

# IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *0956156 B.C. Ltd. v. The General  
Manager, Liquor and Cannabis Regulation  
Branch,*  
2026 BCSC 743

Date: 20260424  
Docket: S261963  
Registry: New Westminster

Between:

**095615 B.C. Ltd.**

Petitioner

And

**The General Manager, Liquor and Cannabis Regulation Branch**

Respondent

Before: The Honourable Justice Giaschi

## Reasons for Judgment

Counsel for Petitioner: S.H. Coulson

Counsel for Respondent: J.T. Lovell

Place and Date of Hearing: Vancouver, B.C.  
March 30, 2026

New Westminster, B.C.  
April 9, 2026

Place and Date of Judgment: New Westminster, B.C.  
April 24, 2026

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**Introduction**

[1] The petitioner applies to stay the decision of the General Manager of the Liquor and Cannabis Regulation Branch (the “Branch”) cancelling the petitioner’s liquor licence in respect of the Gallery Show Lounge (the “Gallery”), a nightclub located on Southwest Marine Drive in Vancouver, pending the hearing of its underlying petition for judicial review. The application was heard on March 30 and April 9, 2026. At the conclusion of the submissions of the parties, I dismissed the application for a stay with reasons to follow. These are my reasons.

**Facts**

[2] The evidence before me consists of:

- a) Three affidavits made by Andonis Anthony Pomonis on February 27, March 3, and March 16, 2026. Mr. Pomonis describes himself as the “representative” of the company that operated the Gallery;
- b) An affidavit of Abdul Fadel made March 12, 2026. Mr. Fadel’s company, Intercom Lux Management Inc. was retained in April 2025 to provide management and security services to the Gallery;
- c) Two affidavits of Renee Bagwell made March 5 and 19, 2026. Ms. Bagwell is the Programs Coordinator at the Branch. She attaches various relevant communications and other documents to her affidavits that provide the background and relevant chronology of the events leading to the cancellation of the petitioner’s licence;
- d) An affidavit of a legal assistant with the Attorney General’s office who merely attaches an email exchange between counsel on February 26, 2026.

[3] For the most part, I rely on the attachments to the various affidavits of Ms. Bagwell as providing the relevant background and chronology of the events leading to the cancellation of the petitioner’s licence.

**Parties and Representatives**

[4] The petitioner operates the Gallery, a nightclub located on Southwest Marine Drive in Vancouver. It was the holder of a license issued under the *Liquor Control and Licensing Act*, S.B.C. 2015, c. 19 [LCLA] entitling it to sell or serve liquor.

[5] 0970665 BC Ltd. (“665 BC”) is the holder of 50% of the shares of the petitioner. The sole shareholder and sole director of 665 BC is Slobodan (Mike) Pajic.

[6] The respondent, the General Manager of the Branch, is responsible for the administration of the *LCLA*, and the regulations passed under the *LCLA*.

**2023-2025**

[7] Ms. Bagwell deposes that the Branch has been actively undertaking investigation and enforcement activities in relation to the Gallery since November 2023. These activities were prompted by a letter dated November 10, 2023, from the Vancouver Police Department (the “VPD”) advising the Branch that the VPD had “significant public safety concerns stemming from violence perpetrated by patrons of the [Gallery]”.

[8] Although not directly deposed to by Ms. Bagwell, I take it that the Branch requested additional information from the VPD as, on April 2, 2024, the VPD provided additional information, purportedly in response to a request from the Branch. The April 2, 2024 email from the VPD provided a synopsis of police investigations involving the Gallery. The synopsis noted that since November 2021 there had been 94 calls for police service, some of which involved violent incidents including a homicide, a stabbing and a shooting.

In November 2021, Gallery Vancouver Nightclub opened for business at 1312 SW Marine Drive, Vancouver. Since this time, there have been over 94 calls for police service. Some of these calls involved violent incidents, including a homicide, stabbing and shooting in which two people were shot causing significant risk to the general public in the area. In addition to these calls, there have been multiple incidents detailing patrons leaving this venue in possession of weapons including firearms, as well as intoxicated patrons who have gotten into vehicles and driven while impaired. After a review of the

above documented calls for police service it was believed that offences under the Liquor Control and Licensing Act were being committed that were amplifying the violence at this venue. In addition to this, information was received that staff at Gallery Vancouver were involved in drug trafficking within Gallery Vancouver Nightclub

[9] The April 2, 2024, email from the VPD also advised:

- a) the VPD believed six staff members of the Gallery were involved in trafficking cocaine inside the Gallery;
- b) search warrants had been obtained and executed on March 6, 2024; and
- c) a report to Crown counsel was in the process of being prepared.

[10] A more fulsome report of police service calls to the Gallery prior to 2025 is found at Exhibit "A" to Ms. Bagwell's second affidavit, which is a table of police service calls by year and by type. The table discloses that between 2021 and July 31, 2024, there were 213 service calls. Some of these calls were minor but others were not. There were 21 calls for assault or sexual assault; 31 calls for disturbance; 10 calls for theft; 8 calls for weapons; and 15 calls for other criminal code violations.

[11] On April 19, 2024, the General Manager suspended the Gallery's liquor licence for a period of 14 days on the grounds that there had been a pattern of violent and criminal behaviour inside and outside the Gallery that posed a serious risk of harm to patrons and members of the public. The letter suspending the licence detailed various incidents, namely:

- a) The execution of a search warrant by VPD on March 9, 2024, which was obtained on the basis that six staff members were engaged in drug trafficking;
- b) On March 30, 2024, VPD observed a disturbance outside the Gallery and arrested three individuals, one of whom had a folding knife;
- c) On April 1, 2024, VPD arrested an individual at the Gallery for causing a disturbance;

- d) In 2023, there were multiple documented incidents of intoxicated persons leaving the Gallery in vehicles;
- e) Individuals linked to organized crime and gangs had been observed frequenting the Gallery;
- f) In May 2022, there was a fatal stabbing at the premises;
- g) In September 2023, the VPD found three males with firearms in a stolen vehicle parked facing the Gallery's main entrance;
- h) In November 2023, there was a stabbing inside the premises that was identified by VPD as gang related. VPD reported that Tony Pomonis, the petitioner's representative, refused to provide them with video footage of the incident; and
- i) The use of a metal detector had been mandated between 9 p.m. and closing.

[12] Also, on April 19, 2024, several conditions were added to the petitioner's licence, namely:

- a) Video surveillance was to be maintained for all areas;
- b) Patrons were not to enter the premises if the video surveillance was not operational;
- c) All patrons were to be screened for weapons using a metal detector;
- d) The video recorder could be inspected by police or liquor inspectors to determine if it was working;
- e) Video was to be made available to police and inspectors; and
- f) Incidents were to be recorded in a log and reported to the Branch within 24 hours.

[13] On April 26, 2024, the licence suspension was lifted subject to the above conditions.

[14] On May 3, 2024, at 10:25 a.m., Dave Brown, the then General Manager of the Gallery, sent an email to the Branch advising of an incident that had occurred in the parking lot between two crowds of people at 3:20 a.m. on May 2, 2024. The report indicated that the two crowds were separated and dispersed without any police involvement.

[15] I observe that Mr. Brown's report of the incident that occurred in the early hours of May 2 suggests the incident was relatively benign, however, this is contradicted by a VPD media release of the incident. The media release indicates that VPD were called to the scene and that witnesses reported a stabbing.

[16] The May 2 incident led to a second 14-day suspension of the petitioner's licence. The licence was suspended by a letter dated May 3, 2024, which noted the following breaches of the licence conditions:

- a) When police asked to review the surveillance footage of the May 2 stabbing, they were told "staff were unable to play the surveillance footage and make it available for police viewing";
- b) When police returned later that day to seize the video equipment, they determined that the equipment was not working and there was no surveillance of the incident;
- c) The incident was not reported to the Branch within 24 hours; and
- d) The Gallery opened the next evening without video surveillance.

[17] On May 7, 2024, the Branch sent a letter to the petitioner advising it was conducting an investigation under s. 13 of the *LCLA* into whether Slobodan (Mike) Pajic was suitable to hold a liquor licence. The letter directed that the petitioner provide specified documents and information by May 14, 2024.

[18] Ms. Bagwell deposes that the petitioner provided some of the requested information to the Branch but did not provide all of the requested information. Her evidence on this point is not disputed. In fact, the May 14, 2024 deadline for the petitioner to provide documents and information was extended to January 17, 2025. The petitioner then requested a further extension, which was denied by letter dated January 24, 2025. However, as the Gallery was then closed for renovations and not serving liquor, no further action was taken. The Branch did, however, advise the petitioner that the investigation remained ongoing and that, if the establishment reopened and the requested documents had still not been provided, the licence might be suspended without notice. The Branch further warned that a decision on the fit and proper investigation might be made based on the information gathered to date.

[19] According to Ms. Bagwell, on March 14, 2025, the Branch learned via social media that the Gallery was planning to reopen on March 22, 2025, without having provided the requested documents. This prompted the Branch to issue a third suspension of the petitioner's licence by email dated March 18, 2025. The email advised the petitioner its licence was suspended immediately and that the suspension would remain in effect until the fit and proper investigation was concluded. The reasons given were:

- a) It had recently come to the Branch's attention that Anthony Pomonis had been charged with trafficking in a controlled substance and another employee had been charged with trafficking and weapons offences;
- b) The Gallery was intending to re-open to the public on March 22, 2025; and
- c) The petitioner had still not complied with the outstanding request for documentation.

[20] The licence suspension referred to in the March 18 email was formally implemented in a letter dated March 22, 2025. That suspension was lifted on April

19, 2025, presumably because the petitioner had provided the requested documentation.

[21] The Gallery reopened to the public in or about April or early May 2025. Mr. Pomonis deposes that the petitioner retained Intercom Lux Management to operate the Gallery upon its reopening. He further deposes that the petitioner changed its business model upon the reopening. In particular, he deposes that the new business model involved contracting with third parties to host events at the Gallery, whereas previously the Gallery was open to the general public.

[22] By letter dated July 30, 2025, the General Manager advised the petitioner that a cancellation of the licence was being considered because of “significant concerns regarding the operation of the Establishment”. The letter set out five main areas of concern as follows:

- a) High-ranking employees at the Establishment have been charged with drug trafficking and related offences;
- b) There was an established pattern of violent incidents endangering public safety, occurring at and in the immediate vicinity of the establishment;
- c) An ongoing investigation was being conducted into alleged violations of Canadian anti-money laundering legislation by the Licensee;
- d) Significant amounts of money were owed to the provincial and federal government for outstanding tax obligations; and
- e) Significant misstatements and discrepancies were contained in the financial information provided by the petitioner that raised concerns about the petitioner's financial integrity.

[23] The purpose of the July 30, 2025, letter was stated to provide the petitioner with an opportunity to respond to these concerns and to make submissions. The letter invited a response and submissions by August 20, 2025.

[24] In an arguably unrelated matter, on August 22, 2025, Rod Cridland, the manager of the investigations branch, sent a letter to an unrelated licensee advising that licensee there was a concern about an association between that licensee and Mr. Pomonis. The letter stated the Branch might initiate an investigation if steps were not taken to prevent an “affiliation between the establishment and Mr. Pomonis”. The petitioner relies on this letter as raising an apprehension of bias by the General Manager.

[25] On September 22, 2025, the petitioner provided a response to the July 30, 2025, letter from the Branch. That response is not contained in the materials before me but is summarized in the decision letter dated February 13, 2026. From the summary, I take it that the petitioner submitted: it should be permitted to continue to operate under the licence with conditions and benchmarks; it was the subject of unfair enforcement and investigative practices by both the Branch and the VPD; cancellation of the licence would be disproportionate and harm third parties; and, a transfer of the licence should be considered as an alternative to cancellation.

### **2026 Incidents**

[26] There were several incidents that occurred at the Gallery between December 2025 and February 2026 that are not mentioned in either the letter of February 13 or February 27, 2026. I am unclear as to whether the reports of these incidents formed part of the record before the General Manager when the decisions set out in those letters were made. Nevertheless, the incidents are:

- a) On December 10, 2025, the VPD advised the Branch of an incident at the Gallery on December 6, 2025, where a patron was allegedly assaulted by “bouncers”. This led to the issuance of a “Notice of Enforcement Action” on January 26, 2026, by which the Branch proposed to suspend the liquor licence for seven days because the petitioner failed to report the incident within 24 hours as required.

- b) On January 23, 2026, an inspector with the Branch and the VPD attended at the Gallery to inspect the DVR camera system. They found that, contrary to the conditions of the liquor licence, 16 of the 32 security cameras in the venue were not operational. The petitioner was told to close and not to re-open until the surveillance system was fully operational.
- c) On January 25, 2026, at approximately 12:30 a.m., there was an altercation inside the premises between two groups of patrons. The VPD were called and two individuals were arrested. The VPD were not able to review the CCTV footage of the incident.
- d) On January 25, 2026, at approximately 2:45 a.m., a patron was allegedly punched by another patron inside the Gallery.
- e) On February 2, 2026, the petitioner reported an incident that occurred the night before, where an unruly patron assaulted a security guard. The VPD were called and arrested the individual.
- f) On February 14, 2026, at 11:14 p.m., VPD observed that people on the street outside the Gallery were drinking what appeared to be alcoholic beverages.
- g) On February 21, 2026, the petitioner reported three separate incidents that had occurred that day, namely,
  - i. At 12:05 a.m., there was an altercation between two groups of patrons inside the establishment.
  - ii. At 12:48 a.m., there was an altercation between two groups of patrons inside the establishment and outside in the parking lot after the patrons were evicted.
  - iii. At 3:40 a.m., a physical altercation occurred between patrons in the parking lot.

[27] Abul Fadel, the principal of the third-party operator hired to operate the Gallery after the renovations, addresses the various incidents that occurred at the Gallery in January and February of 2026. He deposes that “none of the incidents are serious violent incidents” and that they are “the types of incidents that occur at liquor primaries across British Columbia regularly”. He later deposes the incidents “were relatively minor in nature and unfortunately common in nightlife environments”.

**February 13, 2026 Decision**

[28] By letter dated February 13, 2026, the General Manager advised that the petitioner and its affiliate, Mike Pajic, were not fit and proper to hold a liquor licence and cancelled the liquor licence effective February 27, 2026.

[29] The General Manager summarized the reasons for his decision as follows:

In my view, the Licensee and Mike Pajic have failed to exercise any meaningful oversight of the activities at the Establishment in accordance with their responsibilities as a Licensee under the LCLA and Liquor Policy Manual. This failure is to the detriment of the safety of patrons and the public. High-ranking staff at the Establishment are alleged to have engaged in serious criminal activities. There is an established pattern of violent incidents occurring at adjacent to the establishment. Establishment staff have failed to co-operate with police investigating violent incidents connected to the Establishment, and there has been a failure to comply with terms and conditions imposed intended to address these incidents and protect public safety. Furthermore, I continue to have questions and concerns regarding the financial integrity of the Licensee. This established pattern of criminal activity, violence and disregard for the law leads to the unescapable conclusion that the Licensee and Mike Pajic have been seriously negligent in their oversight of the goings on at the Establishment.

[30] The letter addressed four main reasons for the licence cancellation, namely:

- a) That Anthony Pomonis had been charged with one count of trafficking and another employee, Navid Zanaganesh, had been charged with multiple counts of trafficking or weapons related offences. The letter noted that these were high-ranking employees of the petitioner and that the associations indicated a serious lack of oversight on the part of the petitioner and its affiliate in respect of the operation of the establishment while raising serious public health and safety risks;

- b) That there was an established pattern of violent incidents at or adjacent to the establishment endangering public safety. In addition to repeating the incidents identified in the July 30, 2025 letter, the February 13, 2026, letter also stated the Branch had been advised by VPD that the Gallery was frequented by individuals associated with organized criminal networks. As noted, the February 13, 2026, letter did not reference any of the incidents that occurred at the Gallery between December 6, 2025 and February 21, 2026;
- c) That there was an investigation into alleged money laundering at the Gallery. The letter stated that in November 2024, both the RCMP and the VPD executed search warrants at the Gallery in relation to money laundering investigations. The VPD warrant was obtained, in part, based on information provided by the Branch. The letter noted that foreign exchange transactions were being conducted at the Gallery without the licensee being properly registered with FINTRAC; and
- d) That there was a pattern of inaccuracies and unresolved discrepancies in the petitioner's financial information. These included: outstanding payments owed in respect of GST and PST, inaccurate expenses, discrepancies in liquor purchase records, and other discrepancies in relation to artist contracts, USD exchange and coat check revenue. The letter noted that the petitioner provided no explanation for the erroneously classified liquor costs or for the other discrepancies.

[31] Ultimately, the General Manager determined Mr. Pajic and the petitioner were not fit and proper persons to hold a licence because they failed to exercise meaningful oversight.

My determination that the Licensee and Mike Pajic are not fit and proper is not based on whether they are engaged in illegal conduct or associated with organized criminal networks. I have determined that the Licensee and Mike Pajic are not fit and proper because they have failed to exercise meaningful oversight of the activities at the Establishment in accordance with their duties under the *LCLA*. This failure is to the detriment of the safety of patrons and the public.

*Cooper* [*Cooper v. British Columbia (Liquor Control and Licensing Branch)*, 2017 BCCA 451] does not alter my determination because the circumstances in *Cooper* are different than those in the present case. Unlike *Cooper*, where the appellant was a minority shareholder in the licensee, Mike Pajic is the sole shareholder of the corporation holding a majority stake in the Licensee. He therefore has the requisite authority to make decisions that impact the activities under the Licence. Despite having that authority, (i) high-ranking employees have been charged with drugs and weapon offences alleged to have occurred at the Establishment, (ii) there is a pattern of violent incidents at the Establishment that threaten patron and public safety (iii) the Establishment's staff have a history of not cooperating with police investigating said incidents, (iv) the Licensee has not complied with terms and conditions imposed to address the violent incidents and staff noncompliance, and (v) there are serious questions about the financial integrity of the Licensee. In these circumstances, *Cooper* provides no basis to minimize the seriousness of the conduct that forms the basis for my determination.

[32] Having determined Mr. Pajic and the petitioner were not fit and proper persons to hold a licence, the General Manager then addressed whether the licence should be cancelled or, as the petitioner requested, some other remedy imposed, such as additional conditions, administrative supervision or a licence transfer. The General Manager rejected the alternatives proposed by the petitioner on the grounds that they would not adequately address public safety concerns. He wrote:

I have considered the proposal that the Licensee continue operations with renewed compliance conditions or that the Licensee should be placed under administrative supervision with clear benchmarks. However, I have concluded that this does not address a core concern that I have regarding the Establishment, namely, that it has become a place, in the opinion of the VPD, when dangerous individuals, including gang members and members of criminal organizations, choose to congregate. This is certainly consistent with the pattern of violent incidents that have occurred there in the last few years. In other words, as the preferred place for gang members and other persons who may pose a danger to the public to hang out, the Establishment has become inherently dangerous to the public. I am not convinced that there are compliance conditions that can contain the risks to the public from continuing to have the Licensee operate the Establishment. Moreover, I note that the Licensee has a history of failing to comply with the terms and conditions on the Licence.

In my view, ordering a transfer of the Licence is not appropriate in these circumstances. The Establishment has developed a clientele whose influence is likely to persist after any transfer, whether through ongoing informal involvement, financial relationships, or continuing associations that cannot be reliably severed by a transfer alone.

I am concerned that the Establishment, even under a different licensee, would remain inherently dangerous to public safety because of the nature of the clientele it has attracted to date. Accordingly, a licence transfer would be unlikely to mitigate the existing risks to public safety.

[33] The General Manager concluded the licence should be cancelled as of February 27, 2026.

**February 27, 2026 Letter**

[34] On February 17 and 23, 2026, the petitioner submitted a “notice of appeal” of the decision cancelling the licence. The notice of appeal, *inter alia*, attached letters dated February 5, 2026, from the Public Prosecution Service of Canada to the Provincial Court directing the Clerk of the Court to stay the criminal proceedings against Anthony Pomonis and Navid Zanaganesh. I observe that there is no evidence of when the petitioner became aware these charges had been stayed.

[35] It is common ground that the petitioner’s notice of appeal was misguided and of no effect. Nevertheless, the Board responded on February 27, 2026, in a letter entitled “Confirmation of Cancellation”. The February 27, 2026, letter provided in full as follows:

The Notice of Cancellation letter, dated February 13, 2026, stated that if there is a reason this licence should not be cancelled, you will need to provide the relevant information and take any specified action, prior to February 27, 2026

You have not done so, therefore pursuant to section 49(2) of the Liquor Control and Licensing Act and the terms and conditions of your licence the above-noted liquor licence has been cancelled effective immediately. A cancelled licence cannot be reinstated or renewed.

Please contact Tyrell Chatlain at 778 698-9034 or 1-866-209-2111 if you have any questions regarding this notice.

[36] I observe that the February 27 letter misstated the contents of the February 13 letter. The February 13 letter did not say the petitioner could submit further information or take further action to prevent the cancellation by February 27.

[37] I note that the parties dispute whether the February 27 letter is a decision subject to judicial review. The respondent submits that the February 27 letter is

merely a confirmation of the February 13 decision and is not a separate decision subject to judicial review. The petitioner, however, submits that the February 27 letter recognized a right to submit further evidence to the General Manager. The petitioner says it did provide further evidence, namely, the letters staying the criminal charges against Anthony Pomonis and Navid Zanaganesh, and that, in breach of the rules of procedural fairness, the General Manager failed to consider this evidence. The petitioner also says that the General Manager breached the rules of procedural fairness by failing to advise it of the alleged right to submit further evidence in the February 13 letter.

### **Chronology of Proceedings**

[38] The underlying petition in this matter was filed on February 27, 2026, the effective date of the cancellation of the licence. The petition was not prepared by legal counsel and the only relief requested is a stay of the February 13, 2026, decision cancelling the liquor licence.

[39] Also on February 27, 2026, the petitioner applied, without notice, for an interim stay of the decision cancelling its liquor licence. Justice Sukstorf granted a temporary stay until March 9, 2026, to permit the petitioner time to prepare “an appropriate judicial review and proper stay application”.

[40] On March 6, 2026, by which time the petitioner was represented by counsel, the parties appeared before Associate Judge Nielsen. He set a schedule, on consent, for the filing of a proper notice of application, response to application and affidavits. He also ordered, on consent, that the stay was to remain in place until judgment was rendered on the stay application but, during the period of the stay, the licence was to be suspended.

[41] The petitioner filed a proper notice of application for a stay and affidavits in support on March 16, 2026. The petitioner did not, however, amend the petition, which remains defective. The respondent filed an application response on March 19, 2026.

[42] A number of consequences flow from the haste with which the petition and application for a stay were brought and the fact the petition has not been amended. First, the petition itself is defective and wholly inadequate as a petition for judicial review. It does not address the grounds for judicial review or, in fact, even request a judicial review of the decision. Second, the evidence before me is not the record of the decision maker. Rather, I have been provided with a series of affidavits. Some of the information in the filed affidavits would have been before the General Manager when the decision to cancel the liquor licence was made. However, other information clearly would not have been part of the record and an application will be required to adduce new evidence before this matter proceeds to judicial review.

[43] Notwithstanding the defects in the petition and the filed evidence, I proceeded on the basis that the petition will be amended in due course to reflect the grounds for judicial review set out in the petitioner's notice of application.

[44] As noted, on April 9, 2026, I dismissed the application for a stay with reasons to follow.

### **Applicable Law**

[45] The parties agree on the applicable law. It was recently summarized by Justice Majawa in *Chow v. British Columbia (Liquor and Cannabis Regulation Branch)*, 2025 BCSC 2437, as follows:

[14] The parties agree that s. 10 of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241 [JRPA] and the legal test for a stay articulated in *RJR-MacDonald Inc. v. Canada (Attorney General)*, 1994 CanLII 117 (SCC), [1994] 1 S.C.R. 311 govern this application. Section 10 of the JRPA states:

#### *Interim order*

10. On an application for judicial review, the court may make an interim order it considers appropriate until the final determination of the application.

[15] The three-stage test in *RJR-Macdonald* is well known and requires the following:

- a) a preliminary assessment of the merits of the case to insure there is a serious question to be tried;

- b) determining whether or not the applicant will suffer irreparable harm if the relief is not granted; and
- c) determining if the balance of convenience weighs in favour or against granting the injunction.

[16] It should be noted that these three factors are not a checklist. A number of these factors relate to each other. They are not intended to be separate watertight compartments. Consequently, the strength of one part of the test may compensate for a weakness in the other: *Cambie Surgeries Corp. v. British Columbia (Attorney General)*, 2019 BCCA 29 at para. 19.

[46] I would add that the onus is on the applicant for a stay, here the petitioner, to prove on a balance of probabilities that each step of the test is met.

### **Issues**

[47] Therefore, the issues are:

- a) Has the petitioner established that there is a serious question to be tried?
- b) Has the petitioner established it will suffer irreparable harm if the stay is not granted?
- c) Does the balance of convenience favour the granting of a stay?

### **Serious Question**

[48] The threshold for the “serious question to be tried” step is a low one: *Vesuna v. Ashworth*, 2020 BCCA 154 at para. 34. A court must simply be satisfied that the issues being raised are not frivolous or vexatious; a prolonged examination of the merits is neither necessary nor desirable: *RJR-MacDonald* at paras. 54–55; *Western Forest Products Inc. v. Capital Regional District*, 2009 BCCA 80 at para. 22.

[49] The petitioner submits that there are multiple meritorious grounds for setting aside the decision of the General Manager’s cancelling the liquor licence. The Petitioner accepts that these grounds are not set out in the Petition as filed but says the petition will be amended to include them. In summary, the petitioner submits the cancellation decision is unreasonable and subject to be overturned on several grounds, including:

- a) The fit and proper investigation was a criminal or quasi criminal investigation coordinated with the VPD that violated its privacy rights contrary to *R. v. Jarvis*, 2019 SCC 10;
- b) The General Manager relied heavily on the pending criminal charges against Anthony Pomonis and Navid Zanaganesh yet failed to make inquiries into the status of the charges, failed to ascertain those charges had been stayed and failed to consider the staying of the charges when informed of them by the petitioner;
- c) The decisions fail to disclose a factual basis for the alleged associations with criminal gangs;
- d) The decisions fail to disclose an adequate factual basis for allegations of money laundering;
- e) The cooperation between the Branch and the VPD gives rise to a reasonable apprehension of bias; and
- f) The decisions were procedurally unfair for,
  - i. failing to inquire into the status of pending criminal charges against two Gallery employees prior to the notice of cancellation letter of February 13, 2026,
  - ii. failing to provide the licensee with notice of or an opportunity to be heard following February 13, 2026,
  - iii. failing to disclose material evidence in the fit and proper investigation relating to the money laundering investigation and communications with the Vancouver Police Department,
  - iv. failing to provide *Stinchcombe* level disclosure of its penal investigation into the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act*, S.C. 2000 c. 17, and

v. failing to disclose the audit investigation report into the Gallery's finances.

[50] The respondent recognizes that establishing a "serious issue to be tried" is a low hurdle but nevertheless, submits the petitioner has failed to meet the burden. In summary, it says:

- a) The procedural fairness arguments of the petitioner are meritless;
- b) The evidence of the staying of the criminal charges is inadmissible in, and irrelevant to, the judicial review as the disclosure of the stays occurred after the February 13 decision was rendered; and
- c) The General Manager's decision that the petitioner had operated the Gallery in a manner that was unsafe to patrons and the general public is amply supported by the evidence, not unreasonable and entitled to deference.

[51] I do not intend to address the various submissions of the parties in any detail. As I stated at the hearing, I am satisfied that the petitioner has met the low threshold for the "serious question to be tried" test in the sense that the judicial review, once properly formulated, cannot be said to be frivolous or vexatious. In particular, in the February 13 decision, the General Manager did rely heavily on the existence of pending criminal charges against Anthony Pomonis and Navid Zanaganesh yet these charges had been stayed by the time of the decision. Whether the evidence of the stays will be admissible on the judicial review, is something that will need to be determined and not something I should address on the limited evidence before me.

### **Irreparable Harm**

[52] Irreparable harm constitutes harm that cannot be quantified in monetary terms or cannot be cured. Examples of irreparable harm include: where one party will be put out of business, permanent market loss or loss of customers, irreparable damage to reputation, loss of the ability to exploit a market, and the inability of a defendant to pay damages: *Vancouver Aquarium Marine Science Centre v.*

*Charbonneau*, 2017 BCCA 395, at para. 57; and *Accurate Material Testing Ltd. v Keshavarzi*, 2023 BCSC 1302, at paras. 35-36.

[53] As I indicated at the hearing, I have little hesitation in determining that irreparable harm will be caused to the petitioner if the application is refused. Mr Pomonis has deposed:

- a) Over 95% of the establishment’s revenue is generated from liquor sales;
- b) “Without a valid liquor licence, the Gallery nightclub cannot operate in any commercially reasonable manner”;
- c) The cancellation of the licence effectively forces the immediate closure of the business;
- d) Gallery will likely go out of business if its licence remains cancelled while waiting for judicial review; and
- e) Without a stay, the Gallery will likely close permanently.

[54] I accept the evidence of Mr. Pomonis as to the consequences of the cancellation of the liquor licence. In particular, I accept that the cancellation of the licence prevents Gallery from operating in a commercially reasonable manner and will effectively put it out of business permanently. Indeed, even in the absence of this direct evidence I would have inferred that drastic financial consequences would flow from the cancellation of the liquor licence. A nightclub such as the Gallery must rely on revenue from liquor sales to stay in business.

[55] Thus, I am satisfied that the second step of the test is met. The petitioner will suffer irreparable harm if the stay is not granted.

### **Balance of Convenience**

[56] In *Canadian Broadcasting Corp. v. CKPG Television Ltd.*, 64 B.C.L.R. (2d) 96 at 102, 1992 CanLII 560 (C.A.), the Court of Appeal listed some of the factors to consider when assessing the balance of convenience:

... [I]n assessing the balance of convenience a judge should consider these points: — the adequacy of damages as a remedy for the applicant if the injunction is not granted, and for the respondent if an injunction is granted; the likelihood that if damages are finally awarded they will be paid; the preservation of contested property; other factors affecting whether harm from the granting or refusal of the injunction would be irreparable; which of the parties has acted to alter the balance of their relationship and so affect the status quo; the strength of the applicant's case; any factors affecting the public interest; and any other factors affecting the balance of justice and convenience.

[57] A further factor to consider in the context of this case is the public interest: *A Lawyer v. The Law Society of British Columbia*, 2021 BCCA 284 at para. 93; *GRL Freightways Ltd. v. The British Columbia Container Trucking Commissioner*, 2023 BCSC 1331 at para. 10.

[58] The petitioner submits that a factor I should take into account in the balance of convenience analysis is that it has a particularly strong case. Although the petitioner has established its case raises a serious issue, in the sense that it is not frivolous or vexatious, I do not agree that it has established a case of such strength that it is a significant factor in the balance of convenience analysis.

[59] In my view, the balance of convenience assessment in this matter primarily involves a balancing of the irreparable harm to the petitioner, if the application for a stay is refused, against the public safety concerns, if the stay is granted.

[60] The petitioner submits that the public safety concerns are non-existent or overstated. It says: the two criminal charges have been stayed; the incidents from 2022-2024 are stale and did not result in any enforcement actions; there have been no serious violent incidents since 2024; it has modified its business model in material ways that reduce the public safety concerns; and the 2026 incidents are normal incidents associated with all liquor primaries in the lower mainland.

[61] The respondent, on the other hand, submits that the public interest concerns are of central importance and outweigh the harm to the petitioner.

[62] I agree with the respondent.

[63] First, I can infer little from the fact that charges against Anthony Pomonis and Navid Zanaganesh have been stayed. There is no evidence before me of the reasons the charges were stayed. The staying of those charges is a neutral factor in the balance of convenience analysis.

[64] Second, I do not agree that the incidents reported between 2022 and 2024 ought to be ignored because they are stale dated and no enforcement action was taken. To the contrary, these incidents led to the first licence suspension and appear to be what prompted the Branch to commence its fit and proper investigation. The fact the investigation took a lengthy period of time is because the petitioner failed to provide the requested documents and information within the time frame requested by the Branch.

[65] Third, I do not agree that there have been no violent incidents since 2024. The Gallery was closed for renovations from sometime in late 2024 until April or May 2025. Hence, during this period, one would not expect any incidents. I agree that for the balance of 2025 there were no reported incidents except on December 10, 2025, when a patron was allegedly assaulted by “bouncers”. I note that the licence was then suspended because the petitioner failed to report this incident within 24 hours as required by the licence conditions. Of great concern, however, is the number of incidents that occurred in January and February 2026, as I have detailed above. There were multiple bar brawls and assaults and the security cameras were not working at times, as required by the conditions of the liquor licence.

[66] Fourth, I reject the submission that the petitioner’s modification of its business model has reduced the public safety concerns. The changes implemented by the petitioner occurred in April 2025. Although there were no reported incidents between April and December 10, 2025, the incidents reported in January and February 2026,

indicate that the changes to the business model have been ineffective. Moreover, to the extent the changes implemented involved the use of security cameras to enhance security and safety, I note that there were multiple occasions where those cameras were not working or the video was not made available to the police.

[67] Fifth, while I accept that incidents occur at nightclubs with greater frequency than at other types of establishments, I reject Mr. Faldo's evidence that the 2026 incidents at the Gallery are commonplace at nightclubs and not indicative of a danger to the public. The incidents occurred over a period of slightly less than one month. During that time period, there were six incidents of assaults or altercations between patrons.

[68] Considering all of the evidence, I am satisfied that staying the decision of the General Manager to cancel the petitioner's liquor licence would present a clear danger to the patrons of the Gallery and to the public in general. In my view, this danger outweighs the harm that will be caused to the petitioner if the stay is not granted.

[69] Accordingly, the application of the petitioner is dismissed.

[70] As the respondent has not requested its costs of the application, there is no order as to costs.

"Giaschi J."