



**DECISION OF THE  
GENERAL MANAGER  
LIQUOR CONTROL AND LICENSING BRANCH**

IN THE MATTER OF  
A hearing pursuant to Section 20 of  
**The Liquor Control and Licensing Act RSBC c. 267**

|                                 |                                   |
|---------------------------------|-----------------------------------|
| <b>Licensee:</b>                | Minnesota's Billiards & Café Ltd. |
| Case Number:                    | EH02-92                           |
| <b>Appearances:</b>             |                                   |
| For the Licensee                | James Banser                      |
| For the Branch                  | Peter Jones                       |
| Enforcement Hearing Adjudicator | Suzan Beattie                     |
| Date of Hearing                 | December 11, 2002                 |
| Place of Hearing                | Vancouver, B.C.                   |
| Date of Decision                | April 8, 2003                     |

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**Ministry of Public  
Safety and Solicitor  
General**

Liquor Control and  
Licensing Branch

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## INTRODUCTION

The licensee, Minnesota's Billiards and Café, is located at 114 – 13479 - 76 Avenue, Surrey, BC. It holds a Class "B" Dining Room Licence #171561 for the sale and consumption of beer, wine, cider, coolers and liqueurs (including Brandy) with meals.

The hours of the liquor licence are Monday to Saturday from 12:00 Noon to 2:00 A.M., and Sunday from 11:00 A.M. to 12:00 Midnight. The liquor licence dated November 30, 2001, shows a maximum capacity for area 1 of 53 patrons.

## ALLEGED CONTRAVENTION AND RECOMMENDED PENALTIES

The Liquor Control and Licensing Branch alleges that on June 29, 2002, the licensee contravened sections 20(1)(d) and 16 of the *Liquor Control and Licensing Act* by operating outside of class of licence, contrary to the *Act*.

The branch recommends a suspension of the liquor licence for ten (10) days, to be served starting on a Saturday and continuing on successive business days until completed, for the alleged contravention of sections 20(1)(d) and 16.

The branch further alleges that on June 29, 2002, the licensee contravened section 7.1(3) of the *Liquor Control and Licensing Regulations* by failing to comply with the Responsible Beverage Service program (RBS), contrary to the *Regulations*.

The branch recommends a monetary penalty of \$1,000.00 (one thousand dollars) for the alleged contravention of section 7.1(3).

The branch further alleges that on August 8, 2002, the licensee contravened sections 12(3)(e) and 38(3)(b) of the *Liquor Control and Licensing Act* and sections 17(2)(g) of the *Liquor Control and Licensing Regulations* by failing to comply with the General/Terms & Conditions – games (pool table) not permitted in restaurant, contrary to the *Act* and *Regulations*.

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The branch recommends a monetary penalty of \$1,000.00 (one thousand dollars) for the alleged contravention of sections 12(3)(e), 17(2)(g) and 38(3)(b).

The branch further alleges that on August 8, 2002, the licensee contravened section 7.1(3) of the *Liquor Control and Licensing Regulations* by failing to have a manager complete the required training program – Liquor Service, contrary to the *Regulations*.

The branch recommends a monetary penalty of \$1,000.00 (one thousand dollars) for the alleged contravention of section 7.1(3).

The relevant statutory provisions of the *Liquor Control and Licensing Act and Regulations* state:

## **20 Action against a licensee**

- (1) In addition to any other powers the general manager has under this Act, the general manager may, on the general manager's own motion or on receiving a complaint, take action against a licensee for any of the following reasons:
  - (d) the existence of a circumstance that, under section 16, would prevent the issue of a licence.

## **7.1 Beverage service training**

- (3) In order to comply with section 13 of the Act, a licensee shall successfully complete the training program described under subsection (1)(a) and a manager or server shall successfully complete the training program described under subsection (1)(a) or (b).

## **12 Licences**

- (3) Without limiting subsection (2), the terms and conditions referred to in that subsection may:
    - (e) approve, prohibit or restrict games and entertainment in an establishment.
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## 17 Licence categories

- (2) A B licence may be issued, renewed or transferred in respect of a dining establishment that is primarily engaged in the service of food during all hours of its operation, and the following general regulations apply:
- (g) no game, other than a game that had been approved for use in the establishment by the general manager before the coming into force of this section, is permitted and, for the purposes of this section, a game is any form of competition against another person or oneself either with or without an electronic device, but does not include a diversionary activity such as a crossword puzzle or a children's game played by children.

## 38 Unlawful sale of liquor

- (3) A licensee must not sell liquor except
- (b) in accordance with this Act, the regulations and the terms and conditions of the licence.

## ISSUES

1. Whether the licensee contravened sections 20(1)(d), 16, and 38(3)(b) and 12(3)(e), of the *Liquor Control and Licensing Act* and/or sections 7.1(3), 17(2)(g) of the *Liquor Control and Licensing Regulations*.
2. If so, are the recommended penalties appropriate in the circumstances?

## COMPLIANCE HISTORY

There are no prior proven contraventions, offences or enforcement actions ("compliance history") for this licensee or this establishment.

## WITNESSES

The branch called a liquor inspector as its only witness. The licensee called its manager as its witness.

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**EXHIBITS**

The branch and the licensee presented the following exhibits:

- Exhibit 1** Letter of authorization dated December 9, 2002, from the owner of the establishment advising their manager may represent them at the hearing.
- Exhibit 2** **Hearing Brief**
- Tab 1 Notice of Enforcement Action dated September 20, 2002.
  - Tab 2 Contravention Notice Number A000599, and Contravention Notice Number A002027.
  - Tab 3 Excerpts from publication "A Guide to Liquor Licensee in British Columbia" on Restaurant Regulations General referring to "games" in restaurants and the "Responsible Service Beverage Program".
  - Tab 4 Liquor Licence Number 171561 issued to establishment on November 20, 2001, expiry date October 31, 2002.
  - Tab 5 Official Floor Plan of the establishment on file with the Liquor Control and Licensing Branch.
  - Tab 6 Contravention Notice Number A000554.

**EVIDENCE, SUBMISSIONS AND FINDINGS ON CONTRAVENTIONS**

The liquor inspector testified to the events that occurred on two inspections.

***June 29, 2002*** ***Alleged operating outside class of licence contrary to sections 20(1)(d) and 16; and***  
***Alleged failing to comply with the Responsible Beverage Service Program contrary to section 7.1(3)***

**Evidence**

On June 29, 2002, at approximately 10:40 P.M. the Inspector entered the premises on a routine inspection. The inspector walked through the establishment and observed

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several open bottles of beer and coolers being consumed at various pool tables. The inspector also witnessed patrons purchase beer at the service counter and walk back to the pool tables.

There was no clear division between the billiard area and the restaurant area. The inspector spoke with the staff person on duty and asked where the restaurant area was located. The staff person did not think there was a restaurant area.

The staff person produced a Health Permit that expired in March 2000, a Liquor Licence that expired in October 2001, and was unable to produce floor plans. The area the inspector and staff person determined was the restaurant area contained a pool table, large screen TV, sofas, love seats, 3 high bar style tables and 3 low tables. Alcohol was being consumed in this area but the inspector noted there was no food being consumed. The staff person pointed out a rotisserie, which was not in use and a warming oven with some pizza slices. There was a limited sandwich board menu but no food was being prepared. The staff person said that pizza was ordered from a Pizza Factory and sold by the slice. In a coke fridge with the beer there were some wieners and condiments. In the fridge was a keg of beer.

There were approximately 20 patrons on the premises at the time of the inspection. The staff person was not able to produce sales records for the sale of food and liquor. In the inspector's opinion, there was not sufficient food on the premises to prepare a meal. It was not possible to seat and serve 53 customers.

The staff person was not able to supply her Serving It Right number and admitted to not having the licensee portion of Serving It Right. The inspector's subsequent investigations confirmed that the staff person did have a 'server' number. The staff person was aware that a coin operated pool table should not be situated in the centre of the restaurant area.

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The manager testified that, at the time the inspection took place, there was an additional freezer in the storage area that held sufficient food. There is also a microwave in the storage room. The sandwich meat and buns are kept in the freezer and nacho chips are stored above the oven. The rotisserie only takes 15 minutes to cook a wiener. He had no explanation why the staff person did not show these to the inspector.

The manager said that the beer seen at the pool tables could have been brought in by the patrons. The pool table in the restaurant area is coin operated and was put there for busy evenings so patrons could play the coin-operated pool table in the restaurant while waiting for a pool table. The manager was not aware they were not allowed to have a coin operated pool table in the restaurant area on June 29, 2002.

The staff person advised the manager of the inspector's visit on or before June 30, 2002. The manager immediately telephoned the supplier of the coin operated pool table to come and remove it from the premises.

## **Findings**

The licensee did not contest that the staff person had not completed the appropriate beverage service training. I find that the licensee contravened section 7.1(3) of the *Liquor Control and Licensing Regulations*.

The licensee holds a "B" class dining room licence for the sale and consumption of beer, wine, cider, coolers and liqueurs (including Brandy) with food. A "B" class dining room licence must be primarily engaged in the service of food. The allegation that a "B" class dining room licence is not primarily engaged in the service of food reflects a shift in the primary focus of the establishment from the service of food to the service of liquor.

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On the totality of the evidence before me, I conclude that, on June 29, 2002, the establishment was not primarily engaged in the service of food. The staff person was unaware of the restaurant area within the establishment, no food was being consumed, no food was in the process of being prepared, and there was limited kitchen equipment.

I also find that patrons purchasing beer at the service counter had no intention of ordering food in the establishment.

I conclude that the licensee was not primarily engaged in the service of food on June 29, 2002. I find a contravention of section 20(1)(d) and section 16 of the *Liquor Control and Licensing Act*.

***August 8, 2002 Alleged failing to comply with the general terms and conditions – games (pool table) not permitted in restaurant, contrary to sections 12(3)(e), 17(2)(g) and 38(3)(b); and Alleged failing to comply with the Responsible Beverage Service Program contrary to section 7.1(3)***

## **Evidence**

A follow-up inspection was conducted on August 8, 2002. At this time, the inspector noted the coin operated pool table was still in the restaurant area.

The manager as well as the same staff person that was working on June 29, 2002, were present. The manager did not have a Serving It Right certificate and the staff person, who has the server portion of Serving It Right, still did not have the licensee portion of Serving It Right.

The Health Certificate was still invalid. The food menu consisted of nachos, smokies, chips and chocolate bars. The freezer in the back room contained a bag of lasagne and chicken wings. The cooler contained condiments and there was no oven visible for cooking.

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The inspector again requested sales records for the sale of food and liquor, specifically for the last three months. Sales records were never produced.

The manager explained that he had telephoned and asked the owner of the coin operated pool table to remove it from his premises. The owner was not co-operating.

## **Findings**

The licensee did not contest the failure of its manager to have completed the appropriate Beverage Service Training Program.

I find that the licensee contravened section 7.1(3) of the *Liquor Control and Licensing Regulations*.

I also find, based on the un-contradicted evidence that there was a coin operated pool table in the restaurant area, that the licensee contravened the general terms and conditions of its licence, contrary to sections 12(3)(e) and 38(3)(b) of the *Liquor Control and Licensing Act* and sections 17(2)(g) of the *Liquor Control and Licensing Regulations*.

## **PENALTY SUBMISSIONS AND DECISION**

Pursuant to section 20(2) of the *Act*, having found that the licensee has contravened the *Act*, the *Regulations* and/or the terms and conditions of the licence, I have discretion to order one or more of the following enforcement actions:

- impose a suspension of the liquor licence for a period of time
  - cancel a liquor licence
  - impose terms and conditions to a licence or rescind or amend existing terms and conditions
  - impose a monetary penalty
  - order a licensee to transfer a licence
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Imposing any penalty is discretionary. However, if I find that either a licence suspension or monetary penalty is warranted, I am bound to follow the minimums set out in Schedule 4 of the *Regulations*.

### **Submissions**

The licensee submitted that, given their financial circumstances, a penalty was not appropriate. The licensee says they have dealt with the majority of issues arising from the inspections. The coin operated pool table is a continuing problem and, until the owner moves it out of the premises, the licensee said they would place a sign on it stating it is out of order.

### **Decision**

The branch's primary goal in determining appropriate penalties is achieving voluntary compliance. The licensee argued that he is attempting to be in compliance and is in the process of attempting to financially turn the business around.

On the totality of the evidence before me, I am not able to accept this submission.

I will deal with each contravention in turn:

#### ***June 29, 2002 – Operating outside of class***

The minimum penalty in the Schedule for the contravention of operating outside of licence class is 10 days. As the holder of a Class "B" licence, the licensee must be primarily engaged in the service of food. It is contrary to the public interest for the branch to allow a dining room licence to operate as a "straight drinking" licence. As well, fees for a "B" licence are lower than fees for straight drinking establishments. The liquor licensing process requires public and local government input into licence

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applications for bars but not for restaurants. Obtaining a dining room licence and then operating as a bar circumvents this process.

I also point out that, under the licensing scheme in effect at the time of this contravention, a billiard hall was not eligible for a "straight drinking" licence. The explanation and history for the lack of eligibility is beyond the scope of this decision. Suffice it to say that the use of a dining room licence could be, in some cases, a device to circumvent the licence process. Under the new licensing scheme effective December 2, 2002, a billiard hall may, for the first time in the history of licensing in BC, be eligible for a liquor primary licence.

Returning to the events of June 29, 2002, I have found that, on the totality of the evidence before me, this establishment had shifted its focus from the service of food to the service of liquor on June 29, 2002. I have considered the licensee's evidence and submissions and find there are no mitigating circumstances. I find the minimum penalty of a 10 (ten) day suspension is appropriate.

#### ***June 29, 2002 – Failure to comply with Responsible Beverage Service***

On the facts, the licensee did not contest the failure of its staff to comply with the Serving It Right training. I find the recommended minimum monetary penalty of \$1,000.00 (one thousand dollars) is appropriate.

#### ***August 8, 2002 – Terms & Conditions***

In the circumstances of this case, I find the licensee was aware that the coin operated pool table was not permitted in the restaurant area. I was not convinced by the licensee's submission that he exhausted all means of removing the coin operated pool table or took other steps to voluntarily comply with the legislation. I find the minimum recommended monetary penalty of \$1,000.00 (one thousand dollars) is appropriate.

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**August 8, 2002 – Failure to comply with Responsible Beverage Service**

In this case, given the licensee's failure to take the necessary training in a timely fashion, I find the recommended minimum monetary penalty of \$1,000.00 (one thousand dollars) is appropriate.

**ORDER**

Pursuant to section 20(2) of the *Act*, concerning the Class "B" Dining Room Liquor Licence #171561, I order as follows:

For the contravention of section 20(1)(d) of the *Liquor Control and Licensing Act* on June 29, 2002, I order suspension of the licence for 10 (ten) days;

For the contravention of section 7.1(3) of the *Liquor Control and Licensing Regulations* on June 29, 2002, I order a monetary penalty of \$1,000.00 (one thousand dollars); and

For the contravention of sections 12(3)(e) and 38(3)(b) of the *Liquor Control and Licensing Act* and section 17(2)(g) of the *Liquor Control and Licensing Regulations* on August 8, 2002, I order a monetary penalty of \$1,000.00 (one thousand dollars); and

For the contravention of section 7.1(3) of the *Liquor Control and Licensing Regulations* on August 8, 2002, I order a monetary penalty of \$1,000.00 (one thousand dollars).

In summary, I order suspension of the licence for a total of 10 (days) to commence as of the close of business on Friday, May 16, 2003, and to continue each succeeding "business day" until the suspension is completed. I also order a total monetary penalty of \$3,000.00 (three thousand dollars) to be paid on or before May 8, 2003.

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Since I do not know whether the establishment would normally be open 7 days per week as of Friday May 16, 2003, I do not know what the "business days" will be. To ensure that this order is effective, I direct that the liquor licence, Class "B" Dining Room Licence #171561, be held by the branch or the Surrey Detachment of the R.C.M. Police from the close of business, Friday, May 16, 2003, until the licensee has demonstrated to the branch's satisfaction that the licensed establishment has been closed for 10 (ten) business days.

The suspension sign notifying the public shall be placed in a prominent location by a liquor inspector or police officer. A member of the R.C.M. Police Surrey Detachment will be requested to attend the premises, take possession of the liquor licence and hold it in safekeeping during the term of the suspension.

*Original signed by*

Suzan Beattie  
Enforcement Hearing Adjudicator

Date: April 8, 2003

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