

NOVA SCOTIA UTILITY AND REVIEW BOARD

IN THE MATTER OF THE LIQUOR CONTROL ACT

- and -

IN THE MATTER OF THE BOARD'S INTERPRETATION of certain provisions of the *Liquor Licensing Regulations* with respect to the calculation of the number of persons a licensed premises can safely hold, and how the number is subsequently amended, including the interpretation and application of s. 4(4)(f) of the *Liquor Licensing Regulations*

BEFORE: *MM* Margaret A.M. Shears, Q.C., Vice-chair
DA David J. Almon, LL.B., Member
*** Roland A. Deveau, LL.B., Member

WHEREAS the *Liquor Licensing Regulations* (the "Regulations") were substantially amended in August of 2007 and, among a number of other changes, the provision which established that the number of persons a licensed premises can safely hold was determined by dividing the square footage of the area(s) designated to accommodate customers for the sale, service and consumption of liquor by 12 square feet per person, was deleted;

AND WHEREAS this provision was replaced with ss. 22 and 67 of the *Regulations* which read as follows:

Maximum number of persons for premises specified by Review Board

- 22 (1) Before granting a permanent license, the Review Board must determine the number of persons the proposed premises can safely hold and include that information in the notice of a public hearing on the license application.
- (2) If the number of persons determined by the Review Board for a premises under subsection (1) is more than the occupant load for the premises subsequently determined by a fire official, the Review Board must, before the license certificate is issued by the Minister, reduce the number in the license to be granted to equal the occupant load.

...

Number of persons in licensed premises

67 A licensee must ensure that the number of persons in their licensed premises does not exceed the number of persons determined as safe for the premises by the Review Board under Section 22.

AND WHEREAS pursuant to s. 32(1) and (2) set out below, this calculation is also used with respect to amending the number of persons a licensed premises can safely hold when requests are made to change the size, structure or location of licensed premises;

Review Board must approve change to size, structure or location of licensed premises

32 (1) A permanent licensee may change the size of their licensed premises or make a structural change to their licensed premises only if the permanent licensee submits a proposed replacement floor plan to the Review Board and the Review Board approves the replacement floor plan.

(2) A permanent licensee may change the location of their licensed premises only if the permanent licensee submits a proposed replacement floor plan for the new location to the Review Board and the Review Board approves the replacement floor plan and the new location.

AND WHEREAS the Board has continued to use the 12 square foot per person calculation in processing applications for permanent liquor licenses, or changes in the layout of existing licensed premises, and intends to do so for the foreseeable future, in particular with respect to preparing public notices which inform the general public through newspaper advertisements of the dates and locations of public hearings on such applications and, among other things, inform the public as to the proposed customer capacity of the premises;

AND WHEREAS the Manager of Licensing, Alcohol and Gaming Division, Department of Labour and Workforce Development (the "AGD"), in a letter dated April 16, 2008, requested confirmation of the manner in which the 12 square foot per person calculation is applied by the Board;

AND WHEREAS the Board's view is that the methodology described above continues to be an acceptable standard for determining the number of persons a licensed premises can safely hold, subject to any reduction imposed by a fire official in order to protect the public and ensure compliance with all applicable safety requirements, a position which is reflected in Orders issued by the Board;

AND WHEREAS ss. 4(4)(f), 7(2)(a), and 26 of the *Regulations* read as follows:

Information required with application for permanent license

...

4 (4) An applicant for a permanent license must submit all of the following information about the proposed premises to be licensed:

...

- (f) a letter from a fire official confirming that the premises meets the requirements of the Fire Safety Act and its regulations;

...

Application and information referred to Review Board

...

7 (2) The Minister may forward an application to the Review Board that is incomplete only because it is missing one or more of the following items that are not available at the time because the proposed licensed premises is under construction or is not operational:

- (a) the fire official's letter required by clause 4(4)(f);

...

Conditional grant of license for premises under construction

26 The Review Board may grant a permanent license to an applicant whose application is missing information because it was not available at the time of application, as permitted by subsection 7(2), subject to the following conditions:

- (a) the Review Board must not advise the Minister to issue a license certificate until the Review Board receives all of the missing information; and
- (b) the licensed premises must not be operated under the permanent license until the Minister issues a license certificate to the licensee.

AND WHEREAS the above-noted requirements have been consistently applied to premises which are the subject of a permanent liquor license application, or premises in respect of which a permanent license has been granted but not yet issued;

AND WHEREAS questions have arisen with respect to the application of sections 22 and 67 to circumstances where a fire official inspects a premises for which a permanent license has been issued and the fire official reduces the number of persons the premises can safely hold from the number previously set by the Board using the calculation described above and, as a result, the Board is of the view that a generic Order setting out its finding on this matter would be useful to parties in the future;

AND WHEREAS the Board believes that a reasonable interpretation of the purpose and intent of s. 67, when read in conjunction with the other relevant provisions noted above, is that the requirement for a reduction in the number of persons the premises can safely hold also applies to existing licensed premises when, following an inspection by a fire official, a lower customer accommodation is ordered;

AND WHEREAS the Board is satisfied that to interpret the *Regulations* in a manner which would effectively exempt existing licensed premises from a reduction in the number of persons the premises can safely hold, as determined by a fire official, would be contrary to the purpose and intent of the *Regulations* which is to protect the public and, as a result, the Board's view is that the public interest requires compliance with fire safety standards as an ongoing requirement for existing licensed premises;

AND WHEREAS the Board is also of the view that under the *Regulations* noted above such a customer accommodation reduction is mandatory, not discretionary,

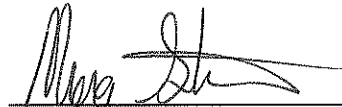
and therefore the Board has no jurisdiction to review occupancy loads determined by fire officials or hear any dispute concerning an ordered reduction;

IT IS HEREBY ORDERED that when a written report from a fire official is filed with the Board which reduces the number of persons that an existing licensed premises can safely hold, the provisions of ss. 22 and 67 of the *Regulations* shall apply and, accordingly, the number of persons permitted in the licensed premises shall be reduced to equal the occupant load set by the fire official.

IT IS FURTHER ORDERED that compliance with these *Regulations*, as set out above, is also required when changes are made, or are proposed to be made, to the layout of existing licensed premises (regardless as to whether the premises is temporarily closed or continues to operate during construction) so as to ensure that liquor is not sold or served to the public unless confirmation is received from a fire official that the licensed premises continues to meet all applicable fire safety standards.

IT IS FURTHER ORDERED that, depending on the circumstances, similar confirmation from a fire official may also be required by the Board when an application is filed for an extension of licensing privileges (whether permanent or temporary) to an unlicensed area, such as a tent or other form of enclosure.

DATED at Halifax, Nova Scotia, this 24th day of July, 2008.



Clerk of the Board