

**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 RSBC c. 267

Licensee:	University of Victoria Students' Society 3815 Finnerty Road Victoria, BC V8W 3P3
Case:	EH06-156, EH06-158
For the Licensee:	Daniel Mildenberger
For the Branch:	Shahid Noorani
Enforcement Hearing Adjudicator:	Sheldon M. Seigel
Date of Hearing:	March 13 & 14, 2007
Place of Hearing:	Victoria, BC
Date of Decision:	April 12, 2007

INTRODUCTION

The University of Victoria Students' Society (UVSS) occupies a building on campus known as the SUB (student union building). The building is a large one-storey structure with a flat roof. The SUB has office and retail components, but the main areas by volume consist of a multi-purpose room called the Michele Pujol Room, a study and gathering place referred to as the Upper Lounge, a pub known as Felicitas and a nightclub-like space known as Vertigos. Felicitas has appended to it, a small, enclosed patio. At one end of the building, there is also a theatre facility. There is a main concourse joining these spaces and leading to the front entrance of the building.

The UVSS holds a single Liquor Primary Licence No. 034024, which entitles it to operate both Felicitas and Vertigos in accordance with the *Liquor Control and Licensing Act (Act)*, and the *Liquor Control and Licensing Regulation (Regulation)*, and the terms and conditions of the licence. By inclusion, the current version of "A Guide for Liquor Licensees in British Columbia" (*Guide*) formed part of the terms and conditions of the licence.

The licence specifies hours of operation are 11:00 a.m. to 1:00 a.m. Monday through Sunday and its person capacity is 500 in Felicitas and 700 in Vertigos.

On August 16, 2006, the licensee applied for a temporary change to its liquor licence in order to accommodate a "welcome back" party for UVIC students.

The branch approved the application and by correspondence dated September 15, 2006, advised of the following temporary changes:

Temporary extension of hours:

Date September 23, 2006 - 2006 SUB party

- Hours extended from 11:00 a.m. - 1:00 a.m. to 11:00 a.m. - 3:00 a.m.

- An additional 30-minute extension, for a total of 60 minutes, to allow patrons to clear the establishment.

Temporary Extension of the Licensed Area:

Date: September 23, 2006 - 2006 SUB Party

- Hours: 11:00 a.m. - 3:00 a.m.

-The red lined area is temporarily extended to the Main Hallway, Multipurpose Room, Upper Lounge, & a patio area as per the submitted plans.

Occupancy Load/Person Capacity of the extended area = 2200

The patio area referred to in the temporary extension is a large irregular area between the front of the SUB and Ring Road. I estimate this area to be between $\frac{1}{4}$ and $\frac{1}{2}$ acre in size. This outdoor space was fenced off for the party, with openings in the fence for ingress and egress.

During the party, the liquor inspector and an undercover police constable attended the SUB and remained on site for a considerable period of time. During their stay, they observed the activities of the licensee and its employees and its contingent of security staff, as well as the patrons.

As a result of the inspection, two contravention notices were issued to the licensee.

ALLEGED CONTRAVENTIONS

The branch alleged that on September 23, 2006, the licensee contravened s. 43(2)(b) of the *Act* by permitting an intoxicated person to remain in the licensed premises.

The branch also alleged that on September 23, 2006, the licensee contravened s. 41(2) of the *Regulation* by contravening the liquor pricing rules. This allegation relates to a sales strategy that may lead to or promote intoxication.

In the alternative to the s. 41(2) allegation, the branch alleged that on September 23, 2006, the licensee contravened s. 12 of the *Act* by contravening a term and condition of the licence. This allegation relates to the maximum size of a single serving of liquor as specified in the *Guide*.

RELEVANT STATUTORY PROVISIONS

Liquor Control and Licensing Act, [RSBC 1996] Chapter 267

12 The general manager may in respect of any licence that is being or has been issued, impose in the public interest, terms and conditions.

43(2) A licensee or the licensee's employee must not permit

- (a) a person to become intoxicated, or
- (b) an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied.

Liquor Control and Licensing Regulation B.C. Reg. 244/2002

41(2) A licensee must not

- (c) use a sales strategy that is likely to promote or encourage intoxication.

Liquor-Primary Licence Terms and Conditions A Guide for Liquor Licensees in British Columbia

- Drink Sizes: You must encourage moderate consumption at all times and follow strict limits on the maximum size of servings.
- Draught Beer: You may serve draught beer in single servings of no more than .5 litre or smaller servings of multiple brands, provided the total served at one time is no more than .5 litres.

ISSUES

1. Did one or more of the contraventions occur as alleged?
2. If so, is a penalty appropriate and what is a reasonable penalty?

EXHIBITS

- Exhibit No. 1: Branch's book of documents.
- Exhibit No. 2: Liquor primary licence No. 034024 excerpt, red lined area.
- Exhibit No. 3: Large copy of layout of facility, showing extension to red lined area.
- Exhibit No. 4: Copy of police constable's notes.
- Exhibit No. 5: Licensee's book of documents.

EVIDENCE

The branch witnesses included the inspector and an undercover police constable. Each of them made personal observations throughout the night of the party. They were in attendance from approximately 10:45 p.m. through

approximately 3:00 a.m. the next day. They described an environment rife with broken bottles and liquor containers scattered throughout the outdoor red lined areas and beyond the facility. They observed more than a hundred persons in line to get in to the facility, many of them intoxicated, boisterous and staggering. Some of the persons in line were consuming liquor while in the line. The inspector and police constable did not see any licensee staff members or security personnel monitoring the line-up. At the entry gate, nobody was checking for identification, containers or bags. A group of five obviously intoxicated patrons, one of them drinking from an open wine bottle, were provided with wristbands and permitted entry.

The branch witnesses entered the establishment and were seated at a table in Felicitas. The undercover constable ordered two bottles of water, and the liquor inspector ordered two beers throughout the night in order to "fit in". Only one of those was ordered in Felicitas. The constable consumed the water but the inspector did not drink from either of the beers.

Over the course of an hour at the table, they observed a regular pattern of male patrons buying pitchers of beer and drinking directly from the pitchers. The males were not given glasses and did not share the pitchers with other patrons. The witnesses saw at least a dozen such incidents of pitchers of beer being consumed as though single servings. The inspector and police constable also observed three female patrons; two inside Felicitas and one just outside the window by their table, who were clearly intoxicated and either passed-out or wavering in and out of consciousness. One of the females inside Felicitas had as many as 25-30 liquor containers on the table in front of her, and she was seen to awake long enough to take a drink and then pass out again. The outside patron fell to the ground "like a limp dead body" on a couple of occasions and each time was picked up and supported by other patrons. The witnesses observed each of these patrons for a significant period of time, during which no staff or security personnel provided assistance or even approached the patrons.

The only staff that these witnesses observed during an hour in Felicitas were selling liquor and beer, with a single exception; a female staff member was observed to make "a feeble attempt" to pick up some empties from a table. The tables were filled with empty and part filled liquor and beer containers.

Outside the building, both inside and outside the licensed area, were piles of vomit, at least two unconscious males, and several sick or violently ill patrons - some of which were being tended to by ambulance attendants and uniformed police officers. The unconscious males were observed over a significant period of time. The ground was littered with broken glass and blood and at least one barefooted female was being treated for cuts to her feet.

Some patrons were sitting on the ground or leaning against the patio fences, some were climbing the fences and the light standards, and some were on the roof of the building. Prior to the sounding of the fire alarm, the inspector and the police constable decided to retreat for reasons of their own safety. Bottles and glasses were being thrown, glass was smashing around them and the crowd was getting out of control. The contingent of uniformed police officers were advised by their superior officer to back away due to the danger. The undercover officer believed there was the potential for a riot.

When the fire department arrived, there remained people on the roof of the building. One male jumped from the building. The witnesses did not know if the jumper was injured as a result.

When the alarm was reset, people were allowed back into the building. The constable said that the police did not break up the party at that time because "they would have been concerned about being able to control the angry crowd."

The inspector and police constable observed a female being interviewed by uniformed police officers inside the red lined area. The female was so intoxicated that she did not know her name or where she lived. They also observed a female outside the red lined area who was vomiting and passing out on the grass. She had apparently lost her purse. Nearby males were seen to be urinating in the bushes and on the building wall.

The constable testified that there were a number of arrests made and "a number of patrons were taken and lodged in police cells until sober, for their own safety."

After the fire alarm, the two witnesses returned to Felicitas and the inspector identified himself. The undercover constable heard a staff member say: "Start passing out these [glasses] to people who are drinking from pitchers because the liquor inspector is here."

The witnesses saw only the one staff member attempt to clear a table. They observed little or no supervision of or even contact with patrons by staff, except to sell them liquor. They saw security personnel helping injured people off of the facility grounds and into the care of ambulance attendants. They did not observe a single patron being ejected by the licensee's staff. The inspector and the constable testified that all of their observations were easily made and the events described were there to be seen by anyone who cared to look. Each of the incidents, they said, should have come to the attention of the licensee's staff.

The licensee called several witnesses. The business operations division manager, responsible for food and beverage and entertainment in the SUB, testified that the party was one of three that the SUB likes to put on: one in September (welcome back), one in April (graduation), and sometimes a smaller mid-year party. He indicated that historically the parties resulted in up to six arrests and that "a lot of people on residence are not of age and are

experimenting with alcohol." At one party, the licensee had a miscommunication and did not close on time - but that situation has since been rectified.

The manager testified as to the considerable planning and preparation that went into the event, and in support of that, pointed to planning documents in Exhibit No. 5. He also identified a document at tab 10, Exhibit No. 5 detailing Saanich Police Department's concerns regarding general drunkenness, liquor service, removal of alcohol from patrons, people accessing the roof of the building, and proper closing times. These concerns date from previous SUB parties.

The manager also said:

- 1500 people is a lot and getting them out in time is difficult and we are not very good at it.
- I don't know if the police recommendations worked for April, but they certainly did not work for September.
- There were too many people trying to get on the roof and many of them gained access. It was impossible to track them down. Many people were seen dropping into the party from the roof.
- One of our volunteers was taking tickets and handing them back to people over the fence. Another of our volunteers was skipping tickets altogether and handing out wristbands.
- We had clearance for 2,200 people. We started with 2,200 wristbands but we were running out so we handed out 200 more. 200 people got in who did not have tickets, so we handed out wristbands to another 200 people because they had tickets.
- We did a number of ejections. If we find drugs or counterfeit bills, we hand those people off to police.
- Sometimes people don't know their limits, or come in already primed.

- There were anxious moments in Vertigos. There were security people who did not want to be in there and wanted to leave. The security people were concerned for their own safety.
- I was not happy. There were lots of issues.
- There were people ripping back doors off of Vertigos to get in. There were people who had gained access to the radio station.
- Some of the staff at the gates were intoxicated.
- We created our own monster.

The manager also testified that he personally came across an intoxicated female in the upper lounge. He noticed her on a walk-through and tried to revive her. He could not get any response and so he asked a security person to help her. He thought she had probably "taken something." He did not notice any other unconscious patrons during the party.

He testified that he knew some patrons were drinking from pitchers, and that he was aware that "did go on from time to time."

He also testified that he did not believe that intoxication was the major problem. He believed the major problem was the overcrowding.

He said:

They were primed when they got in and we did not have a chance to ID them. They were smuggling things in. A lot of the potential over-intoxicated people were not served by us and not granted access by us. When we decided to release 200 more wristbands, we knew we were at capacity or somewhat over that because of the invited guests of the [performing artists]. I made a conscious decision to exceed that capacity when I released 200 more wristbands. I could have denied those 200 more

people entry. We could have kept them out and they would have been a potential problem on the outside, but letting them in proved to be a serious and definite problem on the inside.

The manager said that he understood that overly intoxicated patrons had to be removed, but that there were different levels of intoxication. He described a situation where young athletic males can be loud and boisterous but can speak coherently and are not causing a danger to themselves or others. He said that in that case, staff will recommend:

It is a good idea to put away the beer for a while or we are going to ask you to leave if the behaviour continues.

The licensee called a representative from the university's own campus security, who worked at the party September 23, 2006. He testified as follows:

- Patrons stole beer from the beer tub girl.
- I saw patrons drinking beer from pitchers.
- The police advised me that the facility was 400 people over capacity.
- Some of the security staff were late and were playing catch-up.
- There were intoxicated patrons present, and some who were out of it.
- When it became apparent that there were more people than we were allowed, I told the guys that there was zero tolerance.
- There were too few security, and the gates were unholdable.
- The [private] security company did not sweep the premises.
- The liquor inspector and his friend had three beers each.
- I heard there was 35 people pulled off the roof.
- I removed one male three times. He did not have a wristband.
- There were two intoxicated people passed out [in the exterior red lined area]. Before I got there, they were not dealt with by anyone else.

The licensee also called two representatives of the private security company retained to work at the SUB for the September 23, 2006 party. The owner of the company, and the ranking supervisor for the sub party provided very inconsistent and often conflicting evidence with respect to how unusual the party was (not at all/terribly unusual), whether anyone got into the radio station (none did/quite a few did), how severe the problems were (no real problems/lots of problems), and how many intoxicated people were removed from the line-up (several/none). They were also in disagreement as to how many intoxicated patrons they saw (some/none), and how many unconscious patrons they passed by in the hallways (a couple/none).

One of the security witnesses said the event was very similar compared to the January 2006 party. One said seventy bottles of liquor were confiscated from the site before the party began. These bottles were found stashed in bags and trees and toilets. One of the witnesses testified that there were fights and arguments among the patrons, some of which required the assistance of police and security. One testified that two fire alarms were pulled and there were people on the roof while the evacuated crowd waited outside the building.

One security witness testified that he is [information about witness's size removed, Section 22, FOIPP Act] and he and two other people "were pushed back thirty feet inside the club" by the crowd. He said:

That sort of situation has the potential most definitely for people to get hurt. It is not worth getting injured in that sort of thing. There were probably forty people pushing and they broke the door.

and:

After the fire alarms were pulled, we were watching close to two thousand people and someone was on the roof. Somebody wondered if the building was on fire.

Finally, in the interest of the expediency of the hearing, the branch and the licensee agreed on the evidence that the following two witnesses were to provide:

A volunteer stationed at one of the front gates would say:

- At his gate, volunteers checked identification, ripped tickets and exchanged them for wristbands.
- There were pat-downs being conducted by campus security.
- He saw some of the volunteers were not ripping the tickets and instead were taking them in and passing them intact to others outside the fence.
- Some of the volunteers were giving out wristbands without taking tickets.
- He put a stop to the inappropriate actions of the volunteers.

Another volunteer would say:

- He did pat-downs at one of the gates.
- The pat-downs are conducted for weapons and alcohol and he would watch for intoxication.
- After he did that for a while, he was moved to the side fence to deter fence jumpers who were gaining access to the party.

The branch and the licensee agreed that the evidence of the two volunteers should be accepted as fact.

SUBMISSIONS

The licensee submitted the following:

- The licensee has a good history of compliance.
- In addition to its year-round licence, the licensee has traditionally sought and received three licence extensions per year for parties.
- These special events are meticulously planned with input from police, fire, and campus security.
- There were considerable professional security staff on hand on September 23, 2006.
- Numerous gatecrashers and the fire alarm compromised the licensee's ability to control the event.
- The *Act* does not provide a definition of *intoxicated* or *Intoxication*...therefore, the licensee cannot be faulted for having a policy that acknowledges varying degrees [of intoxication].
- Section 43(2) of the *Act* does not make it an offence to permit intoxicated persons to remain in the establishment, but rather to remain in the areas where liquor is sold, served or otherwise supplied. Persons found in the exterior red lined areas should be therefore excluded from relevance.
- There is no clear evidence of the elements of s. 43(2).
- Security staff was in place inside Felicitas notwithstanding that the inspector and the police constable did not see them.
- The licensee did not permit intoxicated patrons to remain as it exercised due diligence in the context of the event.
- *Permitting* does not occur in an instant, and there is insufficient evidence to establish that a reasonable amount of time had elapsed during which any intoxicated person remained on the premises before being ejected or vacating.

- The patrons which were the subject of the allegations were not disruptive or violent, which would have dictated a faster response by the licensee.
- The patrons observed to appear intoxicated during the fire alarm evacuation did not re-enter the facility and therefore the licensee must be excused from any obligation to eject them.
- The allegation under s. 41(1)(b) of the *Regulation* cannot apply simply on the basis of selling beer in pitchers. Doing so is not a sales strategy that is likely to promote or encourage intoxication.
- There was no evidence of a single individual consuming an entire pitcher of beer. It is likely that such individuals did share.
- The inclusion of the allegation of a contravention of s. 12 of the *Act* is not a lesser included offence relative to s. 41(2)(b) of the *Regulation*. Therefore, this allegation is defective and should be considered a nullity.
- The atmosphere that [the licensee] attempts to provide to its patrons was hijacked that evening by a rowdy minority. The licensee is not an insurer against bad behaviour by its patrons. The licensee and its staff performed as they should have in keeping the patrons safe. This was a considerable feat considering the event was under siege by uninvited guests that tended to be male, aggressive and generally not respectful of authority...Broken glass, blood, vomit and urine are not the high points of any university event.
- In the event that the General Manager finds that a contravention has occurred, an appropriate penalty would be one that affects only licence extensions and not the day-to-day operations of the licensee, which have been to date, clean of any contraventions.

ANALYSIS AND DECISION

"Broken glass, blood, vomit and urine are not the high points of any university event," submitted counsel for the licensee. I agree. Unfortunately, this event

also provided severe intoxication, reckless and dangerous behaviour, and a considerable waste of community resources.

I accept, generally, the evidence of the liquor inspector and the under cover police constable as to the atmosphere and events they witnessed at the SUB party.

I do not accept, generally, the evidence of the security personnel witnesses to the extent that they contradicted each other or the branch's witnesses.

I accept much of the evidence of the licensee's manager. In particular, I accept that the police recommendations did not work, that it was impossible to track down the many people who gained access to the roof, and that the security staff was concerned for their own safety.

I find that the licensee's representatives at the entrance to the party acted irresponsibly and failed to perform the primary function with which they were entrusted, by handing out wristbands and allowing admission to hundreds of uninvited and unpaid guests. This and the failure of the licensee to effectively prohibit gatecrashers and persons dropping in from the roof led to a significant overcrowding issue that complicated the uncontrolled environment.

I accept the manager's evidence that he knew patrons were drinking from pitchers and that so doing had been a problem in the past. I accept his evidence that some of the volunteers staffing the gates were intoxicated. I accept the manager's evidence that he knew the establishment was over capacity when he released 200 additional wristbands, effectively inviting 200 more people into the party. I agree with the manager when he testified that: "We created our own monster."

I find that the evidence discloses multiple cases of individuals who were intoxicated, were present in the licensed establishment, and who were through the action and/or inaction of the licensee permitted to remain.

Specifically, I find that the evidence discloses the following:

A female patron observed through the window by both of the branch witnesses was intoxicated beyond her ability to stand or remain conscious. She was at all relevant times located on Felicitas patio, and at all relevant times was there to be seen by any of the licensee's staff who were present or inclined to see her. She was intoxicated in the establishment and permitted to remain in that state and location for a considerable period of time.

Two female patrons, observed at individual tables inside Felicitas, by both the liquor inspector and the constable, were intoxicated beyond their ability to control their bodies or remain conscious. They were at all relevant times inside the licensed establishment and there to be seen by any of the licensee's staff who were present or inclined to see them. They were intoxicated and permitted to remain in that state and those locations for a considerable period of time.

A male patron observed by both of the branch witnesses was intoxicated beyond his ability to remain conscious. He was at all relevant times inside the red lined area of the licensed establishment and there to be seen by any of the licensee's staff who were present or inclined to see him. He was intoxicated and permitted to remain in that state and location for a considerable period of time.

In the case of each of these individuals, I find that the licensee had an obligation to observe their behaviour and act to remove the intoxicated patron safely and in a timely fashion. The argument that the licensee's employees may not have seen them, or there was simply insufficient time to react, must fail. In each case, the evidence discloses ample time for the condition of the patron to have been

observed and addressed. The licensee cannot hide behind the excuse that none of its employees saw the behaviour. I find the licensee had an obligation to monitor and supervise its licensed establishment and its patrons. I find that the licensee failed to satisfy that obligation.

Counsel for the licensee argued that the *Act* does not make it an offence to permit intoxicated patrons to remain *in the establishment*, but rather to remain in the areas where liquor is sold, served or otherwise supplied. Counsel then pointed out that the intoxicated male on the bike rack and the three males leaning against the fence may have been inside the red lined areas but no liquor was sold served or otherwise supplied in those areas.

I do not accept this interpretation. The normal and ordinary meaning of the section taken as a whole relates that intoxicated patrons are not to be permitted to remain in the areas that are normally occupied by patrons who are drinking liquor that has been supplied within the licensed area.

With respect to the allegation that the licensee breached s. 41(2) of the *Act*, I find no contravention to have occurred. I agree with the licensee that failing to provide glasses with a pitcher of beer cannot fairly be construed as a pricing strategy that encourages binge drinking and intoxication. In my view, this provision of the *Act* was not intended to address the circumstances that the branch witnesses found on this occasion.

I do find, however, that the branch's alternative argument does succeed. The evidence discloses in no uncertain terms that the licensee knew that patrons of the establishment treated pitchers of draught beer as single serving beverages. I find that pitchers were handed out without glasses, and with full knowledge that individual patrons might consume the contents of those pitchers. I also find that the pattern of drinking directly from pitchers and treating them as single servings was obvious for anyone who cared to see what was occurring in the establishment at the relevant time.

The licence states on its face that the terms and conditions to which the licence applies includes the terms and conditions contained in the *Guide*. Those provisions include at p.12:

You must encourage moderate consumption at all times and follow strict limits on the maximum size of servings.

and at p.13:

You may serve draught beer in single servings of no more than .5 litre or smaller servings of multiple brands, provided the total served at one time is no more than .5 litres.

Counsel for the licensee submitted that the Notice of Enforcement Action relating to this allegation is a nullity because it incorrectly characterizes the allegation as a "lesser but included contravention." No evidence was provided by the branch with respect to the status of this allegation as lesser but included. The relevant provision of the NOEA states:

If the General Manager does not make a finding of contravention on the above alleged contravention(s), the lesser but included contravention(s) below may be considered in the alternative. The lesser but included contravention(s) are as follows: *Lesser but included Contravention(s)*: Contravention of a term and condition. *Section of the Act or Regulation*: s. 12. *Date and Time of Contravention(s)*: September 23, 2006, 11:30 p.m. *Proposed penalty*: 3-day suspension.

Whether the s. 12 provision is lesser but included or an independent provision is moot. The branch provided adequate and typical notice of the allegation and the licensee responded to that allegation with the same commitment that it demonstrated with respect to the other allegations. I find that the allegation is procedurally regular.

The licensee claimed that it should be exonerated from liability because it exercised due diligence. Due diligence is a complete defence to an allegation if it is proven. The onus is on the licensee to demonstrate on a balance of probabilities that it took all reasonable steps to prevent the contraventions from occurring.

I find that the due diligence that must be tested relates to the alleged incidents on the time and date and at the location at which they allegedly occurred. The test therefore is not whether the licensee is duly diligent with respect to the normal operation of the establishment, but whether the licensee was duly diligent with respect to the conditions that existed at the time and at the place of the allegations. In this instance, the test must relate to the temporary licence extension and the party of September 23, 2006.

Counsel for the licensee pointed to the copious planning memoranda produced by the manager for the welcome back party of September 23, 2006. I find that the evidence of planning is sufficient to establish that the manager turned his mind to some of the potential issues that he expected to confront during the party. I find, however that the actual implementation of those plans left much to be desired. The licensee chose unprepared or unreliable volunteers to be gatekeepers - or perhaps it simply failed to train those volunteers. The licensee failed to retain security personnel who were knowledgeable about liquor laws - or the licensee failed to assign the security staff appropriate duties. Perhaps the licensee simply failed to follow through with the execution of the well-meaning plans. I find there was inadequate security on site. I find there was inadequate

supervision on site. I find that there were inadequate back-up systems to handle what might have reasonably been anticipated. I find that the licensee did not adhere to its plan when it decided to admit hundreds more patrons that it had prepared for. In all, I find that the licensee has fallen far short of establishing due diligence to the requisite standard. I find, rather that the licensee has established that it exercised very little diligence at all in the execution of its obligations on September 23, 2006. In my view, the licensee and its employees willingly shut their eyes to the obvious and allowed a dangerous situation to continue and escalate without concern for the consequences, including the safety of its patrons and the contravention of the liquor laws.

I find that contraventions of s. 43(2)(b) and s. 12 of the *Act* have 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
- Cancel the liquor licence
- Impose terms and conditions to the licence or rescind or amend existing terms and conditions
- Impose a monetary penalty
- Order the licensee to transfer the 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*. 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.

In light of the significance of the contraventions in terms of the extreme nature of the intoxication, and the almost complete lack of control over the licensed environment, I have no doubt that a penalty is warranted.

For the September 23, 2006, contravention of s. 43(2)(b) of the *Act*, the branch recommended a seven (7) day suspension.

The range of penalty for a first contravention of s. 43(2)(b) of the *Act* in accordance with Schedule 4 of the *Regulation* is four (4) to seven (7) days suspension and/or a monetary penalty of \$5,000-\$7,000.

For the September 23, 2006, contravention of s. 12 of the *Act* as it relates to drink sizes, the branch recommended a three (3) day suspension.

The range of penalty for a first contravention of s. 12 of the *Act* in accordance with Schedule 4 of the *Regulation* is one (1) to three (3) days suspension and/or a monetary penalty of \$1,000-\$3,000.

I find that the penalties recommended by the branch are inadequate under the circumstances. Discretion as to penalty is afforded to the adjudicator sitting as the General Manager. This discretion is designed to allow the penalty to fit the contravention, and permit the General Manager to consider relevant factors that arise during the hearing. These factors may be positive or negative.

In considering a penalty, I was alert to the need to separate the evidence of what I consider to have been a fundamentally dangerous situation, from the evidence of the specific contraventions. I find that the danger endemic in the party of September 23, 2006, was for the most part caused directly by licensee's actions

(or lack of responsible actions) that led to the proven contraventions. To the extent that the danger was caused by individuals, other than the several upon whom the evidence was focussed, I find that the contraventions were systemic and that the individuals who may have contributed to the dangerous environment were directly empowered by the licensee's behaviour.

A licensee should have known that the social impact of allowing this sort of chaotic atmosphere to reign over a licensed establishment would have significant public safety repercussions. I find that the licensee knew or ought to have known from the start of the evening of September 23, 2006, that the systems and controls in place were inadequate and deeply flawed. The licensee should have taken immediate steps to reduce the risk of danger to the public.

I find that once the party was underway, the licensee knew or ought to have known that the situation was becoming dangerous and the liquor licence requirements were not being met. Further action was then required to minimize risk to public safety. This might have been done by:

- Restricting the number of patrons allowed into the establishment.
- Reducing the number of beer stations and bars operating during the party.
- Closing one or more of the areas that was difficult or impossible to control and monitor (i.e., temporary outside patio, hallways of the SUB).
- Increasing security.
- Calling the police for additional help.
- Shutting off liquor service before the crowd became unmanageable.
- Ceasing to serve beer jugs.
- Surveying the premises for intoxicated patrons and seeing to their orderly removal.

I find that the licensee did not do any of the above, or take adequate or any action to minimize the danger to the public or reduce the likelihood of contravening the *Act* and *Regulation*. To the contrary, I find that the licensee

actively contributed to the danger by knowingly permitting hundreds more patrons than were allowed under the temporary extension to the licence into the party and turning its back on the contraventions that its employees were committing.

I find that the recommended penalties simply do not reflect the magnitude of the contraventions. I find the widespread service of full beer jugs well in excess of maximum single serving sizes, and the permitting of large numbers of intoxicated persons to remain in the licensed establishment to be extreme contraventions of the *Act* and *Regulation*.

I find the facts that prove the commission of the contraventions are among the most egregious that I have heard. The penalty should reflect that finding.

I find the appropriate penalty for the September 23, 2006, contravention of s. 43(2)(b) of the *Act* is a seven-day suspension and a monetary penalty of \$7,000.

I find the appropriate penalty for the September 23, 2006, 2006, contravention of s. 12 of the *Act* as it relates to drink sizes is a three-day suspension and a monetary penalty of \$3,000.

ORDER

Pursuant to section 20(2) of the *Act*, I order a suspension of the Liquor Primary Licence No. 034024 for a period of ten (10) days to commence at the close of business on Friday April 27, 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 *Regulations*).

To ensure this order is effective, I direct that the liquor licence be held by the branch or the Saanich Police Department from the close of business on Friday April 27, 2007, until the licensee has demonstrated to the branch's satisfaction that the suspensions have been served.

Pursuant to Section 20(2) of the *Act*, I order the licensee to pay a monetary penalty of ten thousand dollars (\$10,000) relating to Liquor Primary Licence No. 034024. The monetary penalty must be paid no later than the close of business on May 8, 2007.

[ORIGINAL SIGNED]

Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: April 12, 2007

cc: Saanich Police Department

Liquor Control and Licensing Branch, Victoria Headquarters
Attn: Ron Rodrigue, A/Regional Manager

Liquor Control and Licensing Branch, Surrey Regional office
Attn: Shahid Noorani, Branch Advocate