



**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: Crystal Sellers
98-1st Avenue South
Williams Lake, BC

Case: EH13-B011400

For the Licensee: No Appearance

For the Branch: Cristal Scheer

Enforcement Hearing Adjudicator: Edward Owsianski

Date of Hearing: Written Submissions

Date of Decision: October 10, 2013

**Liquor Control and
Licensing Branch**

Mailing Address:
PO Box 9292 Stn Prov Govt
Victoria BC V8W 9J8
Telephone: 250 952-5787
Facsimile: 250 952-7066

Location:
Fourth Floor, 3350 Douglas Street
Victoria BC
<http://www.pssg.gov.bc.ca/lclb/>

INTRODUCTION

The licensee, Crystal Sellers held Special Occasion Licence (SOL) Number 063759 for a wedding celebration on December 31, 2012 from 4 p.m. to 2 a.m. at the Elks Hall in Williams Lake, B.C. In addition to the terms and conditions imposed on all SOLs this licence had the following conditions, as required by Williams Lake Detachment of the RCMP:

- No over-service
- Sober door security required
- Minimum of two security personnel

Special occasion licence holders are subject to the same enforcement process for contraventions as licensees of licensed establishments. SOL licensees are liable for any contraventions which occur while the licence is in effect. The licensee's liability for any contraventions during the scheduled event continues, provided that the General Manager commences enforcement action against the person within six months after the expiry of the licence. In February 2011, the *Liquor Control and Licensing Act* (the "Act") was amended to allow for the General Manager to take enforcement action against special occasion licence holders after the licence expired.

ALLEGED CONTRAVENTIONS AND PROPOSED PENALTIES

In this case, the branch alleges the following contraventions:

No.	Name of Contravention(s)	Section of the Act/Regulation	Date and time of Contravention(s)	Proposed Enforcement Action
1.	Permit Intoxicated person to remain	43(2)(b) Act	January 1, 2013 3AM	none
2.	Liquor Removed from Establishment	42(4) Regulation	January 1, 2013 3AM	none
3.	Consume Liquor ½ hour after end of license	44(3) Regulation	January 1, 2013 3AM	none
4.	Contravening a Term and Condition	12 Act	January 1, 2013 3AM	\$2000 monetary penalty

Schedule 4 of the *Liquor Control and Licensing Regulation* (the “*Regulation*”), provides a range of penalties for first contraventions of each type:

1. Contravention 1, permit intoxicated person to remain, item 11 provides a range of monetary penalties from \$5,000 to \$7,000. The branch has proposed no enforcement action.
2. Contravention 2, liquor removed from the establishment, item 29 provides a range of monetary penalties from \$1,000 to \$3,000. The branch has proposed no enforcement action.
3. Contravention 3, consume liquor ½ hour after end of licence, item 26 provides a range of monetary penalties from \$5,000 to \$7,000. The branch has proposed no enforcement action.
4. Contravention 4, contravening a term and condition of the licence, item 46 provides a range of monetary penalties from \$1,000 to \$3,000. The branch has proposed a mid-range monetary penalty of \$2,000.

RELEVANT STATUTORY AND REGULATORY PROVISIONS

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

Licences

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).

Drunkenness

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

(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

Consumption of liquor in licensed establishments

42(4) All liquor sold or served in a licensed establishment must be consumed there, and the licensee must not allow liquor, other than the following, to be taken from the licensed establishment:

- (a) a bottle of wine that is unfinished by a patron and sealed by the licensee before being taken by that patron from the licensed establishment;
- (b) liquor that is sold for consumption off premises in accordance with the Act, this regulation and the terms and conditions of the licence.

Time

44 (3) Unless otherwise authorized by the general manager, a licensee must not allow a person to consume liquor in the licensed establishment beyond 1/2 hour after the time stated on the licence for the hours of liquor service.

ISSUES

1. Did the contraventions occur?
2. If so, has the Licensee established a defence to the contraventions?
3. If the contraventions are proven, what penalties, if any, are appropriate?

EXHIBITS

- Exhibit No. 1:** Branch's book of documents, tabs 1-7.
- Exhibit No. 2:** Correspondence of the branch Registrar, Enforcement Hearings to the licensee dated July 16, 2013.
- Exhibit No. 3:** Correspondence of the branch Registrar, Enforcement Hearings to the licensee dated July 26, 2013.
- Exhibit No. 4:** Copies of Canada Post tracking documents.

EVIDENCE—THE BRANCH

The branch's evidence is found within the book of documents at Exhibit 1. It is summarized as follows:

On December 24, 2012 the licensee obtained a SOL (Exhibit 1, tab 3) for a wedding celebration on December 31, 2012 from 4 p.m. to 2 a.m. at the Elks Hall in Williams Lake BC. The SOL contained the following terms and conditions as required by the Williams Lake detachment of the RCMP:

- No over-service
- Sober door security required
- Minimum of two security personnel

The licensee acknowledged the requirements and stated that they would have "way more security than required".

Regular police patrols were made of the event during which a number of contraventions were observed by the officers attending. The officers were faced with the situation of an event having continuing serious public safety issues. A decision was made to closely monitor the event as opposed to ending it prematurely as there were limited police resources to deal with the potential safety issues arising by requiring the event to close early.

The officer in charge of the detachment reported the observations (Exhibit 1, tab 5) made by the police officers during their various patrols to the local liquor inspector.

Specifically:

1. At 9 p.m. several persons were observed drinking beer outside the Elks Hall entrance. Upon noting the arrival of the police officer they immediately went inside. The officer attempted without success to locate any security personnel to deal with the situation.
2. At 10 p.m. an intoxicated male was found by police officers in the parking lot and for his own well-being was assisted to his residence by a family member. Several intoxicated persons were observed outside the entrance of the hall. The officer attempted without success to locate any security personnel to deal with the situation.
3. At 11:45 p.m. the police on-duty supervisor making a patrol to the event observed approximately 25 persons outside the hall entrance consuming beer. The smell of marijuana was prevalent. Upon noting the arrival of the police officer they immediately went inside. The officer went inside where he observed many of the guests exhibiting obvious signs of intoxication. Being unable to locate any security personnel he spoke with the groom who also exhibited symptoms of intoxication. The groom advised the officer that he was "it" for security. The officer advised him to have the intoxicated persons removed from the hall in a safe manner.
4. At 12:24 a.m. officers observed several persons drinking beer outside the hall. One person was taken into custody.
5. At 1 a.m. an officer spoke with the groom about the event. He was again observed to be exhibiting signs of intoxication. One male was observed passed out in the hall. One intoxicated female was taken into custody for her own well-being.
6. At 2:39 a.m. officers responding to a complaint of a fight at the hall observed approximately 80 persons still present in the hall with several still consuming beer. One intoxicated male was taken into custody.

7. At 3 a.m. officers observed the band still playing and persons still consuming liquor.

Upon receiving the information from the police, the liquor inspector issued a Contravention Notice (Exhibit 1, tab 2) and prepared a Notice of Enforcement Action ("NOEA") (Exhibit 1, tab 1) which was forwarded to the licensee at her home address on February 1, 2013. The NOEA outlined the alleged contraventions and the proposed enforcement action. The licensee was provided with information on the branch's enforcement process.

On February 12, 2013 the branch mailed a written notice to the licensee requesting her attendance (via telephone conference) at a pre-hearing conference ("PHC") on February 21, 2013. The purpose of a PHC is to assist the licensee in understanding the enforcement process and the options available to deal with the alleged contraventions. The licensee was advised that failure to attend the PHC may result in the licensee losing the opportunity of having an oral hearing.

The licensee did not attend the PHC. On February 21st the branch registrar telephoned the number listed on the licensee's application for the SOL. The person answering identified herself as a relative of the licensee. The relative would not provide the phone number for the licensee but said that she would pass on the message for the licensee to call the branch registrar.

The licensee failed to call the registrar and on February 25th an email was sent to the email address provided on the licence application. The licensee failed to respond. On April 8, 2013 the branch sent a letter (Exhibit 1, tab 4) to the licensee via registered mail outlining the course of action taken to date and the options for the licensee. The licensee was requested to respond by April 26th.

The licensee failed to respond and on July 16th the branch sent a letter (Exhibit 2) to the licensee via registered mail advising that the opportunity for an oral hearing was now lost and that the enforcement proceedings would now take place by way of written submissions. The licensee was offered the opportunity to make a written submission to the general manager's delegate by August 9, 2013. The letter included copies of the branch's disclosure package consisting of the branch's book of documents (Exhibit 1).

On July 26, 2013 the branch wrote to the licensee via registered mail (Exhibit 3) advising that the letter of July 16 with the disclosure package remained at the Kelowna Canada Post Depot. Canada Post had attempted delivery without success and had left a notice at the licensee's address. The letter advised the licensee that Canada Post would retain the disclosure package until August 2nd following which it would be returned to the branch if not claimed by the licensee. Canada Post tracking documents (Exhibit 4) indicate that the July 26th letter was successfully delivered on July 29th; however, the licensee never picked up the disclosure package.

EVIDENCE -THE LICENSEE

The licensee has not provided any evidence.

SUBMISSIONS-THE BRANCH

The branch's submission is summarized as follows:

The licensee failed to comply with the terms and conditions of the SOL by not providing security personnel for the event. This led to contraventions of intoxicated persons at the licensed event, persons taking liquor from the licensed event and consuming in a public place, and liquor consumption continuing after the ½ hour permitted following the expiration of the liquor licence. The branch submits that the licensee's actions lead to serious public safety issues and a penalty is necessary for future deterrence. A \$2,000

monetary penalty for the contravention of failing to comply with the terms and condition of the licence is proposed.

SUBMISSIONS-THE LICENSEE

The licensee did not make any submission.

REASONS AND DECISION

I have considered the evidence and the submission of the branch.

Contraventions

I find on a balance of probabilities that on January 1, 2013 the licensee:

- permitted an intoxicated person to remain in the licensed area of the SOL contrary to section 43(2)(b) of the *Act*
- permitted liquor to be removed from the licensed area of the SOL contrary to section 42(4) of the *Regulation*
- permitted the consumption of liquor beyond ½ hour following the expiration of the SOL contrary to section 44(3) of the *Regulation*, and
- failed to comply with a term and condition of the SOL contrary to section 12 of the *Act*.

Due Diligence

The licensee is entitled to a defence to the allegations of the contravention, 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.

There is no evidence upon which I can find that the licensee acted with due diligence. The evidence is to the contrary. The licensee failed to provide the security required by the terms and conditions of the SOL and failed to provide any measures to prevent the contraventions as alleged.

In conclusion, I find on a balance of probabilities that on January 1, 2013, the licensee contravened sections 12 and 43(2)(b) of the *Liquor Control and Licensing Act* and sections 42(4) and 44(3) of the *Liquor Control and Licensing Regulation*.

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 achieving compliance. Among the factors that I considered in determining the appropriate penalty in this case 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 within the year preceding this incident. I therefore find these to be first contraventions for the purposes of Schedule 4 and calculating a penalty.

Here, the branch has proposed a penalty for only one of the four contraventions: the failure to comply with the terms and conditions of the SOL, for which the branch has proposed a mid-range monetary penalty of \$2,000. The branch in doing so has taken a very measured approach, primarily I expect as a result of the licensee being a private individual holding a one-time SOL and not someone ordinarily engaged in the hospitality industry. The branch is, however, firm in its position that a penalty is necessary in the public interest.

In the circumstances of this case, I am in agreement with the branch's position. The evidence is of the licensee's disregard for issues of public safety and community standards. The police officers were faced with having to deal with the ongoing problems created at the event by the actions or inactions of the licensee on an already busy night for community policing, New Year's Eve.

Giving consideration to all of the evidence and the seriousness of the contravention, I find that a penalty is necessary to ensure future deterrence by this licensee and others who would hold a SOL.

Any penalty imposed must be sufficient to ensure compliance in the future. Schedule 4 of the *Regulation* provides a range of penalties for a first contravention of failing to comply with a term and condition of the liquor licence. In the circumstances here I find that the monetary penalty of \$2,000 is necessary, appropriate and reasonable.

ORDER

Pursuant to Section 20(2) of the *Act*, I order that the Licensee pay a monetary penalty in the sum of \$2,000 to the General Manager of the Liquor Control and Licensing Branch on or before November 12, 2013.

Original signed by

Edward W. Owsianski
Enforcement Hearing Adjudicator

Date: October 10, 2013

cc: Liquor Control and Licensing Branch, Surrey Office
Attention: Michael Clark, Regional Manager

Liquor Control and Licensing Branch, Vancouver Office
Attention: Cristal Scheer, Branch Advocate