a fourteen (14) day penalty disproportionately higher than other penalties for the same type of contraventions. Even where an establishment was "wilful grossly overcrowded" and tickets were oversold, the maximum seven (7) day suspension was imposed (*Mustang's Bar & Grill*, EH06-069, August 22, 2006). While I find the circumstances of this contravention are sufficiently serious to warrant the maximum penalty, I do not find them so outrageous compared to other cases of overcrowding as to warrant a more excessive penalty at this time.

Accordingly, given the evidence, I find that the maximum seven (7) days suspension is appropriate.

## **ORDER**

Pursuant to section 20 (2) of the Act, I order the suspension of Liquor Primary Licence No. 146969 for a period of seven (7) days, to commence as of the close of business Sunday, April 8, 2007 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 Liquor Primary Licence No. 146969, be held by the branch or the Vancouver Police Department from the close of business Sunday, April 8, 2007 until the licensee has demonstrated to the branch's satisfaction that the suspension has been served.

Date: March 5, 2007

"Kathleen McIsaac"  
Enforcement Hearing Adjudicator

cc: Vancouver Police Department

Donna Lister, A/Regional Manager  
Liquor Control and Licensing Branch

Shahid Noorani, Branch Advocate  
Liquor Control and Licensing Branch

## APPENDIX A

*Liquor Control and Licensing Regulation*, B.C. Reg. 244/2002 (the "Regulation")

### 6 (1) Before the general manager

- (a) approves the issuance of a licence,
- (b) approves a structural alteration of or a change to the size of any area of a licensed establishment,
- (c) approves a transfer of a licence under section 21 (3) of the Act, or
- (d) approves an application for an increase in the person capacity of a licensed establishment,

the general manager must set the person capacity of the establishment, having regard to the public interest and the views of a local government or first nation if provided under section 10 or 53 of this regulation.

(2) Once the general manager has set the person capacity of an establishment in accordance with subsection (1), the general manager must refuse to issue, amend or transfer a licence for that establishment if the occupant load of the establishment is not equal to the person capacity.

(3) Despite subsection (2), if the occupant load of an establishment is less than the person capacity of the establishment set under subsection (1), the general manager may issue, amend or transfer the licence for that establishment after reducing the person capacity to equal the occupant load.

(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).

(5) This section does not apply to a U-Brew, U-Vin, licensee retail store, distillery, brewery or a winery without a winery lounge endorsement.

## Definitions

### 1 (1) In this regulation

...

**"occupant load"** means the least number of persons allowed in an establishment under

- (a) the Provincial building regulations,

(b) the *Fire Services Act* and British Columbia Fire Code Regulation,  
and

(c) any other safety requirements enacted, made or established by the local government or first nation for the area in which the establishment is located;

**"patron capacity"**, in relation to an establishment, means the maximum number of patrons allowed by the general manager in the area of the establishment designated by the general manager under section 12 (3) (b) of the Act as the area where liquor may be sold or served;

**"person capacity"**, in relation to an establishment, means the maximum number of persons allowed by the general manager in the establishment;

#### Schedule 4

##### Penalties for Overcrowding

Period of Suspension (Days)	Monetary Penalty
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##### Contraventions

First	Second	Subsequent	
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**Item 14** Permitting more persons in the licensed establishment than the patron or person capacity set by the general manager and the number of persons in the licensed establishment is less than or equal to the occupant load

1-3	3-6	6-9	\$1 000 - \$3 000
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**Item 15** Permitting more persons in the licensed establishment than the patron or person capacity set by the general manager and the number of persons in the licensed establishment is more than the occupant load

4-7	10-14	18-20	\$5 000 - \$7 000
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