



**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:	Eagle Pass Enterprises Ltd. dba Revelstoke Motor Inn 112 1 st Street East Revelstoke, BC V0E 2S0
Case:	EH11-009
For the Licensee:	F. Brady Beruschi General Manager, Regent Hotel
For the Branch:	Bode Fagbamiye
Enforcement Hearing Adjudicator	Sheldon M. Seigel
Date of Hearing:	Written Submissions
Date of Decision:	June 7, 2011

INTRODUCTION

The Corporate Licensee operates the Revelstoke Motor Inn in Revelstoke under Liquor Primary Licence No. 139459. The licence indicates that liquor may be sold from 11:00 a.m. to 1:00 a.m., Monday through Saturday and 11:00 a.m. to midnight on Sunday.

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*).

The Branch's allegations and proposed penalties are set out in the Notice of Enforcement Action (the NOEA) dated March 18, 2011.

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Branch alleges that on January 08, 2011, the Licensee contravened s. 50 of the *Liquor Control and Licensing Act* (Act) by allowing prohibited acts or prohibited entertainment by exotic dancers or strippers. The *Guide* describes the terms and conditions that apply to a licence that allows for such entertainment. In this case the Branch alleges; exotic dancers were performing both in the approved areas and outside the approved areas, the dancers were allowed to deliberately engage the patrons in the performance both on and off the stage, there was live realistic and simulated sex acts throughout all the performances, and at no time did any staff member stop the performance or any patron for engaging in the performance even though they did witness it.

The proposed penalty for contravening s. 50 is a \$5,000 monetary penalty. The proposed penalty is within the range provided in item 34 of Schedule 4 of the *Liquor Control and Licensing Regulation (Regulation)* for a first offence of this kind.

The Licensee admits that the contraventions took place, but disputes the proposed penalty. The Branch and the Licensee agreed that the hearing would take place by way of written submissions.

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 licence, 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 licence or at any time during the term of the licence, 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 licence is issued.

Liquor Primary Licence Terms and Conditions: A Guide for Liquor Licensees in British Columbia (at page 31)

Exotic dancers and/or adult-oriented performers may not:

- engage in live, realistic or simulated sex acts, or in any acts involving coercion or violence, either simulated or real
- insert any object into, or extract any object from, the vagina or anus
- urinate or defecate while performing
- touch, share food and beverages, or pass objects to members of the audience
or
touch or share food and beverages with other performers
- dance/perform on table tops or other areas outside the approved areas
- deliberately engage a patron(s) in an adult-oriented performance or activity
- perform while intoxicated

ISSUES

1. Did the licensee contravene the *Act* as alleged?
2. If the contravention occurred, is a penalty required under the circumstances of this case, and if so, what penalty is appropriate?

EXHIBITS

Exhibit 1: The Branch's Book of Documents with 10 tabs.

Exhibit 2: The Licensee's correspondence including submissions dated May 4, 2011.

EVIDENCE

The NOEA documents the inspector's observations during a visit to the licensed establishment on January 8, 2011. It describes the inspector's payment of a cover charge, entrance, and establishment of a seating position with a clear view of the stage. The inspector observed two female exotic dancers performing a total of three performances over a period of approximately 80 minutes. The dancers were identified by name over the sound system. The inspector observed the dancers touch, rub, or slap male and female patrons. Each of the dancers also instigated and allowed patrons to touch, kiss, lick, or rub the dancers both on stage and off. One of the dancers sat on a patron's lap off of the stage, while naked and performing. The inspector also described the presence of a male employee identified by a name-tag, the manager of the establishment (known to the inspector), and two servers, each of whom witnessed some or all of the touching between dancers and patrons. In one case, the male employee with the name-tag applauded when a dancer invited a female patron to lick her breast.

The Licensee in its correspondence (Exhibit 2) acknowledged that the establishment contravened the *Act* by permitting prohibited acts, and stated that the bar manager was terminated immediately upon the Licensee being notified of the contravention. The Licensee also said that it is no longer contracting exotic entertainment, has laid-off four employees as a result of that change, and is now operating as a games and sports lounge.

SUBMISSIONS

The Branch submits the Licensee contravened s. 50 of the *Act*. Control over the entertainment is a factor that may affect the Licensee's ability to effectively manage the establishment, and the Branch provides rules for the conduct of exotic entertainment. The Branch submits that the exotic dancers performed outside of the approved area (as well as within it), engaged patrons in performances contrary to acceptable conduct, and performed live, realistic, and simulated sex acts throughout all of the performances. The Branch also points out that management and employees of the establishment observed the performances and took no steps to prevent the prohibited acts.

The Branch submits that a monetary penalty of \$5,000 is warranted in order to send a clear message to the Licensee, the employees, and the community that the Branch takes this matter seriously. The Branch adds that a monetary penalty is more appropriate than a suspension in this instance because the licence is only operated seasonally and a suspension would not be as effective a deterrent to further contraventions.

The Licensee submits simply that a \$5,000 fine is excessive in these difficult economic times and a suspension of operations would be more acceptable.

REASONS AND DECISION

None of the evidence is controverted. Accordingly, I accept as fact the description of the events observed by the liquor inspector as documented in the NOEA and the remedial actions and changes to the operation of the establishment described by the Licensee.

The evidence discloses that two dancers over the course of a total of three performances did touch members of the audience and did deliberately engage patrons in an adult-oriented performance or activity contrary to the *Guide*. The relevant terms of the Guide represent restrictions on performances described by s. 50 (2) of the *Act*.

The Guide says at p. 31: "*Performances must be confined to the stage or other approved areas (these areas will be noted on your liquor licence). No performing is allowed in the audience area.*" The evidence discloses that the dancers did perform in the audience area. There is no indication that the Licensee obtained approval for performances to occur in any approved area other than the stage.

There is no indication that the Licensee or operating mind was duly diligent with respect to preventing this contravention from occurring.

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 may do any one or more of the following:

- 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 NOEA.

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.

There is no record of prior proven contraventions, offences or enforcement actions of the same type for this licensee or this establishment within the year preceding this incident. The range of penalties for a first contravention of section 50 of the *Act* pursuant to the *Regulation*, Schedule 4, item 34, is a suspension of four to seven days or a monetary penalty of \$5,000 - \$7,000.

The only evidence of the establishment being a seasonal operation is the statement to that effect by the liquor inspector. There is no reference to whether that alleged seasonal nature relates to the establishment in its earlier format with exotic dancers, or its later format as a games and sports lounge. The licensee neither contests nor clarifies the inspector's statement.

The *Regulation* stipulates the range of penalties for a first contravention of this type whether suspension or monetary, and where monetary provides \$5,000 as the bottom of the range. Absent detailed evidence and submissions from the Licensee to the contrary, I cannot determine that \$5,000 is an excessive penalty for this contravention. I note also that actions resulting in the contravention in this instance were sustained or repeated over a protracted period of time and passively accepted by management and

employees. I therefore find that a monetary penalty of \$5,000 is reasonable for this contravention.

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 July 6, 2011.

Original signed by

Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: June 7, 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