



**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: Fort Chelsea Holdings Ltd.
dba Coachman Inn
229 Gorge Road East
Victoria, BC V9A 1L1

Case: EH11-163

For the Licensee: Miles Stanley and Jessica Brillinger

For the Branch: Bode Fagbamiye

Enforcement Hearing Adjudicator: Dianne Flood

Date of Hearing: July 18, 2012

Place of Hearing: Victoria, BC

Date of Decision: September 21, 2012

**Liquor Control and
Licensing Branch**

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INTRODUCTION

The Licensee is Fort Chelsea Holdings Ltd. and the licensed premises, The Coachman Inn, are also known as the Upper Deck Sports Lounge. The third party operator is 0847964 BC Ltd. and the resident agent, Joseph Miles Stanley, appeared at the hearing as the Licensee's representative.

The premises are located at 229 Gorge Road East in Victoria, in an area that is primarily a mix of apartments, motels and restaurants. The licence is a Liquor Primary licence (#120212) with a total patron capacity of 118: 110 patrons are permitted in the area referred as Patron 01 and 8 patrons in the area referred to as Patio 1. The occupant load, as confirmed from floor plans on file with the Branch, is 162 persons. The licence hours are from 11:00 am to 1:00 am Monday to Saturday and from 11:00 am to midnight on Sunday. The licence is, as are all liquor licences 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 March 19, 2012. The Branch alleges that on November 5, 2011, the Licensee contravened section 12 of the *Liquor Control and Licensing Act* (the "Act") and section 71(2)(b) of the *Liquor Control and Licensing Regulation* (the "Regulation") by overcrowding beyond patron capacity less than or equal to occupant load. The proposed penalty is a one day suspension of the licence under Item 14, Schedule 4, of the Regulation.

The Licensee disputes both the contravention and the penalty proposed.

RELEVANT STATUTORY PROVISIONS

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

12 (1) The general manager, having regard for the public interest, may, on application, issue a licence for the sale of liquor.

(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

(a) that vary the terms and conditions to which the licence is subject under the regulations, or

(b) that are in addition to those referred to in paragraph (a).

(3) Without limiting subsection (2), the terms and conditions referred to in that subsection may

(a) limit the type of liquor to be offered for sale,

(b) designate the areas of an establishment, both indoor and outdoor, where liquor may be sold and served,

(c) limit the days and hours that an establishment is permitted to be open for the sale of liquor,

(d) designate the areas within an establishment where minors are permitted,

(e) approve, prohibit or restrict games and entertainment in an establishment,

(f) exempt a class or category of licensee from requirements with respect to serving food and non-alcoholic beverages in an establishment,

(g) vary seating requirements in the dining area of an establishment,

(h) vary requirements with respect to the location of an establishment,

(i) exempt a class of licensee from requirements with respect to marine facilities where liquor is sold,

(j) specify the manner in which sponsorship by a liquor manufacturer or an agent under section 52 may be conducted and place restrictions on the types of events, activities or organizations that may be sponsored,

(k) specify requirements for reporting and record keeping, and

(l) control signs used in or for an establishment.

The Liquor Control and Licensing Regulation, B.C. Reg. 244/2002 provides:

71 (2) The following apply to a licence converted under subsection (1) unless and until rescinded or amended by the general manager:

- (a) the terms and conditions imposed on the licence by the general manager under section 12 and 12.1 of the Act in effect immediately before December 2, 2002;
- (b) the hours of liquor service and the patron or person capacity of the licensed establishment in effect immediately before December 2, 2002;
- (c) endorsements on the licence in effect immediately before December 2, 2002, except an endorsement on a winery licence for a consumption area.

The Guide provides:

“overcrowding” Your liquor licence tells you the maximum number of patrons or the maximum number of persons (patrons and staff) that you may allow in your premises at one time (see the definitions of “patron capacity” and “person capacity” at the beginning of this guide).

“occupant load” means the number of persons, including staff, who may be in a licensed premises at one time. The number is calculated by local fire and building officials or other designated professionals such as architects and engineers. The occupant load calculation must be the least number of people allowed under the relevant provincial regulations or municipal by-laws.

“patron capacity” means the maximum number of persons, not counting staff, who may be in a licensed premises at any one time.

“person capacity” means the maximum number of persons, including staff, who may be in a licensed premises at one time.

ISSUES:

1. Did the contravention occur?
2. If so, has the Licensee established a defence to the contravention?
3. If the contravention is proven, what penalty, if any is appropriate?

EXHIBITS:

Exhibit 1: The Branch's Book of Documents

Exhibit 2: The Licensee's Book of Documents

EVIDENCE:***The Branch's Evidence:***

Inspector 1 gave evidence on behalf of the Branch. Inspector 2 did not give evidence as, subsequent to November 5, 2011, Inspector 2 left the Branch.

Inspector 1's evidence:

Inspector 1's evidence was that he has been a liquor inspector for five years. He is a former RCMP officer with 16 years of service, which included responsibility for the RCMP liquor licence enforcement team. He has been trained by both the Branch and the RCMP how to conduct inspections and specifically in how to take counts of occupants. In the over 20 years he has worked for the Branch and the RCMP he has conducted thousands of liquor inspections, of which over 100 were counts for overcapacity.

On November 5, 2011, Inspector 1 met Inspector 2 outside the premises for a routine inspection. The parking lot was full and the Inspectors had to park on the street. The Inspectors knew that the Victoria Blues Society was holding an event at the premises. In accordance with normal protocols, the Inspectors both checked their mechanical hand counters to ensure they worked properly, set them at zero, and checked the time on their watches.

The Inspectors entered the hotel together, to gain access to the premises which are located on the second floor of the building. Inspector 1 had inspected the premises previously in the course of his duties and knew the general layout. There are two entrances to the premises: normally the premises could be entered by a stairway at the main desk but on this occasion that stairway was not open so the Inspectors used the second entry, down the hall and up the stairs. Inspector 1 observed a line up of about 6 persons at the door, which was being manned by two Victoria Blues Society volunteers. The volunteers told the Inspectors that the premises were at capacity, there was a line up, and no one was allowed in until someone left. The Inspectors identified themselves as liquor inspectors and were allowed entry. Inspector 1 did not observe the volunteers to be using mechanical counters to determine the number of persons entering.

Inspector 1 said his line of vision was good, lighting was good and he could see across the premises. He immediately noted the premises appeared to be more crowded than on his prior inspections. People were dancing, the bar was full with people both seated and standing, the pool/games room had silent auction prizes on display and was crowded. He thought there was potential overcrowding and began a count, using his mechanical counter that he checked for functioning and "zeroed".

In conducting the count, he divided the room into sectors, counting first one then another sector. He conducted the count in a methodical way to ensure no double counting. He counted all persons within the redlined area where liquor could be sold, including staff, but did not include any persons who may have been in the bathrooms or on the patio. He arrived at a count of 151 persons.

He then “zeroed” the counter and conducted a second count and arrived at a count of 159. The difference, in his opinion, was not large and he had not counted persons who might have been in the washroom or on the patio. The second count was conducted in the same way as the first count. Nothing had changed and there was little movement of people. The count took 2-3 minutes to conduct.

Inspector 1 gave evidence that Inspector 2 also conducted a count, with Inspector 2’s count being 142 but that he had not included 8 persons as he thought they were staff. Inspector 2 only conducted one count.

Inspector 1 then went to the bartender, identified himself as a liquor inspector and the bartender confirmed he was in care and control of the premises and there were two servers also on duty. Inspector 1 went behind the bar and determined that the premises were licensed for 118 patrons – 110 on Patron 01 and 8 in the Patio, for a total of 118 patrons.

Inspector 1 advised the bartender that the premises were overcapacity and that persons had to be asked to leave to bring it down to the permitted capacity. The bartender did not dispute Inspector 1’s assertions of overcapacity and did not offer an alternative count. According to Inspector 1’s notes (Tab 1 of Exhibit 1) the Inspectors then proceeded to the patio area and counted five persons on it. The Inspectors, the bartender and Mr. Stanley then attended at the door and the Inspectors explained to them and the door staff that they had to reduce numbers to the maximum allowable. The Inspectors then left the premises.

Inspector 1 reviewed the “red lined” area of the premises (Tab 4 of the Branch’s book of documents) and confirmed the area in which he did his count.

Inspector 1 also gave evidence that, according to the Guide, it is the role of the licensee to know and comply with the Act and it is the role of the inspector to identify any contraventions.

Inspector 1 also gave evidence about sample policies and incident reports suggested by the Serving it Right Program manual and said that the Licensee had not submitted any such policies or minutes of staff meetings to him.

The Inspector stated that under the Regulation the penalty for this type of contravention is a 1 to 3 day suspension or a \$1,000 to \$3,000 fine. Here, the proposed penalty was a one-day suspension. The Inspector said the reason for that is overcrowding is one of the most serious offences given the safety issues, especially for egress if a fire or other mishap should happen, as injury or death could result. Having a large number of persons in an area not designated for it makes it difficult for staff to observe if patrons are being over-served or intoxicated, raises hazards for fighting, both of which can require policing resources to be diverted from other policing demands. Also, from the community perspective, the number of patrons is set with the impact on the community in mind. Overcrowding raises issues of parking, increased potential for late night disturbances, and the demand on policing. In his opinion, a one-day suspension would be sufficient to adhere to the Act and for the Licensee to make the changes to its policies necessary to avoid overcrowding in the future. A monetary penalty would not satisfy the need to convince the Licensee and others that this issue needs to be addressed.

When questioned by Mr. Stanley, the Inspector agreed that there were two hallway exits plus the patio and a fire exit in the pool room, and that the volunteers at the door were limiting entry because they believed the premises to be at capacity.

The Inspector did not know or speak to a “Dave” at the premises on November 5, nor was “Dave” identified to the Inspector by Mr. Stanley or the bartender. The Inspector did not ask the Licensee for the number or a list of volunteers, nor was one provided to him by the Licensee.

The Licensee’s evidence:

The Licensee’s representative, Miles Stanley, and the bartender who was in care and control of the premises on November 5, 2011, gave evidence for the Licensee.

The bartender’s evidence:

The bartender said that it was an unusually busy night and only he and two servers were on duty. Mr. Stanley was there, but was not working and the bartender was in charge of the premises.

The event was a fundraiser for the Victoria Blues Society, and the door was being managed by Victoria Blues Society volunteers. The volunteers had been told to sell only 100-105 tickets, “to be compliant”. The Victoria Blues Society was charging for the event and the bartender thought the Victoria Blues Society wanted to make sure people were paying for tickets. When ticket sales got to 100- 105, sales were stopped and a line up was started and only if someone left was someone admitted. The bartender thought there was a mechanical counter being used to count sales, but he never saw it.

The bartender also said “Dave” was “going around, keeping track of the numbers”. Dave may have been using a mechanical counter - he had one in his hand - but did not show it to the bartender who assumed Dave was using it.

The bartender believed the patron count was being properly made at the door but the problem was with band members coming in to play and then not leaving after their sets were finished. The event involved a number of bands (8 – 10), who would each play a set and then a different band would come on, so there was lots of coming and going of band members and their sound technicians and their friends. After each set, some

band members stayed, talking and listening to the music. The band members were “mostly not drinking” and so in the bartender’s opinion they were not patrons, but “probably” some of the band members who stayed on had been served. At the time of the inspection, one band was just finishing their set and another band was getting ready to go on.

According to the bartender, the Victoria Blues Society also had a number of organizers and volunteers present.

When Inspector 1 approached the bartender and told him that the premise were overcapacity, the bartender confirmed he was in charge. He immediately cut off liquor sales and as the set was just finishing, he then cut off the music. When the music stopped, the lights were turned up and the bartender conducted a count using a mechanical counter and he got 124, including everyone. Of these, there were 4 or 5 staff, some owners, 7- 10 volunteers and 10-15 band members, so in his opinion that accounted for the number they were over. By that time, the inspectors had left.

Later in his testimony, the bartender said that with the bands switching over and earlier bands staying after their sets, there could have been as many as 30 or more musicians present, but that “Dave” would have probably counted them as they would have been seated at tables.

When it became apparent to the bartender that the band members were the reason for being overcapacity, the bartender told them that if they had done with playing and had no ticket they had to leave, and some left. It took about ½ hour and he got about 20 people to leave so the premises were then at capacity.

The bartender did not mention “Dave” to the Inspectors, or the count “Dave” was to be keeping. He did not dispute the Inspectors’ counts when he was advised they were overcapacity as he did not want to argue with them, as it would be like disputing the police. He treated the issue seriously and wanted to do what was necessary to ensure compliance.

The bartender has completed the “Serving It Right” course. When questioned by the Branch advocate, the bartender agreed that the Licensee did not have written policies specifically on overcrowding and had not done any tests of staff about the issue of overcrowding.

The bartender believes he made a written recording of the evening’s incident. No official logbook was maintained, but since then one has been ordered.

Staff meetings are held and the bartender prepares the agendas or plans that he submits to Mr. Stanley who also attends the meetings. With only five staff, the bartender does not make or keep minutes of the meetings.

Mr. Stanley’s evidence:

Mr. Stanley was on the premises on November 5, 2011, but was not working or in charge because he had consumed liquor on the premises that night.

He said it was the first time they had had an event like this and it was an unexpectedly and unusually busy night.

To manage the door, he had given the Victoria Blues Society volunteers only 100 tickets to start with, but no counter. The number of tickets was to be used to monitor the sales. The volunteers were required to get more tickets from him when that 100 were sold.

Also, he had an occasional part-time staff member, "Dave" the relief bartender, "watch over the door". He said Dave used a mechanical counter to keep track of the numbers and Dave told him when they reached 103, so the volunteers were told to stop selling tickets.

According to Mr. Stanley, the band members did not have to have tickets, but their entourages did.

The Victoria Blues Society volunteers played a big part in the event, but he did not know how many there were, and had not thought to bring a list of them to the hearing.

On November 5, 2011 when he talked to the Inspectors at the door about the overcapacity, Mr. Stanley did not dispute the allegation or call Dave over to dispute it or to show the Inspectors his counter, because he did not want to have a dispute with the Inspectors at that time.

Since November 5, 2011, the premises have held another Victoria Blues Society event and a number of controls have been put in place. Because the volunteers did not work out well managing the door on the November 5 event, security was hired. All persons entering, including staff and volunteers, were given a wristband. Only 110 wristbands were made available. The band members were given lanyards that they had to transfer to the next band. Band members were given direction that when not playing they must leave the premises and a hotel room had been set aside for their use. If the band members wanted to stay, they had to get a wristband. If all the wristbands were sold, then they had to wait for someone to leave and turn in their wristband in order for a new person to get in.

Mr. Stanley said he was unaware that the patron capacity did not include staff and volunteers and the band members, so it was only after reading the Guide that he realized the count of 124 on November 5 did not, in his estimation, exceed the licence. He had thought that the legal capacity included staff, so the premises were actually under capacity on that second Victoria Blues Society event.

Mr. Stanley said the Licensee had no policy on overcrowding because it was very seldom that many people would be in the premises. The turnout on November 5, 2011, took them by surprise. The actual number of tickets sold that night was not available because as ticket buyers left, more tickets were sold. No one was tracking band members staying after their sets as that had not been anticipated.

Since the incident on November 5, 2011, a logbook has been ordered. Staff meetings are held but because overcrowding is not an issue for them as the “are not that busy a bar”, it is not an agenda issue for those meetings.

While there was video surveillance on November 5, 2011, that captures the whole of the premises, the videotapes were not made available because in Mr. Stanley’s opinion the tapes would not have been helpful in counting the number of patrons in the premises.

The Licensee’s letter to the Branch about the incident, Tab 10 of Exhibit 1, identified only three staff working on that night – the bartender and two servers. While “Dave” was mentioned in that letter, it was not as a staff person. The volunteers were also mentioned in that letter but no numbers were provided.

SUBMISSIONS:

The Licensee says that the premises were not overcapacity, that ticket sales were being monitored and restricted at 100. The bartender's count at 124 included staff, Victoria Blues Society volunteers and musicians who should not be counted as patrons. While the exact number of volunteers was not available, they played a big part of the event. And with the bands changing, that explained the excess numbers. Further, the premises were well under the occupant load and safety was not an issue with four exit doors.

The event was bigger than expected for the small neighbourhood bar that the Upper Lounge is, and perhaps there were things that could have been done better. They relied on the volunteers because the Victoria Blues Society had conducted other events that also served liquor but were much bigger. The Licensee does take the issue of overcrowding seriously and had put in place a number of controls for the second event they have held. Staff have been told about expectations and what to do.

The Licensee thinks a warning would have been sufficient to achieve the Branch's goals of safety and compliance. The Licensee also submitted that a monetary penalty would be more appropriate than a suspension as the business was still suffering from an earlier 14 day suspension for a different contravention.

REASONS AND DECISION:

I find the premises were over the legal patron capacity of 110 in Patron 01, less than or equal to occupant load, on November 5, 2011, contrary to the Act and the Regulation. The following are my reasons.

The Guide provides:

“overcrowding” Your liquor licence tells you the maximum number of patrons or the maximum number of persons (patrons and staff) that you may allow in your premises at one time (see the definitions of “patron capacity” and “person capacity” at the beginning of this guide).

“occupant load” means the number of persons, including staff, who may be in a licensed premises at one time. The number is calculated by local fire and building officials or other designated professionals such as architects and engineers. The occupant load calculation must be the least number of people allowed under the relevant provincial regulations or municipal by-laws.

“patron capacity” means the maximum number of persons, not counting staff, who may be in a licensed premises at any one time.

“person capacity” means the maximum number of persons, including staff, who may be in a licensed premises at one time.

The evidence was that four counts were done. Inspector 1 conducted two counts, using a mechanical counter each time and counted everyone present, except those on the patio and in the bathrooms, arriving at counts of 151 and 159 respectively. Inspector 2 did one count, using a mechanical counter and arrived at a count of 142, excluding eight persons whom he thought were staff. The bartender did one count, using a mechanical counter after liquor service and the music had stopped, and counted everyone and arrived at a count of 124. There was also evidence of a count of 103 done by “Dave” at some point in the evening, using a mechanical counter.

I prefer the evidence of the Inspectors' counts. They are trained and experienced in how to do inspections and count for capacity in a logical, methodical way, dividing the premises into sectors. They did the counts while the premises were under full operation, but under conditions of good lighting and clear sight lines. Their three counts are closely consistent in numbers – 150 (142 plus 8), 151 and 159.

The bartender's count was conducted after the band finished their set and after liquor service had been stopped and the lights turned up. So while the bartender's count may have been accurate when conducted, the stopping of service and the music and the potential for knowledge that the Inspectors had been in the premises may have meant some persons had already left the premises.

I do not give any weight to the count done by "Dave". He was not called as a witness and the means and manner of how his count was done was not provided, other than he was thought to have used a mechanical counter. Who he included in his count and when he conducted that count was not in evidence.

I also do not find that a direction to the volunteers to sell only 100 tickets, and then to give them 100-105 tickets to sell, to be a reliable means or way to control the number of persons in the premises, or an accurate count of how many persons were in the premises.

The bartender suggested that the overcapacity might have been due to the presence of persons on the premises who had not bought tickets. As the bartender stated, in addition to the ticket holders, there were a number of other persons in the premises: "ownership", an unknown number of organizers and volunteers, and also possibly up to 30 band members who had stayed on after their sets, and at least some of whom were served liquor.

Therefore, I find the counts of the inspectors to be most accurate and accept that there were at least 150 persons in the premises.

I must now consider how many of those 150 persons were patrons.

I find based on the evidence of the bartender's conversation with Inspector 1 and the letter from the licensee (Tab 10, Exhibit 1) that there were only three staff persons on duty that night and only these three persons are to be counted as staff who are excluded from the count of patrons. To be clear, Mr. Stanley did not claim to be present as an employee that evening, and in fact the bartender made it clear Mr. Stanley was not on duty that evening. And while "Dave" may be an occasional employee, he was not listed as being on duty as such in the Licensee's own letter (Tab 10, Exhibit 1) and there is no clear evidence that he was acting in the capacity as an employee that night. He, like Mr. Stanley, must be considered a patron for the purposes of determining if the premises were at or over capacity. I do not accept the bartender's recollection of 4-5 staff being present as that number is directly contrary to the letter from the Licensee and may have included Dave and Mr. Stanley or other persons who were there that night who worked there, but were not on duty. Only if staff are on duty are they to be deducted from the patron count.

I find the organizers of the event, who were not staff of the Licensee and who may have been served liquor, to be patrons for the purposes of determining legal capacity. The same applies to the volunteers. If organizers or volunteers are to be considered as excluded from the patron count, there must be names provided and clear, distinguishable responsibilities and shift times, similar to paid staff.

I find that the musicians, if to be excluded from the patron count, must have the same attributes as staff – to be on duty - that is, actually playing or preparing to play imminently, and their names and set times provided. Here, at best, based on the evidence of the bartender, there were 10 musicians who were either playing or preparing to play. I find that the other musicians who had played earlier and who had stayed on after their sets, and some of whom may have been consuming liquor, were patrons when the Inspectors' counts were conducted.

Both Mr. Stanley, who was present but not on duty, and the bartender, who was in charge, knew the premises were much busier than usual and both considered that they were at capacity, but neither undertook or directed that a proper count be made of the persons in the premises until after the Inspectors identified the issue. Relying on volunteers and a sometime relief bartender, without evidence of any instructions given to any of them on how to ensure a proper count and its importance, was an inadequate manner to address a serious issue and an important term of the Licence.

In addition, while my decision does not turn on this, I would have drawn an adverse inference from the Licensee's failure to provide the video surveillance tapes of the premises for the night in question, as he was requested to do by the Branch. It is not up to the Licensee to decide if the tapes were capable of providing acceptable evidence – that submission should have been made when the tapes were produced, and potentially viewed at the hearing. The Licensee may well have been correct in that, but without the tapes being produced, it is unknown if that is, in fact, the case.

As such, given I accept the Inspectors' counts as more accurate and reliable and that the excluded persons numbered a maximum of 13, I find that the premises were, on November 5, 2011, over the legal capacity of 110 patrons in Patron 01, but less than the occupant load of 162 persons.

DUE DILIGENCE:

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

While the high turnout for the event on November 5, 2011 was unexpected, few controls were in place to monitor the number of patrons admitted to the premises, and those that were in place were inadequate. The Licensee simply left a limited number of tickets with volunteers who were not given any training or direction on what the occupancy limits were and what they meant in terms of the Licence, and why it was important not to exceed capacity. A person ("Dave") was allegedly responsible for counting patrons, but he was not presented at the hearing to give evidence of the instructions given to him, or the method to be followed, or when and how he did the counts. Mr. Stanley's own evidence was that it was not until after reading the Guide more carefully after the second Victoria Blues Society event that he had a clear understanding of what the patron limit was and who was to be included in that. No written policies or explanations about patron capacity were provided to staff, before or after the event.

Based in this, I find the defence of due diligence is not available to the Licensee.

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 may do one of more of the following:

- Take no enforcement action
- Impose terms and conditions on the licence or rescind or amend existing terms and conditions
- Impose a monetary penalty on the Licensee
- Suspend all or any part of the licence
- Cancel all or any part of the licence
- Order the Licensee to transfer the licence

I am not bound to order the penalty proposed in the NOEA. However, if I find that either a licence suspension or a 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.

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

There is no record of a proven contravention of the same type for this Licensee at this establishment within the preceding 12 months of this incident. Therefore I find this to be a first contravention for the purposes of Schedule 4 and calculating a penalty. Item #14 in Schedule 4 provides a range of penalties for a first contravention of this type: a 1 to 3 day suspension or a \$1,000 to \$3,000 fine.

The Licensee has the responsibility to know the legal capacity of the premises, to know who is to be included in determining legal capacity and to take steps to ensure that the capacity is not exceeded, not just for the reason of compliance, but for public safety and patron well-being, and also to respect and limit impacts on the neighbourhood and the community. The Licensee here did none of these. The Licensee's representative and staff knew the premises were unusually crowded, the turnout was higher than expected and musicians were not leaving after completing their sets. Ticket sales had reached close to capacity and the suspending of ticket sales was only one of the steps that ought to have been taken. The Licensee should have conducted a proper count of the number of patrons and ensured patron capacity was not exceeded. The terms of the Licence were breached, patron well-being was jeopardized, and the neighborhood and community were compromised. In the circumstances, I find the appropriate penalty to be a one day suspension.

ORDER:

Pursuant to section 20(2) of the Act, I order a suspension of Liquor Primary Licence No. 120212 for a period of one (1) day to commence at the close of business on Friday, November 2, 2012.

To ensure this order is effective, I direct that the Liquor Licence be held by the Branch or the City of Victoria Police Department from the close of business on Friday, November 2, 2012, until the Licensee has demonstrated to the Branch's satisfaction that the suspension has been served.

Signs satisfactory to the General Manager notifying the public that the licence is suspended will be placed in a prominent location in the establishment by a Branch inspector or a police officer, and must remain in place during the period of suspension.

Original signed by

Dianne Flood
Enforcement Hearing Adjudicator

Date: September 21, 2012

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

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