



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

**IN THE MATTER OF**

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

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| <b>Licensee:</b>                | Twinpower Restaurant Management<br>Incorporated<br>dba V8 Sports Café and Golf Range<br>8451 West Road<br>Richmond B.C. |
| Case:                           | EH03-005  |
| <b>Appearances:</b>             |   |
| For the Licensee                | Fred Lau, Manager (Appearing with<br>the consent of the licensee)   |
| For the Branch                  | Peter K. Jones  |
| Enforcement Hearing Adjudicator | Edward W. Owsianski   |
| Date of Hearing                 | April 16, 2003  |
| Place of Hearing                | Vancouver, B.C.   |
| Date of Decision                | May 26, 2003  |

**INTRODUCTION**

The licensee, Twinpower Restaurant Management Inc. operates the V8 Sports Café and Golf Range under a Class "B" Dining Lounge Liquor Licence No. 189735 located at 8451 West Road in Richmond, B.C. The licence permits the sale and consumption of all types of liquor with meals during the hours of sale from 12:00 Noon to 2:00 A.M. Monday through Sunday. The licence permits 48 patrons in Area 1 and 34 patrons in Area 2.

**ALLEGED CONTRAVENTION AND RECOMMENDED ENFORCEMENT ACTION**

The Liquor Control and Licensing Branch has alleged: that on or about November 22, 2002, prohibited entertainment (Karaoke) occurred within the licensed establishment, contrary to section 50 of the *Liquor Control and Licensing Act*, (the *Act*) and has recommended a monetary penalty of One Thousand dollars (\$1000.00).

An additional allegation of contravening a term or condition of the liquor licence contrary to section 12 of the *Act* was not pursued by the Branch (see Exhibit B).

**Section 50 of the *Act* states as follows:****Entertainment**

**50** (1) If entertainment is permitted under the regulations or the terms and conditions of a licence, a municipality or regional district may restrict or prohibit any or all of the types of entertainment permitted.

(2) Without limiting section 12, the general manager may, at the time of the issue of a licence or at any time during the term of the licence, impose as a condition of it the restrictions and limitations that the general manager considers necessary on any type or form of entertainment performed or carried on in the establishment for which the licence is issued.

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**ISSUES**

1. Whether the licensee contravened Section 50 of the *Act* on or about October 18, 2002?
2. If so, is the recommended penalty an appropriate penalty in the circumstances?

**EXHIBITS**

The following exhibits were presented:

- Exhibit A** Book of Documents
- Tab 1** Notices of Enforcement Action (NOEA) letters of January 8 and February 24, 2003 with appendices, regarding the alleged contraventions.
  - Tab 2** Contravention Notice No. A013688 dated November 22, 2003.
  - Tab 3** Disclosure documents forwarded to the licensee by the Branch.
  - Tab 4** Disclosure documents received by the Branch from the licensee.
  - Tab 5** Liquor Licence issued to the establishment (this was subsequently replaced by the Liquor Licence contained in Exhibit D)
  - Tab 6** Floor Plan of the establishment (this was subsequently replaced by the Floor Plan contained in Exhibit E)
- EXHIBIT B** Letter of April 15, 2003, from the Branch to the licensee advising that the Branch is no longer pursuing the allegation of contravening a term or condition of the liquor licence.
- EXHIBIT C** Preliminary Statement of the Branch Advocate, Peter K. Jones.
- EXHIBIT D** Liquor Licence 189735 issued to the establishment, dated May 6, 2002.
- EXHIBIT E** Floor Plan of the establishment.
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**EXHIBIT F** Statement of Mr. Thomas Tsang.**EVIDENCE - The Liquor Control and Licensing Branch**

A **constable from the R.C.M.Police** Richmond Detachment testified that on November 22, 2002, he attended at the V8 Sports Café between 11:30 P.M. and 12:00 Midnight in the company of another police officer and a liquor inspector for the purpose of looking for contraventions of the Liquor Control and Licensing Act. Upon entering the establishment the police officer heard amplified music and singing coming from Area 2 and entering that area noted a male singing in a Chinese language into a microphone whilst standing in front of a TV. The police officer advised that he is familiar with the form of entertainment known as Karaoke and the singer's actions were consistent with a person performing Karaoke. The police officer could not recall whether there was music, singing or Karaoke being performed in the remainder of the establishment, Area 1.

A **liquor inspector** testified that on November 22, 2002, at approximately 11:30 P.M. he arrived at the V8 Sports Café in Richmond, B.C. in the company of two police officers. Music could be heard outside the establishment and peering through the window into Area 2 he noted a male person standing in front of the TV and singing into a microphone. He proceeded into the establishment and spoke with the manager in the bar area (area 1). The manager advised him that the activity observed was not Karaoke but rather a person watching a music video being played on the TV. The liquor inspector was adamant that he was familiar with Karaoke entertainment and what he observed was consistent with that.

The liquor inspector testified that he had previously met with the manager following a contravention observed on November 8, 2002, and warned him that Karaoke entertainment was not permitted in the establishment and that the Karaoke machine should be removed. The manager was advised that to have Karaoke entertainment in the establishment he would have to request approval of the Branch and that should it be

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approved the hours for the sale of liquor would be reduced in accordance with Branch policy. The manager advised the inspector that he did not want the reduced hours for the sale of liquor.

### **EVIDENCE - The Licensee**

A **waiter employed by the establishment** testified that following the liquor inspector's visit on November 8, 2002, he was told by the manager that Karaoke was not permitted in the establishment. Business subsequently decreased as patrons like to come to the restaurant later in the evening, eat, have a few drinks and perform Karaoke. He testified that he was working on November 22, 2002, when the liquor inspector and two police officers arrived at approximately 11:30 P.M. At that time there was no Karaoke taking place in the establishment and music videos were being played in its place. The music was turned off upon their arrival at the direction of the manager. The microphone previously used by patrons in performing Karaoke had been removed from the establishment by the manager. The waiter was quite certain that no patrons had brought their own microphone into the establishment and even if they had there was no means of plugging it into the music video sound system in Area 2. He advised that he can tell the difference between persons singing along in karaoke style entertainment and that of the original singer in a music video. He stated that he did not hear anyone singing with a microphone on the night of November 22, 2002.

The manager introduced Exhibit F, **the written statement of a regular customer** of the establishment. The manager advised the hearing that the customer intended to appear at the hearing as a witness however was prevented from doing so by work commitments. The statement was subsequently typed by the customer and provided to the manager. The customer in his statement says that he was present on Saturday night, November 22, 2002, when the liquor inspector accompanied by two other males entered the establishment for approximately 8 to 10 minutes at 11:30 P.M. The customer states that there was no Karaoke that night, only music videos being played.

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The Branch Advocate noted that the customer in his statement refers to November 22, 2002, as being a Saturday night whereas it was actually a Friday night.

The **manager** referred to his own written statement contained in Exhibit A at Tab 4. He advised that his statement and that of the waiter (both found at Tab 4) were typed by a bookkeeper for the restaurant. The manager testified that following the liquor inspector's visit of November 8, 2002, he took away all the microphones to ensure Karaoke was not performed in the establishment. Since that date only music videos are played. Patrons may still sometimes stand and sing-along with the music videos however he doesn't recall this occurring during the night of November 22, 2002. The liquor inspector approached him at the bar (Area 1) on November 22, 2002, and advised him that Karaoke was being performed in Area 2. He told the inspector that it was not Karaoke but a music video. The inspector did not accept the explanation. The manager advised that it is sometimes difficult to tell the difference between a patron singing and that of the performer on the original music video.

## **SUBMISSIONS**

### **Liquor Control and Licensing Branch**

In his written submission the Branch advocate submitted that to permit Karaoke style entertainment in a licensed establishment approval must first be obtained from local government. This allows concerns of the community regarding any negative impacts to be addressed. He submitted that the evidence given by the police officer and the liquor inspector was impartial and was to be preferred to that of the witnesses for the licensee. The evidence presented during the hearing was sufficient that the contravention of prohibited entertainment (Karaoke), contrary to section 50 of the Act, was proven. The Branch is recommending the minimum monetary penalty of \$1,000.00. The previous contravention on November 8, 2002, was dealt with as a warning. He submitted that a financial penalty was appropriate here as the licensee had gained financially by increasing revenue through improper means.

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**The Licensee**

The manager submitted that Karaoke style entertainment consists of a person leaving their table, standing and singing along to a Karaoke machine using a microphone. Here the evidence was that all the microphones had been removed. The patron, whose back was to the window thus making it impossible to determine that he had a microphone, was singing along to a music video. This was not Karaoke. He submitted that the recommended penalty of \$1000.00 was a substantial amount to a small business. Business has decreased without Karaoke entertainment and it will take time to get the business back to where it was previously. He submitted that this was the first time this had occurred and it had not resulted in an increase in revenue. He argued that if a penalty must be levied he preferred it to be the minimum one day suspension.

**Finding of Fact**

Having considered all of the evidence I find that the licensee permitted prohibited entertainment (Karaoke) and in so doing contravened Section 50 of the Liquor Control and Licensing Act.

**REASONS AND DECISION**

In finding that the licensee permitted the prohibited activity I accept the evidence of the police officer and the liquor inspector on their observations of seeing a male person singing into a microphone in front of a TV. I do not accept the evidence as presented by the witnesses for the licensee. In reviewing the written statements it appears that, contrary to the information provided by the manager, they were all typed by the same source. Further, on a close reading of their content, it appears that they were authored by the same person. To provide guidance to this licensee I am satisfied that Karaoke style entertainment does not strictly require that the singer's voice be amplified through a microphone though it may be common to do so. It is the participation of the patron in the entertainment i.e. singing-along to pre-recorded music that is prohibited unless otherwise approved by the Branch.

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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 license or rescind or amend existing terms and conditions
- impose a monetary penalty
- order a licensee to transfer a license

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*.

The purpose of the Branch in bringing enforcement action is to encourage voluntary compliance on the part of all licensees. In the circumstances, I find that the minimum monetary penalty of \$1,000.00 is warranted. I am satisfied that the motivation in permitting the prohibited entertainment (Karaoke) was to increase business which had suffered during its absence.

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**ORDER**

Pursuant to Section 20 (2) of the Act, concerning Liquor Licence #189535, I impose a monetary penalty of \$1,000.00 (one thousand dollars) to be paid no later than July 15, 2003.

*Original signed by*

Edward W. Owsianski  
Enforcement Hearing Adjudicator

Date: May 26, 2003

cc: R.C.M.Police Richmond Detachment

Liquor Control and Licensing Branch, Vancouver Office  
Attention: Lee Murphy, Regional Manager

Liquor Control and Licensing Branch, Victoria Office  
Attention: Peter Jones, Branch Advocate

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