



**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:	0781385 B.C. Ltd dba Arlington Hotel (Nanoose Bay) 2414 Island Hwy Nanoose Bay, BC V9P 9E2
Case:	EH10-120
For the Licensee:	Paul Manhas
For the Branch:	Bode Fagbamiye
Enforcement Hearing Adjudicator:	George C.E. Fuller
Date of Hearing:	March 3, 2011
Place of Hearing:	Telephone Conference
Date of Decision:	April 21, 2011

The Corporate Licensee, 0781385 B.C. Ltd. (“the licensee”) owns and operates an establishment known as the Arlington Hotel (Nanoose Bay) in Nanoose Bay, BC. The licensee holds Liquor Primary Licence No. 012860. The authorized representative of the Licensee is Paul Manhas.

The licence is, as are all liquor licenses issued in the province, subject to the terms and conditions contained in the publication “*Guide for Liquor Licensees in British Columbia*” (the “*Guide*”).

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Liquor Control and Licensing Branch’s (“the Branch”) allegations and proposed penalties are set out in the Notice of Enforcement Action (“the NOEA”) dated October 25, 2010.

The Branch alleges that on September 23, 2010, the Licensee contravened section 50 of the *Liquor Control and Licensing Act* (the “Act”) by permitting entertainment in the establishment that is contrary to the terms and conditions of the licence. The proposed enforcement action is a \$5,000 monetary penalty. The penalty range for a first contravention of section 50 of the *Act* is a four to seven day licence suspension and/or a \$5,000 to \$7,000 penalty (Item 34 of Schedule 4, of the *Regulation*).

The Licensee does not dispute that the contravention occurred. However, it disputes the proposed penalty. The Branch and the Licensee agreed that the hearing would take place by teleconference.

RELEVANT STATUTORY PROVISIONS

Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267

Entertainment

50 (1) If entertainment is permitted under the regulations or the terms and conditions of a license, a municipality or regional district may restrict or prohibit any or all of the types of entertainment permitted.

(2) Without limiting section 12, the general manager may, at the time of the issue of a license or at any time during the term of the license, impose as a condition of it the restrictions and limitations that the general manager considers necessary on any type or form of entertainment performed or carried on in the establishment for which the license is issued.

ISSUES

1. Did the contravention occur?
2. If so, is a penalty warranted under the circumstances?
3. If a penalty is warranted, what is the appropriate penalty?

EXHIBITS

The following documents were submitted for consideration:

- Exhibit 1 The Branch's Book of Documents, tabs 1 to 11

- Exhibit 2 Letter dated March 1, 2011, from Elizabeth M. Barker, Registrar Enforcement Hearings to the Licensee, confirming that the Licensee had admitted that on September 23, 2010, it contravened section 50 of the *Act* by permitting entertainment in the establishment that is contrary to the terms and conditions of the licence, that the Licensee disputed the proposed penalty, that he was no longer calling any witnesses, and that he would be the only one speaking on behalf of the Licensee at the enforcement hearing.

EVIDENCE

As previously noted, the Licensee does not dispute that the contravention occurred as alleged and, therefore, the Licensee is deemed to accept the facts as put forward by the Branch with respect to the issue of whether the contravention occurred. The Licensee has, however, made submissions in respect to the appropriateness and fairness of the penalty which the Branch has recommended.

In light of the above, the evidence can be summarized as follows:

The Arlington Hotel operates a pub in Nanoose Bay, BC. The main inside area of the bar is made up of one rectangular shaped room and on the night that the alleged contravention occurred, there was a small stage area set against the wall which also houses the main entrance door.

On Thursday, September 23, 2010, Liquor Inspectors 1 and 2 were working together in a covert capacity in the Nanoose and Nanaimo areas. They had received information that there recently had been difficulties with licensed premises complying with the *Act* and *Regulations*, specifically as those provisions applied to establishments providing entertainment by strippers/exotic dancers.

At approximately 9:10 p.m., the inspectors entered the licensed premises in order to observe a "Ladies Night" event that had been advertised in the Nanaimo area earlier that week. Upon paying a cover charge, the inspectors entered the bar and sat at a table which had a clear, uninterrupted view of the main bar, the stage area, the entrance to the washrooms and the door to the patio area.

At that time, the bar was very quiet, however, around 10:00 p.m. a group of females involved in a stagette arrived. The show commenced at approximately 10:30 p.m. Between 10:00 and 10:30 p.m., the two male dancers circulated and chatted with patrons through the bar and both were fully clothed during this period.

One of the dancers acted as a master of ceremonies and during his introduction he advised the patrons that the performers would "get up close and personal" with them. One of the dancers took to the stage dressed as a firefighter. He performed briefly on the stage removing some of his upper clothing and then moved off the stage to continue his performance in the audience seating area. During his performance, which lasted approximately 20 minutes, the inspectors noted that while the performer continued to remove the remainder of his clothing, he moved amongst the audience kissing seven different patrons; went behind the service bar and kissed a female server, during which time the master of ceremonies announced "what rules, no rules, break the rules"; picked up a female patron and wrapped her legs around his waist and began gyrating his hips simulating sexual intercourse; placed a female patron on her back on the dance floor area and simulated sexual intercourse in the missionary position; took a female patron onto the stage area and along with the master of ceremonies, encouraged her to rub oil onto his naked body and place her hand underneath the towel he was wearing around his waist, onto his genital area.

At approximately 10:55 P.M., when the first performer concluded his act, the inspectors departed the Licensee's establishment without identifying themselves to any staff members. They drove to a nearby rest area, approximately three minutes from the Arlington Hotel and recorded their observations with regard to the events that had occurred at the Licensee's establishment.

On Monday, September 27, 2010, Inspector 1 met with the general manager of Nanaimo Entertainment which represents a consortium of pubs, nightclubs and liquor stores, including the Arlington Hotel, and issued to him contravention notice B009591, citing a contravention of section 50 of the *Act*. Inspector 1 had intended on reviewing Branch policy with regard to performances by exotic dancers and other adult oriented performers, however, the general manager advised her that he had recently reviewed the Guide and was now fully aware of the Branch's expectations.

On September 30, 2010, Inspector 1 made a request of the Licensee to deliver to the Branch all documents that provided details of how employees at the establishment were trained, to ensure that strippers/exotic dancers would comply with the terms and conditions of the Liquor Licence no. 012860. In response to this request, the Licensee provided a document entitled "Employee Handbook" and it was noted that there is no specific reference to the control of the conduct of strippers/exotic dancers working within licensed premises contained in that document.

With respect to the reasons for recommending enforcement action in this case, the inspector noted that any establishment, whether it be liquor primary or food primary, the Licensee has a responsibility to manage and control the behaviour of its patrons. As a result, the Branch imposes certain conditions on certain types of acts in certain establishments and one of those is the conduct of strippers and exotic dancers. On the night in question, there appeared to be little or no guidance given to these exotic dancers, as to what was permitted and what was not permitted.

Inspectors 1 and 2 had both previously seen these dancers perform in other establishments and they were well aware of the rules. Ordinarily, the introduction at the start of the evening was to let patrons know that if the dancers were touched, the bar would be closed. On this occasion, however, it was clear that the dancers were going to be out of compliance from the outset, given that the opening announcement specifically informed the patrons that they planned to "get up close and personal", which is a clear contravention of the guidelines, as set out by the Branch.

With respect to the reasons for the proposed enforcement action of a \$5,000 monetary penalty, Inspector 1 noted that the Licensee's premises were basically a neighbourhood bar that had no compliance history. The premises occasionally had karaoke, live music and ladies' nights, but this Licensee generally operated in a satisfactory manner. In this case, however, there were multiple contraventions with the various acts of the dancers. This was not just a case where a dancer came down and kissed a number of the patrons, there were multiple contraventions in that one evening. Inspector 1 indicated that she was conscious of the fact that licensees, ordinarily, do not like to have their licenses suspended. It is the last thing most licensees want. When such enforcement action is meted out, there is a significant impact on not only the licensee's business, but also the livelihood of staff that work there. Inspector 1 further stated that she did not want to add insult to injury by recommending what she thought would be a fairly strict penalty of a suspension and, therefore, having reviewed all the circumstances, she determined that a \$5,000 monetary penalty was reasonable in all of the circumstances, particularly when the \$5,000 amount was the minimum monetary penalty.

SUBMISSIONS OF THE BRANCH

The Branch Advocate notes that the contravention occurred, as alleged by the Branch. Accordingly, the Licensee has contravened section 50 of the *Act* by breaching the terms and conditions of its licence in permitting patrons to touch performers and engaging in sexual simulations. Furthermore, the male performer in this case touched and was touched by staff of the Licensee. It was clear, therefore, that the Licensee had not established methods of dealing with these types of situations to guide the staff of the Licensee.

With regard to the defence of due diligence, the Branch Advocate submitted that, notwithstanding that the Licensee may have put measures into place to ensure that this activity would not occur again, it was trite law that such preventative measures must be in place at the time of the contravention and not after. Here it was clear that the Licensee did not provide direction to staff and noted that, although the Licensee had created and published policies for staff, those policies did not incorporate any directions

with respect to exotic dancing/adult entertainment. In this case, the Licensee could have done a great deal more training and supervising as it was obvious that the staff in this case were not equipped to intervene and control the situation in accordance with the Guide and, therefore, the Licensee was not entitled to the defence of due diligence in this case.

With respect to an appropriate penalty, the branch advocate noted that the Branch was recommending \$5,000 which was the minimum monetary penalty. It could have been a penalty of up to \$7,000 or even a combination of the monetary penalty and a suspension. Accordingly, as there were no mitigating factors in this case, he recommended a sanction of a \$5,000 monetary penalty was reasonable to bring this Licensee into voluntary compliance.

SUBMISSIONS OF THE LICENSEE

The Licensee acknowledged that the contravention occurred as alleged and there was no excuse for it occurring. He noted that the exotic dancers are permitted by the *Act*, but acknowledged that there should not have any touching between the dancers and the patrons.

As to penalty, the Licensee requested a four day suspension of the licence as opposed to a monetary penalty. Although this was the reverse of what most Licensees would prefer, the Licensee indicated that the business was deserving of that option given that the establishment had a perfect compliance record of more than 50 years.

REASONS AND DECISION

The Licensee has admitted to the contravention. Having considered all of the evidence, I find that on September 23, 2010, the Licensee contravened section 50 of the *Act*, by permitting entertainment in the establishment that is contrary to the terms and conditions of the licence.

DUE DILIGENCE

The Licensee is entitled to a defence to the contravention if it can be shown that it was duly diligent in taking reasonable steps to prevent the contraventions from occurring. The Licensee must not only establish the existence of procedures to identify and deal with problems, but must ensure that those procedures are consistently acted upon and that problems are dealt with.

Here, there is virtually no evidence upon which I can find that the Licensee was duly diligent. In fact, the evidence is to the contrary. In this regard, I note that there was no effective control, not only of the entertainers, but the patrons as well. Furthermore, and perhaps more damning, is the fact that the Licensee's employees not only failed to control the entertainers and patrons, but the female server behind the service bar was transformed from observer to participant in the contravention.

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 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 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, and I am not bound to order the penalty proposed in the Notice of Enforcement Action.

The branch's primary goal in bringing enforcement action and imposing penalties is to achieve voluntary compliance with the *Act*, the *Regulation*, and the terms and conditions of a licence. 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 wellbeing of the community.

There is no record of prior proven contraventions of the same types for this Licensee within the year preceding this incident. Schedule 4, item 34 of the *Regulation* sets out penalties for the first contravention of this kind (a license suspension of four to seven days and/or a monetary penalty of \$5,000 to \$7,000) for breaches of section 50 of the *Act*. The branch has recommended a \$5,000 monetary penalty.

In its submissions with respect to penalty, the Licensee was appropriately contrite and asked that I consider meting out a four day suspension rather than the recommended \$5,000 monetary penalty. This submission was based upon the fact that the establishment had been contravention-free for approximately 50 years. Having thoroughly considered the matter, I am not prepared to accept the Licensee's plea. First, there were multiple contraventions throughout the performance of the entertainers but, more significantly, a staff member of the establishment freely joined in those contraventions.

In any event, the branch has shown some leniency with respect to the proposed penalty in this case. The branch has proposed the minimum monetary penalty of \$5,000 for the contravention of section 50 of the *Act* and I find, therefore, that the same is appropriate, necessary and reasonable in order to bring the Licensee into compliance in this case.

ORDER

Pursuant to Section 20(2) of the *Act*, I order that the licensee pay a monetary penalty of Five Thousand Dollars (\$5,000) to the General Manager of the Liquor Control and Licensing Branch on or before May 20, 2011.

Original signed by

George C.E. Fuller
Enforcement Hearing Adjudicator

Date: May 16, 2011

cc: Liquor Control and Licensing Branch, Victoria Regional Office
Attn: Gary Barker, Regional Manager

Liquor Control and Licensing Branch, Victoria Regional Office
Attn: Bode Fagbamiye, Branch Advocate