

Northwest Territories Liquor Licensing Board

IN THE MATTER of an Application for a Class 2 – Resale Special Occasion Permit and Application for Minors in a Licensed Premises from The Racquet Club;

AND IN THE MATTER of the Liquor Act S.N.W.T. 2007, c.15 (“the Act”) and the *Liquor Regulations*, R-069-2008 (“the Regulations”) as amended;

AND IN THE MATTER of a request to reconsider, on May 29, 2017, the Liquor Licensing Board’s decision of May 18th, 2017;

REGARDING:

THE RACQUET CLUB

Applicant

For the event

2017 Territorial Squash Championships

Event

The Liquor Licensing Board has considered a request by legal counsel for the Applicant to reconsider the denial of Class 2 – Resale Special Occasion Permits and Applications for Minors in a Licensed Premise.

Overview

The Racquet Club serves alcoholic beverages under a Class D Premises Licence in Yellowknife. The Applicant seeks to provide licenced service on the new upper and lower outdoor deck (the ‘Outdoor Deck’) each day during a sporting event to be held this weekend. This outdoor service would be in addition to their continuing Class D Licence.

On May 10th, 2017 the Board office received Special Occasion Permit applications from the Applicant for an event taking place May 29th to June 4th, 2017. The Event is to take place at The Racquet Club, in Yellowknife. The Board office records show that the Applicant was advised that day that the applications were incomplete and advised of the additional information that was required. On May 11th, 2017 the Board office received the additional information from the Applicant. The Members of the Board met on May 12th, 2017 to give preliminary consideration to the Applications. At that time, further additional information from the Applicant was requested. That information was also received and then the

completed application was reviewed by the Board in their teleconference on May 17th, 2017. The Applications were denied and the signed Board Decision was sent to the Applicant on May 18th, 2017.

The Applicant sent a request on May 19th, 2017 for reconsideration of the Board Decision. On May 23rd, 2017, the Board sent the Applicant a letter acknowledging receipt of several email submissions received on May 18th and May 19th. In addition, the Board advised that the email submissions of May 18th and May 19th had been reviewed and the information provided did not address the Board's concerns in a conclusive manner. The letter of May 23rd advised the Applicant there was insufficient evidence or change in the relevant circumstances to warrant a reconsideration of the Board's decision pursuant to *section 23* of the *Liquor Act* at that time¹.

The Board received correspondence from Mr. Rutland, the Applicant's legal counsel on May 29th, 2017. The Board requested updated information on May 30th and received updated photographs and documents that same day. The Board then held a teleconference on May 31st, 2017 to reconsider its previous decision.

Reconsideration

The *Act* states every decision or order of the Board is final.² There is a caveat contained within the *Act* as to the finality of the Board's decision. The *Act* provides that the Board may, where it deems it appropriate, reconsider its decision.³ It is under this authority that the Board grants the application to reconsider its decision in this matter based on the additional material submitted by the Applicant's counsel.

Issues

In its decision of May 17, 2017 in this matter, the Board listed a number of issues that caused the Board to originally deny the Applicant's applications. The new material submitted by counsel for the Applicant, including the photographs, assisted greatly in addressing several issues for the Board. Unfortunately, there still remain a number of significant issues.

The Hot Tub

Contrary to the submissions of the Applicant, Alberta does not licence alcohol consumption in or near hot tubs. Indeed, hot tubs are not permitted within a licenced area⁴. However, even if Alberta did permit this type of use, the decision of that Province's liquor licensing

agency is not binding on this Liquor Licensing Board as this is a separate and independent Territorial jurisdiction.

There are significant health concerns associated with the use of hot tubs where alcohol is not being consumed. There are recommended maximum time limits for use and cautions for non-use pertaining to those suffering certain health conditions. The consumption of alcohol and its intoxicating effects only exacerbate, as it does for nearly every human activity, those health and safety concerns. Given the increased risks to health and safety, the Board would normally require the removal of the hot tub before a licence/permit would be issued. However, the hot tub of the Applicant has a cover that, from the photos provided, can be locked in place.

If the Applicant were to be granted a licence/permit for the Outdoor Deck, the hot tub would have to be removed or the cover locked on and the hot tub area walled off by a solid permanent or portable barrier. In no case would an Applicant be granted a licence/permit to allow for the consumption or service of alcohol in or near a hot tub during the hours of service. As well, a new occupancy load certificate would need to be issued that assesses the occupancy of the Outdoor Deck less the area of the hot tub and the flight of stairs between the deck levels.

While not bearing directly upon the decision of the Board, the Applicant indicated that there was a hot tub on the previous Outdoor Deck that was licenced. The Board's records show that no such licence for a hot tub was ever granted or applied for. The licence for the original Outdoor Deck was granted based on drawings and supporting material that did not include a hot tub. The Board can only conclude that the hot tub was added later and the Applicant continued to serve alcohol to patrons near it and, by the Applicant's own admission, to patrons sitting in the hot tub. Such service was in contravention of the Applicant's licence as it then was. In addition, by adding the hot tub to the service area, the Applicant, as it has done with the recent deck renovations, contravened the legislation and regulations by carrying out a renovation or alteration to the licenced area without first applying for Board approval.

Deck Railings

Since the Board's original decision, additional evidence has been provided to show that the construction of the Outdoor Deck has been completed and it is now in compliance with City of Yellowknife bylaws. However, the Plexiglas railings on portions of the Outdoor Deck are only 3'6" tall and therefore inadequate to prevent the passing of alcoholic beverages out of

the licenced area to a person on the ground below. This is particularly true of the upper deck, but also of the corner of the lower deck closest to the stairs to the upper deck. Prior to a licence/permit being granted, the Applicant would be required, as have other Applicants with outdoor decks, to install an addition to the railing or new railings that are of such a height as to make it impossible for a patron in the licenced area to pass alcohol to someone outside that area.

The Outdoor Deck was part of the licenced area of the Racquet Club prior to it being completely replaced. Structural renovations to licensed premises require Board approval prior to making any structural additions or alterations, including complete replacement, to the licensed premises under s.62 of the *Liquor Regulations*. Such authorization was not applied for by the Applicant prior to construction commencing and had only been brought to the attention of the Board as a result of these applications⁵. Had the Applicant followed the requirements of the legislation and regulations, the Applicant would have altered its construction plans prior to commencing with construction so that railings of sufficient height would have been installed originally. By not seeking prior approval, the result is that the Applicant will be required to incur additional cost to modify the railing if it wishes to be granted a licence/permit for the Outdoor Deck.

Filing Time

The modified applications stated 119 people were expected in the proposed area of the event. Based upon this estimate, the *Liquor Regulations* require that the completed Application must be at least 5 days prior to the Event. The Applicant's original application was submitted well in advance of the 5 day deadline. In the Applicant's request for reconsideration, the Applicant modified its requested proposed days to Thursday [sic] June 2nd to Sunday June 4th, 2017. It is noted Thursday is June 1st, rather than June 2nd. The request for reconsideration was not considered complete until May 30th.

There is a sliding scale for application filing times. This regulation is, in part, intended to allow for appropriate notification to be given to Liquor Enforcement and the RCMP in a time frame allowing for adequate planning of oversight and policing by those organizations. In the case of an application for this type of permit, it is the Board that notifies Liquor Enforcement of the permit being granted to ensure that they have adequate time to adjust their staffing requirements. Liquor Enforcement then notifies the RCMP. The Board is not satisfied that there is sufficient time to ensure that appropriate policing could be provided on such short notice.

The completed request for reconsideration presently before the Board was received on May 30th, 2017. The permit applied for is for Thursday June 1st to Sunday June 4th. This is just 2 days in advance of the time period applied for and does not provide adequate notice time to Liquor Enforcement. While the Board can waive the deadlines where circumstances warrant doing so, given the very short timelines involved in an application of this type⁶, in the future and only in the rare and extraordinary case, the Board will not reconsider its decision where the deadline for a completed application to be submitted has passed for the licence/permit sought to be issued.

Pre Event Advertising

The *Liquor Regulations*, at section 107, prohibit a permit holder from advertising an event as licensed or authorized to sell or service liquor⁷. The exception to this is that a holder of a Class 3 – Fundraising permit may advertise, but only after the permit has been issued. Further, sections 72 and 73 of the *Liquor Regulations* prohibit advertisement of this nature⁸.

On May 31st, 2017, the website for The Racquet Club contained a brochure for the proposed events advertising liquor for sale at the event to be held this weekend⁹. The Board does take note of this breach. It contributes to the overall impression conveyed by the Applicant of an indifference to the obligation to know what the *Act* and *Regulations* require.

Conclusion

As previously indicated, the Liquor Licensing Board must consider the public interest and safety above all else. In administering the *Liquor Act* and *Liquor Regulations*, the duty of the Board cannot be transformed by the unfortunate inconvenience that may be caused to an Applicant. In this case, sufficient diligence on the part of the Applicant would have avoided any resulting inconvenience to the Applicant and the patrons of the event it is hosting.

It is for these reasons the Board affirms its previous decision to deny these Permit and Minors applications.

It must be noted that the decision of the Board does not affect the Applicant's current liquor licence and the conditions attached to that licence for the service of alcohol under that

licence. Nor does this decision in any way prohibit the Applicant from hosting the planned event; it will, however, be hosting the event without liquor service on the Outdoor Deck

Decision of the Board

The Board's decision dated May 18th, 2017 to deny the applications for Class 2 Special Occasion Permits and Minors in a Licensed Premises is affirmed. The applications are denied.

Dated this 1st day of June 2017 at the Town of Hay River, NT.



Michael E. Hansen
Acting Chairperson

¹*Section 23 of the Liquor Act*

²*Section 26 of the Liquor Act*

³*Section 23 of the Liquor Act*

⁴*Section 5.10 Alberta Gaming and Liquor Commission Licensee Handbook*

⁵*Section 62 of the Liquor Regulations*

⁶*Sections 88 and 83 of the Liquor Regulations*

⁷*Section 107 of the Liquor Regulations*

⁸*Section 72 and 73 of the Liquor Regulations*

⁹**"KEG NIGHT! Featuring beer from NWT Brewing Company!"**