



Encouraging Responsible Alcohol Behavior

CADA

Liquor Licence Legislation Review Sub-Committee

Report to the Ministry of Culture & Social Rehabilitation

July 8th 2008

This report is an account of the discussions and decisions made by CADA's Liquor Licence Legislation Review Sub-Committee (hereinafter referred to as 'the Committee') formed in January 2008. The stated purpose of the Committee is to: Review current alcohol practices and legislation in Bermuda; decide what needs to be changed or strengthened; look at other jurisdictions to see what alcohol legislation and practices they have successfully used to combat the problems we uncover in Bermuda; draft changes Bermuda should make to their alcohol practices and legislation; and present our findings to the Ministry of Culture & Social Rehabilitation.

Committee Members:

Anthony Santucci, Chairman of CADA and Chairman of this Committee
Roxanne Christopher, Road Safety Officer
Andre Curtis, Formerly of Faith Based Tourism, Spokesperson of United by Faith
Constable Scott Devine, Liquor Licensing Police Officer, Member of CADA Board
Liana Hall, Legislative Consultant, JH Consultants
Jon Legere, Owner of Volcanic Productions
Jennifer Murdoch, General Manager, Colonial Insurance
Vernon Pemberton, Vice-Chairman of CADA Board
Elder Kevin Santucci, Seventh Day Adventist Church
Walter Simmons, Chairman, Bar & Restaurant Division of Chamber of Commerce
Craig Smith, Bacardi Brands Manager, BPSL, Member of CADA board

THE REPORT

1. Liquor Licensing Authority

a. Creation of the Alcoholic Beverage Control Commission ("ABC")

- i. The Committee has decided that due to the size of the island there is no need for the currently legislated 3 (three) separate licensing districts
- ii. Instead these should be replaced with 1 (one) single Licensing Authority, provisionally titled "the ABC".

b. Removal of Magistrates' Court Jurisdiction

- i. The Committee has decided that all licensing duties shall now be removed from Magistrates' Court due to
 1. the overwhelming burden it places upon the Court, AND
 2. in order to make the licensing authority a modernized entity

c. Terms of Reference

- i. To ensure the health, safety and welfare of the public by regulating the activities of the alcoholic beverage industry and by

enforcing liquor license laws, while permitting open competition and legal marketing practices that meet the lawful needs and convenience of the customer.

d. Structure of the new ABC

- i. The Committee has, in its review, examined various other ABCs from many jurisdictions
- ii. The Committee has discussed the need for the membership of the ABC to reflect the diversity of our society
- iii. The Committee has found that the State of Delaware's ABC provides a workable template for the structure of Bermuda's new proposed ABC:
- iv. The structure of the Delaware ABC can be found at the following web pages:
 1. <http://date.delaware.gov/dabcpublish/index.jsp>
 2. <http://delcode.delaware.gov/title4/c003/index.shtml#TopOfPage>
- v. The Committee suggests the following structure for Bermuda's ABC:
 1. 1 (one) Full-Time Commissioner
 2. 3 (three) Deputy-Commissioners who are non-paid board members (East, West, Central)
 3. 3 (three) to 5 (five) Board Members
 - a. Number should depend on number of Deputy Commissioners. As an alternative: only 1 (one) DC and more Board Members.
 - b. The entire Board should be comprised of 5 (five) to 7 (seven) members
 - c. These members should comprise of a sufficient cross-section of the community
 - d. Suggested membership includes a Parks Department official
 4. A minimum of 3 (three) to 4 (four) Full-Time Enforcement Officers. These officers are employed by the ABC. The ABC is a separate entity from the Bermuda Police Service. These officers are not members of the Bermuda Police Service. A background in law enforcement is however essential.
- vi. Quorum:
 1. Should be a majority with the Commissioner present
 2. If the Commissioner is unable to be present should require a super-majority which includes at least 2 Deputy Commissioners

e. Sessions

- i. Committee recommends that instead of a yearly session with occasional “special sessions” the ABC should meet quarterly.
- ii. Reasoning:
 1. It relieves the ABC of an overload of all applications at once
 2. It ensures the ABC will be more thorough with each application as there will be fewer applications to review each session
 3. A further suggestion is that the quarterly meetings could be staggered with each meeting representing applications for each class of licence, or group of licences i.e. January for Hotels & Members Clubs, April for Grocery/Liquor Stores, July for Nightclubs/Restaurants etc

2. Classes of Licence (Section 9 of Liquor Licensing Act 1974) & Grant of Licence Subject to Conditions (Section 18 of Liquor Licensing Act 1974)

The Committee has discussed the various distinctions and has found the need for adjustment in various classes of licence:

a. Licence A (Grocery/Liquor Store)

- i. The Committee has decided that due to the anti-social behaviour it promotes, a decision should be made to limit the sale of both miniatures and singles. Miniatures should only be permitted to be offered for sale in premises that hold a Hotel Licence.
- ii. Miniatures and Singles will be permitted for sale in Liquor store(s) only in minimum packs of 4 (or as packaged by the manufacturer)
- iii. Licence A covers both Liquor and Grocery stores
 1. The Committee feels that the requirements for a Grocery Store to sell intoxicating liquor need to be more clear
 2. The current legislation requires that grocery stores sell liquor from “a discrete and separate part of the premises”
 3. The Committee feels that many grocery stores are currently flouting that rule, as it is too vague, by selling liquor from the same cash register as other food products and showcasing alcoholic beverages in display cases right next to non-alcoholic beverages
 4. This issue is particularly timely due to the recent Ferry Driver incident where the driver was able to claim confusion over the alcoholic content of the beverage he consumed.

5. This is also important as there are often under-18 cashiers on grocery store premises, these under-age cashiers should not be permitted to sell alcohol at their register.

b. Licence B

- i. The Committee is content with the requirements of Licence B and suggests they remain the same

c. Restaurant & Nightclub Licences

The Committee has examined the differentiation between Restaurant (E Licence) & Nightclub (F Licence) Licences due to the fact that many de facto Nightclubs do in fact hold a Restaurant Licence as they manage to fall into the Restaurant category (being able to serve substantial meals to 24 people at one time). Furthermore, this issue is an important one due to the mostly recent decisions by many restaurant owners to “convert” their premises into de facto nightclubs after main food service has ended. Much discussion has been had within the Committee meetings to discover an alternative to the current situation of holding a Restaurant Licence yet operating as a nightclub, including the possibility of merging the two. However, it has been decided to maintain two separate licences, the reasons for which and methods of enforcement are as follows:

- i. The current legislation allows for a licensed premise to hold two licences simultaneously e.g. a premise may hold both a restaurant license and a nightclub license. However, the original spirit of the legislators is being violated as currently establishments which are operating as a restaurant and then “converting” to a nightclub are being allowed to hold only restaurant licences.
- ii. To merge the licences would make enforcement of the prohibition of underage drinking much more difficult as it would require a cut-off period for all patrons including those under 18, who should be permitted to stay and eat for as long as the establishment is open (especially on any designated “teen nights” etc.)
- iii. The resolutions are as follows:
 1. Restaurants operating only as restaurants should be permitted to hold only a restaurant licence, even if they wish to stay open until 3am. However, one suggestion is that they must continue to serve a FULL menu until that time in order to serve alcohol on the premises.
- iv. Those restaurants that wish to “convert” into a nightclub must apply for an additional nightclub licence, which will come into effect at midnight.
 1. “Converting into a nightclub”, for the purposes of this review, means clearing space for not less than 50 people at

one time to dance and providing music. (This remains in line with the current requirements for a nightclub in the legislation).

- v. Additional Rules for a Nightclub Licence:
 - 1. No Under-18s (as it currently stands) permitted. Under-18s who have been on the restaurant premises prior to midnight must be asked to leave.
 - 2. After midnight the premises must have security personnel who have been certified by the Bermuda Police Service (please reference (2 e ii.) below).
 - 3. A driving force for many applicants in applying for an E Restaurant Licence is the decreased cost in comparison to an F Nightclub Licence. All figures will likely need to rise due to inflation since the last amendment in 1998; however for the purposes of this section the Committee will discuss the current prices. The Committee suggests that those already holding a Restaurant E Licence (at the cost of \$1000) pay only \$2000 more to obtain an otherwise \$3000 F Nightclub Licence, bringing the final figure in line with a single Nightclub licence to encourage the application of this particular licence.
- vi. Those establishments that hold only a nightclub licence must continue to keep under-18s out at ALL times, and keep security at all times. This requirement will come into effect during operation hours.
- vii. All other requirements for either a Restaurant (E) or Nightclub (F) Licence detailed in the Liquor Licence Act 1974 shall remain in force

d. Members Club Licence

The Committee is keen to highlight its concerns regarding Members Club Licences. The issue is that clubs are using the veil of membership to allow themselves 24-hour liquor sale and consumption. The Committee feels that the purpose of allowing these licences under the Liquor Act 1974 was to allow private clubs, with social/activity purposes to have a private gathering place for members to socialise and such a privilege is being abused to the detriment of law and order. The Committee's suggestions are as follows:

- i. To prevent instantaneous membership, whereby clubs are allowing patrons to sign up upon arrival (and therefore drink all night) the Committee recommends following the UK's approach and placing a 48-hour wait period between joining as a member and allowing to use the club's facilities
- ii. The minimum yearly dues should be raised from \$5 to \$50 (The Committee is further suggesting that all fines, fees and other figures throughout the Act be raised according to inflation and

further punitive value, and has dealt with this in the ‘Fines’ section below)

- iii. Whilst the current legislation determines that accounts must be kept in order, this is not being properly enforced. Although the Legislation need not be changed, this issue must be pressed upon the ABC when deciding upon Liquor Licence renewals
- iv. The Committee has also determined that enforcement of this Act upon Members Clubs is difficult due to the fact that the club is only liable as a whole. The Committee therefore suggests that either the Chairman or the Secretary (and more likely the latter) should be held personally liable for failing to adhere to the Act
 - 1. Such a step will also likely ensure that the book-keeping measures are adhered to more strictly
- v. Currently non-members must leave the premises by 2 am, and the Committee suggests bringing the whole act into line by enforcing a 3 am cut-off instead for consistency’s sake
- vi. Currently the police may inspect a club’s books by giving 48 hours notice. The Committee feels this same power should be bestowed upon the ABC Enforcement Officers.

e. Further Conditions Relevant to all Premises Licences

- i. Training for Intervention Procedures (TIPS). TIPS is a responsible alcohol sales and service training program
 - 1. The Committee understands the Bermuda government is in the process of putting in place legislation that every licensed establishment will have to have a certain number of managers and staff trained in the TIPS program in order to receive their liquor license.
 - 2. The Committee has determined that the legislation should be altered to require that these managers and staff be trained under a Government approved “responsible alcohol sales and service training program” (e.g. the TIPS program)
- ii. Security Training and Registration (STAR).
 - 1. The Committee recommends that after midnight, when the nightclub licence comes into effect (or in nightclub only premises) all premises **must have** STAR (or another program run by the Police Service yet to be named) trained security

3. Persons to whom Licences May be Granted

a. Age Limit

- i. The Committee recommends that the lower age limit be reduced from 21 to 18 to bring the Act in line with all other modern legislation

b. Convictions

The Committee has discussed a time limit for bars to Liquor Licence applications, due to the belief in rehabilitation. The Committee believes the Act should be brought in line with the Rehabilitation of Offenders Act 1977 and all convicted persons shall be eligible for licences, provided they meet all other conditions, after a period of seven (7) years.

c. Disqualification of any person serving in Her Majesty's Forces or any member of the Bermuda Police Service

- i. The Committee believes that members of the Bermuda Police Service shall continue to be disqualified from holding a liquor licence, due to the enforcement duties of members of the Police Service
- ii. The Committee does not believe that the disqualification need extend to persons serving in Her Majesty's Forces

4. Application Process

a. Objections

- i. The Committee believes that due to the size of the island and that licensed premises have the potential to affect many residents, the eligibility requirements for objection should be removed (i.e. Resident of parish, owner or occupier of nearby property, Commissioner of Police) and any individual (including on behalf of a group) may be permitted to object to any application
- ii. In order to continue in the vein of creating a more streamlined, efficient licensing authority the requirement of delivering the grounds for objection to the Commissioner of Police shall be removed and only presentation to the ABC will be required
- iii. The Committee has decided in the interest of fairness there should be no awarding of costs to either the successful objector or applicant.

b. Premises Plans

- i. The Committee has agreed that to further provide guidelines, whether in the legislation or just in the application to the ABC, all plans must be certified i.e. architects plans approved by Planning Department, etc.

5. Provisional Licences

a. Transition to Permanent Licences

- i. The Committee suggests that if a provisional licence has been applied for, the transition to a permanent one after completion of building works should be made more efficient
- ii. The Committee recommends that provided the full licence application meets all the requirements detailed in the provisional licence the licence be automatically granted upon application

6. Transfer of Licences

- a.** The current legislation prescribes that a licence may transfer to any person or premises within the same licensing district
 - i. This will now be redundant due to the creation of a singular licensing district
- b.** Transfers of Licences should be valid for a maximum of 3 (three) months and must be approved at next quarterly session

7. Occasional & Seasonal Licences

a. Application Time Limits

- i. Applicants should be encouraged to apply 2 (two) to 4 (four) weeks prior to an event for an Occasional Licence
- ii. Applications received a minimum of 2 (two) weeks prior to the event will pay the usual application fee
- iii. Other applications should, from hereon, only be accepted a minimum of 5 (five) business days prior to the event. In which case the applicant must pay a penalty/increased application fee.
- iv. Late applicants of 5 (five) days will be declined
 1. Reasons for early application encouragement: Early notification enables the Police Service to efficiently police all the various events that are going on across the island on any given date, as there can be many large events occurring at one time

b. Seasonal Licences

- i. The concept of seasonal licences is a new initiative that the Committee has considered due to the changing social scene in Bermuda
- ii. Many of these seasonal licences will be for outdoor locations, therefore no seasonal licence for an outdoors location shall be granted without Parks Department approval. This is due to the

need to consider the environmental impact such activity may have in a specific area

- iii. Seasonal Licences can cover 1 (one) month to 3 (three) months, for either one day each week, or all days of the week, depending on the Licence
- iv. Seasonal Licences allow for short-term licences that can be altered depending on the occasion, and should allow the ABC a large scope of discretion in terms of when and where to allow such licences
- v. The cost of a Seasonal Licence should depend on the number of days in the Season it will be required for
- vi. It is preferable that the Seasonal Licence be applied for during the regularly scheduled quarterly sessions before the season for application, however it could also be determined during special sessions for occasional licences
- vii. Furthermore, Seasonal Licences should not be open for application more than 1 (one) year prior to the start date

c. Decision Making within ABC

- i. The Committee suggests a streamlined version of the ABC should decide on Occasional/Seasonal Licence Applications
 - 1. Perhaps just the Commissioner, 1 ABC Board Member and 1 Enforcement Officer
 - 2. The ABC should pay special attention to the location, the time of event and the environmental impact.
- ii. The ABC should no longer be able to deny an application for no reason. In the interests of the fairness and the rule of law all denials should be delivered with the reasons for refusal
- iii. In making the decision whether to grant a licence, special attention should be made to the security provisions in place

d. Hours of Alcohol Service

- i. In order to bring the occasional licences in line with other licences the Committee has decided that Occasional/Seasonal Licences should be allowed to apply to serve alcohol until 3 a.m.
- ii. However, the allowed hours of operation on each Occasional/Seasonal Licence are still within the discretion of the ABC and can vary on a case-by-case basis

e. Notification of Commissioner of Police & Accountant-General

- i. In order to make the licence applications process more efficient the Committee suggests that applicants for Occasional/Seasonal Licences no longer need be made also to the Commissioner of Police and that the ABC itself will be responsible for forwarding all relevant information to the Commissioner of Police and Accountant-General

8. Fees

a. Application Fees

- i. Committee has decided that whole fee section needs updating due to inflation

b. Selling liquor under 15% (for example)

- i. Under the current legislation licence fees are halved if the proprietor is selling only beer or wine.
- ii. The Committee feels this should really reflect the spirit of the legislation which is encouraging responsible drinking of lesser alcoholic beverages.
- iii. Therefore the Committee recommends that this section be altered to reflect that the licence will be half the usual fee if there are only sales of alcohol with less than 15% (a figure decided upon due to its lesser alcoholic value, but which is entirely available for alteration)

9. Duty of Licence Holder to Display Hours

- a.** Committee feels this section is accurately defined in the Act, however compliance by licence holders is often lacking and should be encouraged and emphasised more during the application process

10. Restrictions on Employment of Young People

a. Grocery Store

- i. There are often under-18 cashiers on grocery store premises, these under-age cashiers should not be permitted to sell alcohol at their register.

b. Restaurant & Hotel License

- i. The Committee determines that this section shall remain unchanged

11. Dealing with Drunk Persons

- a.** The Committee has determined that whilst the legislation accurately reflects the need to control drunken persons on the premises, emphasis must be placed on responsible sales and service training such as TIPS

12. Miscellaneous Offences

a. Drug Offences

- i. The Committee has determined that any licence holder convicted under a drug offence of the Criminal Code should not be permitted a licence again until elapse of the Rehabilitation of Offenders Act time requirement

b. Disqualification

- i. The Committee has also determined that if someone has their licence removed three times they should be disqualified for a period of not less than 7 (seven) years.

13. Fake/Altered ID & Underage Drinking

a. Fake ID

- i. The Committee has found that the offence of providing fake/altered ID is duplicated in the current Act due to a later amendment (with two different fine amounts) and the legislation should be altered to remedy this surely accidental provision
- ii. The Committee has decided that as fines usually affect parents more than the young offender additional measures should be implemented that punish the offender themselves
- iii. For each offence the Committee suggests a 6 (six) month driving ban and/or (in the case of the offender with no licence) community service, possibly with CADA, AA, or some other organisation devoted to alcohol education.

b. Mandatory ID Checks

- i. The Committee has decided that establishments with a liquor licence must check Identification upon entry and upon service/purchase.
- ii. The Committee has decided that those establishments holding Nightclub or "B" Licences must check ID at entry
- iii. The Committee has drawn this practice from its prevalence in the United States and feels that although it may at first be frowned upon by the general public, the community will soon become accustomed to this requirement and that such a provision will ease the prevention of underage drinking

c. Forms of Identification

- i. For those unable to provide a driver's licence or passport, alternative methods of proof with both Photo and Date of Birth will be acceptable. However, they must be Government Issued.
- ii. The Committee suggests an examination of United Kingdom runs the Proof of Age Standards Scheme (PASS) which provides a hologram on all IDs which reach the rigorous standards or proof. Only those forms of ID holding such a hologram are deemed acceptable proof of age by law. More information can be found at www.pass-scheme.org.uk
- iii. The Committee further suggests that all drivers licences/permits issued by TCD should be altered. Three alternative suggestions follow:
 1. A different colour licence provided to those under the age of 18 (i.e. auxiliary cycle riders) which can still be used after the age of 18, but merely allows security officers inspecting ID to do so quickly, OR
 2. Those who are provided with licences under the age of 18 have a section on the licence which says: "Carrier will reach age of 18 on dd/mm/yy" to prevent any security officers needing to calculate the correct date, OR
 3. A more conspicuously placed DOB on all licences, preferable in **bold** type and red, or otherwise conspicuous colour.
 4. Persons under age 18 license be printed in Portrait rather than Landscape

14. Powers of Search

a. Inspection by Commissioner of Police

- i. The current legislation states that the Commissioner of Police must inspect licensed premises at least once every 6 months and report findings to the chairman at regular annual meetings.
- ii. The Committee has agreed that this inspection should be the responsibility of the ABC and that ABC officers should inspect licensed premises in place of the Commissioner of Police

15. Police Powers to Shut Down Premises

a. Justice of the Peace

- i. The Committee believes that the current legislation's requirement for the attendance of a Justice of the Peace in person to the site of a

disturbance is an unnecessary and cumbersome measure which affects the Police Service's ability to properly control a potentially volatile situation

- ii. The Committee has decided that the ABC Enforcement Officers/Police should have the power to close down licensed premises for up to 24 hours without consent from a Justice of the Peace

16. Annual Report

a. Quarterly Reports

- i. The Committee has decided that in place of annual reporting there should be quarterly reporting by the ABC for records purposes
- ii. There should still be an Annual Report provided to the Minister, however the quarterly reports held by the ABC should be accessible to the Minister at any time

17. Fines, Other Penalties and Fees

a. Increases

- i. To reflect the seriousness of many the offences within the Act, and to act as a deterrent, the Committee suggests a steep increase across the board
- ii. Those fines and penalties that have been specifically reviewed are as follows:
 1. Section 28: Prohibition of sale outside permitted hours
 - a. Increase from \$300 (three hundred) to \$3,000 (three thousand)
 2. Section 32: Duty of Licence holder to display notice of permitted hours
 - a. Increase from \$20 (twenty) to \$200 (two hundred)
 3. Section 35: Restrictions on service of intoxicating liquor by under-18s
 - a. First Offence - \$1,500 (One thousand, five hundred)
 - b. Second Offence - \$3,000 (Three thousand)
 - c. Third Offence – Suspension of Licence
 4. Section 36: Duty of holder of licensee to lock up intoxicating liquor
 - a. Increase from \$200 (two hundred) to \$2000 (two thousand)
 5. Section 37: Drunken person refusing to leave premises
 - a. Increase from \$100 (one hundred) to \$1000 (one thousand)

6. Section 38: Punishment of Licensed Person being drunk on licensed premises
 - a. First Offence - \$3,000 (three thousand)
 - b. Second Offence - \$4,000 (four thousand)
 - c. Third Offence – Suspension of Licence
7. Section 40 – Miscellaneous Offences
 - a. Serving Under-Age drinkers:
 - i. First Offence - \$10,000 (ten thousand)
 - ii. Second Offence - \$15,000 (fifteen thousand) with possible suspension
 - iii. Third Offence - \$20,000 (twenty thousand) with definite suspension
 - b. Offering on-duty police officers alcohol & using establishment as brothel/gaming house
 - i. Increase from \$300 (three hundred) to \$3,000 (three thousand)
 - c. Selling or serving alcohol to any person who is drunk or knowingly selling/serving alcohol to another person for consumption by such drunken person:
 - i. Increase from \$300 (three hundred) to \$3,000 (three thousand)
8. Section 41: Restriction of consumption of liquor under a Licence A
 - a. Increase from \$300 (three hundred) to \$3000 (three thousand)
9. Section 42: Persons found on licences premises outside permitted hours and (1) Licensee allowing, and (2) Giving false information to Police
 - a. Instead of two separate fines, both offences should be set at \$500 (five hundred)
10. Section 45 & 47: Obstruction of Police Officers right to inspect
 - a. First Offence - \$1,500 (One thousand, five hundred)
 - b. Second Offence - \$3,000 (Three thousand)
 - c. Third Offence – Suspension of Licence
11. Section 51: Failure to keep premises closed after being closed due to possibility of occurrence of riot
 - a. Increase from \$500 (five hundred) to \$5,000 (five thousand)
12. Section 53: Serving liquor in an unlicensed establishment
 - a. \$5,000 (five thousand) initial fine
 - b. Followed by \$1,000 for every patron found drinking
- iii. The final decision on levels of fines and fees, will likely be a joint decision by the ABC, the Ministry of Social Rehabilitation and the Ministry of Finance

18. Miscellaneous Issues

The following subsections deal with areas of concern that have either been overlooked or under-examined in the current legislation

a. Sobriety Check Points

- i. Whilst this section would more accurately be dealt with in Road Traffic Legislation, the Committee would like to emphasise the need for random sobriety checks. The Committee suggests that the Police should have broader powers to stop any car, regardless of driving behaviour, to inspect the sobriety of the driver

b. Open Liquor in Vehicles

- i. The Committee suggests that all containers, containing liquor/alcohol should be banned from being transported in vehicles, unless in trunk or back box

c. Marin Institute

- i. The Marin Institute is a United States Alcohol Industry Watchdog whose practices should be examined. A main focus is ensuring that so-called “alcopops” remain out of reach of under-age drinkers and that their alcoholic content is emphasised, as they often contain a higher alcoholic content than many wines and beers. These findings are also very relevant to the need to separate such “alcopops” in grocery stores from other beverages

d. Dramshop Legislation

- i. The Committee feels that the concept of Dramshop Legislation (i.e. where bartenders, managers and owners can be held legally responsible, if a patron to whom they have sold alcohol, has an accident.) takes the responsibility too far, and puts too much liability upon a bartender. Responsible alcohol sales and service training is sufficient to encourage the finding of alternative travel arrangements for the intoxicated patron. Therefore, the Committee does not recommend the incorporation of Dramshop Legislation but feels the issue was relevant to the debate and worthy of mention.

END REPORT