



**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

Licensee:	Jive Billiards Ltd. dba Jive Billiards Café 1127 West Broadway Vancouver BC
Case Number:	EH03-134
Appearances:	
For the Licensee	Seyed Mohammadi, Licensee Masoud Zarrinfar, Licensee
For the Branch	Shahid Noorani, Advocate
Enforcement Hearing Adjudicator	Edward Owsianski
Date of Hearing	November 28, 2003
Place of Hearing	Vancouver, BC
Date of Decision	February 13, 2004

**Ministry of Public
Safety and Solicitor
General**

Liquor Control and
Licensing Branch

Mailing Address:
PO Box 9292 Stn Prov Govt
Victoria BC V8W 9J8
Telephone: 250 387-1254
Facsimile: 250 387-9184

Location:
Second Floor, 1019 Wharf Street
Victoria BC

<http://www.pssg.gov.bc.ca/lclb/>

Introduction

The licensee, Jive Billiards Ltd. operates the Jive Billiards Cafe located at 1127 West Broadway, Vancouver, BC. It is a small 20 seat restaurant located within a much larger billiards hall from which it is separated by a five foot high pony wall.

At the time of the alleged contravention it held "B" Dining Lounge Liquor License No. 174294, hours of sale of liquor Monday to Saturday from 12:00 Noon - 2:00 A.M. and on Sunday from 12:00 Noon – 1:00 A.M. with a maximum capacity of 20 seats. It currently holds "Food Primary" Liquor License No. 174294 with the same hours and capacity. Both licenses contain the provision: "Liquor may only be sold, served and consumed within the areas outlined in red on the official plan, unless otherwise endorsed or approved by the L.C.L.B."

The billiards hall is part of the same business entity; however, it is not licensed for the sale, service or consumption of liquor.

Alleged Contravention and Recommended Penalties

The branch's allegations and recommended enforcement action are set out in the amended Notice of Enforcement Action (NOEA) dated November 17, 2003. The Branch alleges that on August 16, 2003, the licensee contravened section 12 of the *Liquor Control and Licensing Act*, (the *Act*) contravening a term and condition of the liquor license by allowing liquor to be removed from the red-lined area of the establishment.

Schedule 4 of the *Liquor Control and Licensing Regulations*, (the *Regulations*) provides a range of licence suspensions and monetary penalties for each contravention. For this contravention the penalty range is a one to three day licence suspension and a one thousand (\$1,000) to three thousand (\$3,000) monetary penalty for a first contravention.

In this case, the branch is recommending a one (1) day licence suspension to be served on a Friday.

Section 12 of the *Act* is as follows:

Licences

12 (1) The general manager, having regard for the public interest, may, on application, issue a licence for the sale of liquor.

(2) The general manager may, in respect of any licence that is being or has been issued, impose, in the public interest, terms and conditions

(a) that vary the terms and conditions to which the licence is subject under the regulations, or

(b) that are in addition to those referred to in paragraph (a).

(3) Without limiting subsection (2), the terms and conditions referred to in that subsection may

(a) limit the type of liquor to be offered for sale,

(b) designate the areas of an establishment, both indoor and outdoor, where liquor may be sold and served,

(c) limit the days and hours that an establishment is permitted to be open for the sale of liquor,

(d) designate the areas within an establishment where minors are permitted,

(e) approve, prohibit or restrict games and entertainment in an establishment,

(f) exempt a class or category of licensee from requirements with respect to serving food and non-alcoholic beverages in an establishment,

(g) vary seating requirements in the dining area of an establishment,

(h) vary requirements with respect to the location of an establishment,

(i) exempt a class of licensee from requirements with respect to marine facilities where liquor is sold,

(j) specify the manner in which sponsorship by a liquor manufacturer or an agent under section 52 may be conducted and place restrictions on the types of events, activities or organizations that may be sponsored,

(k) specify requirements for reporting and record keeping, and

(l) control signs used in or for an establishment.

(4) Nothing in subsection (2) or (3) authorizes the general manager to impose terms and conditions that are inconsistent with this Act or the regulations.

(5) A licence expires on the date specified on it as the expiry date.

(6) The general manager may, on application by a licensee, amend the terms of, renew or transfer a licence.

(7) If the general manager, following application, refuses to issue, amend the terms of, renew or transfer a licence, the general manager must give to the applicant or licensee written reasons for the decision.

Issues

The licensee acknowledges that the NOEA accurately describes what took place on the night in question. However, disputes that that amounts to a contravention. In addition, the licensee raises the defence of due diligence resulting from the licensee's efforts to stop patrons from removing liquor from the licensed area.

1. Whether the licensee has contravened section 12 of the *Act*?
2. If the contravention occurred is the recommended penalty appropriate?

Exhibits

1. Book of Documents

EvidenceLiquor control and Licensing Branch

The branch advocate advised that the evidence is contained in the amended NOEA dated November 17, 2003, (exhibit 1, tab 1) sent by the branch to the licensee.

The NOEA states that on August 16, 2003, at approximately 12:31 A.M. two liquor inspectors attended at the establishment for the purpose of conducting a routine inspection. Inside they observed a person who had been playing billiards in the adjacent unlicensed area, reach over the pony wall into the licensed restaurant area, pick up a bottle of beer from a table and consume from it. They brought this to the attention of the owner and whilst speaking with him observed another person in the unlicensed billiards area reach over the wall, pick up a beer from a table in the licensed area and consume from it. The owner told the inspectors that he had previously told the persons that they could not consume liquor in the unlicensed area. The owner then went over and told the persons that they must be in the licensed area to consume liquor.

The advocate advised that the problem of persons in the billiards area removing and consuming liquor from the licensed area into the unlicensed area has been brought to the attention of the licensee on previous occasions. Liquor inspectors observed persons consuming liquor outside of the licensed area on May 4, 2001, and June 19, 2003. Following the June 19, 2003, contravention a liquor inspector suggested to the owner that signs be posted notifying persons of the requirements. This had not been done at the time of the most recent inspection.

The advocate referred to relevant portions of the branch publication; "Food-Primary Licence, Terms and Conditions: A Guide for liquor Licensees in British Columbia".

- **At page 1:**

Food-Primary Licence
Terms and Conditions

This Guide

This guide outlines the requirements of the Liquor Control and Licensing Act and Regulations for serving and consuming liquor in food-primary establishments (restaurants). It also imposes further terms and conditions, in addition to those found in the Liquor Control and Licensing Act and Regulations.

- **At page 7:**

If you offer games or adult entertainment

Adult entertainment and games that require customers to stand or move round, such as darts, billiards or foosball, are not allowed in the licensed area of a restaurant. Food-primary licensees may, however, apply to have an unlicensed area where adult entertainment or games are allowed, provided building officials are able to calculate a separate occupant load for the licensed area indicated on the restaurant's floor plans.

If you have been approved for an unlicensed area:

- there must be sufficient separation between the licensed and unlicensed areas to ensure patrons do not take liquor into the unlicensed area, and
 - the physical separation must be fixed and immovable to ensure the size of the licensed area is maintained, and
 - you must be able to control access to the licensed area.
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At page 10:

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Where customers may consume liquor

Customers may not bring their own bottles of liquor to consume in your establishment, and you may only sell and serve liquor in the licensed area of your establishment (commonly referred to as the "red-lined area" of your floor plans). Patrons may stand or walk around within the redlined area with their drinks, but you may not permit customers to consume liquor outside of the red-lined area, or to take liquor from the redlined area to other parts of your establishment....

Licensee

The licensee representative advised that he was tidying up in the unlicensed billiards area when the inspectors entered the licensed restaurant area. He went into the restaurant area and spoke with them. He advised them that the customer had just purchased the beer approximately three minutes earlier and just taken a first sip of it. Persons taking beer from the licensed area into the unlicensed area is a continuing problem for him. He tells all of the patrons that they are not permitted to take beer out of the licensed area or reach over the partition from the billiards area; however they still try and do it. He has, subsequent to the August 16, 2003, incident, posted signs in the restaurant area notifying patrons that liquor may not be removed from the area and has as well moved the tables in the restaurant approximately three feet away from the wall adjoining the billiards area to prevent people from reaching over and picking up their beer.

SUBMISSION

The licensee representative submitted that a penalty is not warranted. He was not at fault, he did not serve liquor outside the red-lined area, has repeatedly told customers that it is not permitted, and has since put up signs and moved the tables in the restaurant to prevent the practice from recurring.

Decision

Having considered all of the evidence I am satisfied that on August 16, 2003, the licensee contravened the terms and conditions of its liquor license by allowing liquor to be removed from the red-lined area of the establishment and has contravened section 12 of the *Act*. I am not satisfied that the licensee acted with sufficient diligence to prevent the contravention from occurring. Based on the observations of the inspectors during their inspection of August 16, 2003, I find that it is unlikely that the persons observed reaching over the pony wall to pick up and consume their beer had been told that the practice was not allowed. However, even if they were told, that in itself is not sufficient. Action must be taken by the licensee to prevent the occurrence and reoccurrence of the prohibited behaviour.

PENALTY

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

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 minimum set out in Schedule 4 of the *Regulations*.

The *Regulations* provide for a graduated scale of penalties for contraventions of the *Act*. The graduated nature of the penalties is necessary for the consistent and vigorous enforcement of the provisions in the *Act* and *Regulations*.

The branch's primary goal in determining the appropriate penalty along the scale is achieving voluntary compliance. Among the factors that are considered in determining the appropriate penalty is whether there is a past history of warnings by the branch and/or the Police, the seriousness of the contravention, the threat to public safety and the well being of the community.

In considering whether a suspension penalty is warranted in the circumstances of this case I note that there is no record of prior contraventions, offences or enforcement actions of this type for this licensee or this establishment within the year preceding this incident. Therefore, this contravention is considered a first contravention for the purposes of the Penalty Schedule. There have been however, previous contravention notices issued by the branch to the licensee for the same prohibited activity occurring on May 4, 2001, and June 19, 2003. Although these were not proceeded with by the branch they do provide notice to the licensee that a problem is perceived. Additionally, the licensee was provided with a suggestion on how to alleviate the problem following the June 19, 2003 occurrence. That suggestion was not implemented by the licensee. While the licensee has, subsequent to the date of the contravention of August 16, 2003, taken measures which may prevent future contraventions if they are enforced by the licensee, I am not persuaded that they provided sufficient reason for not imposing a penalty in this instance. In the circumstances I am satisfied that a penalty is necessary to ensure future compliance and that the minimum one (1) day suspension penalty is appropriate.

Order

Pursuant to section 20(2) of the *Act*, concerning "Food Primary" Licence No. 174294, I order as follows: I suspend the liquor licence for one (1) business day starting at the close of business Thursday, March 25, 2004, and continuing until the suspension is completed. "Business Day" means a day on which the licensee's establishment would normally be open for business (section 54(1) of the *Regulations to the Act*).

Since I do not know whether the establishment would normally be open seven (7) days per week as of March 26, 2004, I do not know what the business day will be. To ensure that this order is effective, I direct that the liquor licence be held by the branch or the Vancouver City Police from the close of business Thursday, March 25, 2004, until the licensee has demonstrated to the branch's satisfaction that the licensed establishment has been closed for one (1) business day. A suspension sign notifying the public shall be placed in a prominent location by a Liquor Inspector or Police Officer.

Original signed by

Edward W. Owsianski
Enforcement Hearing Adjudicator

Date: February 13, 2004

cc: Vancouver City Police

Liquor Control and Licensing Branch, Vancouver Regional Office
Attention: Wendy Jones, Regional Manager,
Liquor Control and Licensing Branch, Surrey Regional Office
Attention: Shahid Noorani, Advocate
