



CRIMINAL JUSTICE BRANCH, MINISTRY OF ATTORNEY GENERAL
CROWN COUNSEL POLICY MANUAL

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SUBJECT: Immoral Theatrical Performances		CROSS-REFERENCE: CHA 1.2

POLICY

When a Report to Crown Counsel recommends a charge under Section 167 of the *Criminal Code*, Crown Counsel should, where appropriate, contact the area Liquor Inspector to determine whether the matter can be regulated through enforcement of the terms and conditions of the liquor licence.

It is Branch policy to consider effective alternatives to prosecution under the *Criminal Code* where there is a social regulatory enforcement scheme available. The Branch policy on Charge Assessment– Social Regulatory Offences (CHA 1.2) has application.

Of particular concern are immoral theatrical performances involving young persons or involving coercion or non-consensual violence, simulated or real, in a sexual context. In those circumstances, prosecution under the *Criminal Code* should be considered.

DISCUSSION

Enforcement of terms and conditions of liquor licence

The police do regular walk-through inspections on behalf of the Liquor Control and Licensing Branch and provide written reports to Liquor Inspectors re contraventions of the liquor licence, including acts by exotic dancers or strippers.

If the police have provided a Report to Crown Counsel recommending charges, Crown Counsel may wish to ask the investigating officer whether the liquor inspector has been involved.

To obtain the telephone number for the area Liquor Inspector, Crown Counsel may call the Liquor Control and Licensing Branch Headquarters in Victoria at 250 387 1254.

Attached as appendix A is a copy of page 17 of the Liquor-Primary Licence, Terms and Conditions which describes those acts by strippers or exotic dancers which would contravene the licence.

The terms and conditions of the liquor licence are set by the General Manager of the Liquor Control and Licensing Branch under Section 50 of the *Liquor Control and Licensing Act*. Enforcement action includes the service of a contravention notice by the Liquor Inspector and then either voluntary compliance or further enforcement action consisting of an administrative hearing with monetary penalties (minimum \$5,000.00 to a maximum \$7,000.00) or a range of licence suspensions, or both.

Prosecutions under Section 167 where social regulatory enforcement is not appropriate

Section 167(1) of the *Criminal Code* provides: “Every one commits an offence who, being the lessee, manager, agent or person in charge of a theatre, presents or gives or allows to be presented or given therein an immoral, indecent or obscene performance, entertainment or representation.”

In Regina v Mara, (1997) 2 S.C.R. 630, the Supreme Court of Canada held that “a performance is indecent if the social harm engendered by the performance, having reference to the circumstances in which it took place, is such that the community would not tolerate it taking place.” The Court also held that:

“indecent, unlike obscenity, entails an assessment of the surrounding circumstances in applying the community standards test”;

“the relevant social harm to be considered pursuant to Section 167 is the attitudinal harm on those watching the performance as perceived by the community as a whole”;

“the conduct in issue in this case in the context in which it takes place is harmful to society in many ways. It degrades and dehumanizes women and publicly portrays them in a servile and humiliating manner, as sexual objects with a loss of their dignity. It dehumanizes and desensitizes sexuality and is incompatible with the recognition of the dignity and equality of each human being. It predisposes persons to act in an anti-social manner, as if the treatment of women in this way is socially acceptable and is normal conduct, and as if we live in a society without any moral values.”

What the community will tolerate will vary with the surrounding circumstances and context, including the place in which the performance occurs and the composition of the audience. Relevant factors could include the forewarning of the public as to the nature of the performance, the conditions of admission and the size of the audience.

The question of whether a performance is immoral, indecent or obscene, so as to violate Section 167, is a question of law. Listed below are some examples of performances which would be subject to the circumstances and context test:

1. Sexual acts where there is audience participation in the sense of physical contact between the spectator and the performer, e.g. lap-dancing.
2. Live sex acts on stage, i.e. acts of oral/genital, genital/genital, genital/anal or oral/anal contact or insertion.
3. Sex acts that are simulated but are so realistic that a reasonable observer could not determine that they are simulated.
4. Where objects are ejected from the anus or vagina of the performer into the audience.
5. Where the performance involves insertions of any object into the vagina or anus.
6. Real or simulated sex acts involving consensual violence.

APPENDIX A

- draws are limited to meat draws, 50/50 tickets, raffles, or other draws specified by the general manager
- prizes do not include liquor or tokens redeemable for liquor
- winners are not required to be present to collect prizes, and
- proceeds and prizes are disbursed according to Gaming Policy and Enforcement Branch rules.
- Offer pari-mutuel (off-track) betting, if approved by Teletheatre B.C. and provided:
 - the betting area, including the area in which patrons line up to place their bets, is located outside the licensed area of your establishment
 - where the betting area shares a common wall with your licensed area, the wall, doors and other openings are designed and constructed according to approved specifications
 - any openings directly between the betting area and your licensed area are clearly marked with signs indicating that liquor may not be taken into the betting area, and
 - where the betting area is directly accessible from your licensed area, you provide adequate staff during the hours it is in operation to ensure that patrons do not enter or remain in the betting area with liquor.

Performances by Strippers or Exotic Dancers

A stripper is an entertainer who strips off clothing during a performance; an exotic dancer is a performer who does not necessarily strip clothing during a performance. (Belly dancers are not considered strippers or exotic dancers.)

If you are offering performances by exotic dancers/strippers:

- The entertainers must be at least nineteen years of age and must wear appropriate clothing while walking through the audience, both before and after performances. This clothing must not be part of their stage costume.
- 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.
- Animals may not form part of a performance, and are not permitted as entertainment except as approved by the general manager.
- The exotic dancers/strippers may not act as

servers or hold any other employment position in your establishment while they are also working for you as entertainers.

Exotic dancers/strippers 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
- touch or share food and beverages with other performers
- consume liquor immediately prior to a performance, during a performance or between performances
- dance/perform on table tops or other areas outside the approved areas

