



**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: Galaxy Hotels Ltd.
dba Ingraham Hotel
2915 Douglas Street
Victoria, BC

Case No. EH03-151

Appearances:

For the Licensee: Dennis Coates, Q.C.

For the Branch: Peter Jones, Advocate

Enforcement Hearing Adjudicator: M. G. Taylor

Dates of Hearing: March 18, 2004

Place of Hearing: Teleconference

Date of Decision: May 6, 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

Galaxy Hotels Ltd. operates the Ingraham Hotel. Prior to the events that gave rise to these contraventions, the Ingraham Hotel operated with 4 liquor licences:

Cabaret	No. 001884
Lounge	No. 003834
Beer Parlour	No. 007467
Restaurant	No. 003813

In the summer of 2003, the licensee undertook major renovations which resulted in combining some areas and creating new liquor premises. These contraventions occurred during the transition between the old and new premises.

One of the additions was a Liquor Retail Store (LRS) which opened on December 13, 2003, in the space previously occupied by the beer parlour ("A" class licence) which closed on August 9, 2003. The new Liquor Primary Licence (LPL) went into the old cabaret ("C" licence) space.

Throughout this decision, reference to 'the cabaret' means the new cabaret operating under LPL No. 001884.

The old cabaret licence ("C" No. 001884) permitted occupancy of 250 patrons and the old beer parlour licence ("A" No. 007467) permitted occupancy of 450 patrons. The new cabaret has an occupancy of 250 patrons.

The old beer parlour "A" licence No. 007467 permitted hours of sale from 11:00 A.M. to 1:00 A.M. and from 10:00 A.M. to 12:00 Midnight on Sunday. The old cabaret "C" licence No. 001884 permitted hours of service from 7:00 P.M. to 2:00 A.M. That is the licence that was transferred to the new cabaret. That licence was amended on November 28, 2003, to permit hours of service from

11:00 A.M. to 1:00 A.M. Monday through Saturday and from 10:00 A.M. to 12:00 Midnight on Sunday.

Alleged Contraventions and Recommended Enforcement Action

By Notice of Enforcement Action (NOEA) dated November 6, 2003, the branch alleged that on September 29, 2003, the licensee

1. contravened section 42(4) of the *Regulations* by allowing liquor to be removed from the establishment.
2. contravened section 12 of *Act* by failing to comply with a term and condition of the licence, specifically that the licensee operated the establishment outside the permitted hours of sale. (Opening at 11:00 A.M. instead of 7:00 P.M.)

The branch recommends enforcement action respectively as follows:

1. \$1,000 monetary penalty;
2. \$3,000 monetary penalty.

The prescribed penalties for these contraventions are contained in *Liquor Control and Licensing Regulation*, Schedule 4, items 29 and 46. The range of penalty for first contraventions for each is one (1) to three (3) days licence suspension and \$1,000 to \$3,000 monetary penalty. For second contraventions of the same type which occur within 12 months of the preceding contravention, the range of penalty is three (3) to six (6) days licence suspension.

The branch's recommended penalties are within the first contravention range for each of these contraventions.

Compliance History

There is no record of prior contraventions, offences or enforcement actions ("compliance history") for this licensee or this establishment within the year preceding this incident. Therefore, this contravention, if proved, would be considered a first contravention for the purposes of the Penalty Schedule.

On September 20, 2003, a liquor inspector issued a Contravention Notice (CN) for operating outside the permitted hours of service. On September 24, 2003, the inspector faxed a note to the licensee instructing the licensee not to open the cabaret prior to 7:00 P.M. It is apparent that the branch did not pursue enforcement action for the September 20, 2003, Contravention Notice.

Issues

The licensee admitted the contraventions, but disputed the recommended penalties arguing that the circumstances did not warrant penalties or, at most, minimum penalties.

Exhibits

Exhibit No. 1 Book of documents

Additional documents referred to although not officially entered as exhibits:

Correspondence from the branch's registrar dated
December 11, 2003, and January 27, 2004.

Applicable Statutory Provisions

See Appendix A

Evidence

The branch's evidence was contained in the Notice of Enforcement Action. The licensee agreed to the facts related in the NOEA. The licensee provided evidence through the general manager of operations (the 'manager') who is also an owner.

The Branch's Evidence

On September 20, 2003, a liquor inspector issued a Contravention Notice for operating outside the permitted hours of service, and on September 24, 2003, the inspector faxed a note to the licensee instructing the licensee not to open the cabaret prior to 7:00 P.M. On September 26, 2003, there was a meeting between the licensee and the liquor inspector.

On September 26, 2003, the licensee submitted an application for temporary change to the liquor licence No. 001884, requesting a "change of hours until such time as our permanent change of hours is submitted and approved." The request was for hours of service from 11:00 A.M. to 1:00 A.M. every day except Sunday which would be from 10:00 A.M. until Midnight. The licensee's request was crossed out and replaced with "temporary change of hours for September 26, 27, 28, 2003 only." It is not clear from either the branch's or the licensee's evidence who made that change, but that is what the branch approved.

The liquor inspector telephoned the hotel manager on September 29, 2003, and told her he would be doing an inspection that morning. At approximately 11:30 A.M. the liquor inspector attended, observed three patrons drinking outside at a fire exit, and when he attempted to enter by the front door of the cabaret, he found that the cabaret door was locked. He located the manager who used her key to enter the cabaret where they found approximately 25 patrons consuming

alcohol and a couple of patrons consuming food. The manager told the inspector she had not authorized the cabaret staff to open for business. She confirmed the cabaret was not authorized to open until 7:00 P.M.

The inspector issued a contravention notice which is the subject of this hearing.

Also included in the NOEA is information that another liquor inspector had cautioned the licensee the previous week about empty bottles and glasses at the fire exit, which is outside the red-lined area where liquor consumption is permitted. The inspector had not observed any patrons, only the empty glasses and bottles.

Subsequent to this event, the licensee applied for, and the branch approved, another temporary change in operating hours from October 2 to November 30, 2003, to the new hours (from 11:00 A.M. to 1:00 A.M. Monday through Saturday and from 10:00 A.M. to 12:00 Midnight on Sunday). These documents are at Tab 5 of Exhibit No. 1. Also included in those materials is a letter of approval of the change of hours from the City of Victoria, dated October 1, 2003.

On October 2, the licensee also submitted an Application for Permanent Change (Tab 6). The branch granted that approval on November 28, 2003, (Tab 8) and issued a new licence.

The Licensee's Evidence

The manager testified that his intention with the renovations was to have the beer parlour close and to open a bar and grill approximately two (2) months later. He understood that the primary liquor licence was attached to the Liquor Retail Store application and he understood he was transferring the old pub licence to the

cabaret. The beer parlour closed on August 9, 2003, and reopened in the cabaret area on August 13, 2003.

The manager testified that he made the application to the branch, had discussions with the appropriate person at the branch, and understood he had done everything properly. He understood that the beer parlour licence had been transferred to the cabaret space. However, that turned out to be incorrect. For one and half months, the cabaret operated under the hours of the old beer parlour licence until a patron told them it was not legal. The manager then found out it was necessary to amend the hours of the cabaret licence. In order to do that, it was necessary to get City of Victoria approval which involved a public application.

The manager testified that this process was very much tied to the LRS 'approval-in-principle' which he understood was attached to the beer parlour licence. He explained that the branch gave extensions for the 11:00 A.M. opening while the process was going through the City's process. However, the branch would only give a limited number of days of extension at a time. As a result, there were a number of days when the establishment did not open until 7:00 P.M. The manager stated that while the branch was dealing with the extensions, the Acting Manager of Licensing Administration transferred the LRS licence from the beer parlour to the cabaret licence.

The manager testified that he knew that the cabaret was not permitted to be open on September 29, 2003. He acknowledged that it was only because of very bad management that the information had not filtered down to the bartender.

The manager testified that the beer parlour used to have 450 seats and the smoking area was the busiest. Now the seating is reduced and there is not yet a smoking area although the licensee has an application with the regional district. The manager stated it was 'core regulars' who have been drinking at the 'Ingy'

since 1962 who were responsible for taking their beer outside. They used the fire exit as a place to smoke. He testified that there is sign on the door indicating that "no alcohol is allowed beyond this point."

The manager stated that he does not employ a server for the cabaret, only a bartender. He acknowledged that the bartender, who had been employed by the licensee for 25 years, should not have permitted patrons to go outside with their beer. The staff are required to sign an acknowledgement that they are familiar with the house rules. However, he also explained that at the time of this incident, the area by the fire door was somewhat blocked from the bartender's view. Additionally, if the bartender had turned to do something, he would not have seen the patrons going out.

Since this occurrence, the licensee has installed a monitor so the bartender has a view of the area.

Penalty

The licensee admitted both contraventions. Pursuant to section 20(2) of the *Act*, 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*. As noted above, these are considered to be first contraventions for the purposes of the Penalty Schedule.

The branch's primary goal in determining the appropriate penalty 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. I consider the issuance of a past Contravention Notice, for which the branch did not pursue enforcement action, as indicative that certain issues have been brought to the attention of the licensees, but I do not consider them to be proof of a prior contravention.

Submissions

Mr. Coates submitted that this situation arose due to naivety of both the licensee and the branch. If the old beer parlour licence, instead of the old cabaret licence, had been activated as the new LPL the hours would not have been problematic. The licensee understood that everything had been done correctly and for one and half months operated on the assumption that the hours permitted opening at 11:00 A.M. In fact, this could have been legally implemented and it was only because of improper advice from the branch that the licensee was operating under a different set of terms and conditions.

Mr. Coates submitted that the background circumstances are unique and should not result in the licensee suffering a monetary penalty, or at least not more than the minimum penalty. He submitted that there was no 'willful disregard' as suggested in the NOEA, rather the licensee was caught up in a 'bureaucratic muddle.'

Concerning the contravention of removing liquor from the premises, Mr. Coates submitted that the licensee did not encourage, allow or condone the activity. The patrons conduct was not done with the licensee's permission, the licensee attempted to avoid this conduct by posting a notice and that staff would tell the patrons to bring their drinks back inside when they were observed (this was not

part of the evidence but the branch did not take exception). He submitted that the clientele is different from other cabarets or neighbourhood pubs in that it is a true blue collar beer parlour atmosphere.

Reasons and Decision

Operating outside of hours

There is no disagreement on the facts. I find that the licensee was operating under a misunderstanding for approximately one and half months, thinking that the licence allowed 11:00 A.M. opening. However, I find the licensee's submission that the misunderstanding was due to improper advice by the branch personnel is not persuasive.

The terms and conditions and hours of operation of the May 8, 2003 licence were clearly stated on the face of the licence. The licensee contends that he was not aware that this was the operative licence until the end of September. Then, the branch warned the licensee about the correct hours, issued a Contravention Notice dated September 20, 2003, and issued a temporary extension for three (3) days. The licensee testified that there were a number of days when the cabaret did not open until 7:00 P.M.

This contravention occurred after the initial extension had been issued and had expired. Nonetheless, the licensee submitted that there should be no penalty assessed because of the previous misunderstanding and because the branch gave incorrect advice by not issuing the correct license in the first place.

On September 29, 2003, the branch ensured the licensee was aware of the hours of operation and telephoned in advance of the inspection. I find that this contravention did not occur as a result of inadvertence or improper advice by the

branch. The misunderstanding had been cleared up. It was entirely within the licensee's responsibility to ensure the cabaret did not open until 7:00 P.M.

I do not accept Mr. Coates' submission that no penalty is required in these circumstances. Clearly, the licensee understood that 11:00 A.M. opening was not permitted. I do, however, accept Mr. Coates' submission that only the minimum penalty is required. I acknowledge that the branch had previously warned the licensee by issuing a CN for the September 2003, occurrence, but I am also cognizant of the fact that this was a unique circumstance during a period of transition. For that reason, I find that the minimum \$1,000 monetary penalty is sufficient.

Liquor removed from premises

I appreciate that the licensee had a sign on the door. I also accept counsel's suggestion that the licensee had previously required patrons to bring their drinks back inside. The licensee's actions were insufficient to prevent the contravention. The previous week the branch had cautioned the licensee that it appeared that patrons were taking their drinks outside. I find that the licensee did not take appropriate steps to ensure that the contravention did not continue to occur.

In these circumstances, I find the imposition of the minimum \$1,000 monetary penalty is appropriate.

Order

Pursuant to section 20(2) of the *Act*, concerning licence No. 001884,

1. for the contravention of operating outside the permitted hours of operation, I order Galaxy Hotels Ltd. to pay a monetary penalty of \$1,000;
2. for the contravention of liquor being removed from the premises, I order Galaxy Hotels Ltd. to pay a monetary penalty of \$1,000;

both of which are to be paid no later than June 11, 2004.

Original signed by

M.G. Taylor
Enforcement Hearing Adjudicator

DATE: May 6, 2004

cc: Victoria Police Department

Liquor Control and Licensing Branch,
Attention: Gary Barker, Regional Manager

Liquor Control and Licensing Branch, Surrey Office
Attention: Peter Mior, Advocate

APPENDIX A

Liquor Control And Licensing Act

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.

Liquor Control And Licensing Regulation

Consumption of liquor in licensed establishments

- 42** (1) A person must not consume liquor in a licensed establishment unless that liquor has been purchased from or served by the licensee of that licensed establishment.
- (2) A licensee must not allow consumption in the licensed establishment of liquor that was not purchased from or served by the licensee.
 - (3) A licensee, and the employees of the licensee, must not consume liquor while working in the licensed establishment.
 - (4) All liquor sold or served in a licensed establishment must be consumed there, and the licensee must not allow liquor, other than the following, to be taken from the licensed establishment:
 - (a) a bottle of wine that is unfinished by a patron and sealed by the licensee before being taken by that patron from the licensed establishment;
 - (b) liquor that is sold for consumption off premises in accordance with the Act, this regulation and the terms and conditions of the licence.
 - (5) A licensee who seals an unfinished bottle of wine in accordance with subsection (4) (a) must inform the patron of the requirements of section 44 of the Act.
 - (6) This section does not apply to a U-Brew or U-Vin.
-