



**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, R.S.B.C. 1996, c. 267

Licensee: Cribs Entertainment Ltd. dba Q-In Café
8451 West Road
Richmond BC V6X 1T6

Case: EH06-091 & 125

For the Licensee: Ren Chen, principal of corporate licensee

For the Branch: James Macdonnell

Enforcement Hearing Adjudicator: Edward Owsianski

Date of Hearing: November 7 & December 8, 2006

Place of Hearing: Vancouver, BC

Date of Decision: December 22, 2006

**Ministry of Public
Safety and Solicitor
General**

Liquor Control and
Licensing Branch

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INTRODUCTION

Cribs Entertainment Ltd., dba Q-In Cafe holds Food Primary Licence number 189735. Food Primary liquor licenses are issued for the sale and consumption of all types of liquor in establishments with a primary focus on the service of food. The hours of sale are noon to 2:00 a.m. seven days per week. The patron capacity is 48 in area 1, and 34 in area 2. The licence is, as are all liquor licences in the province, subject to the terms and conditions contained in the publication, 'Guide for Liquor Licensees in British Columbia'. The establishment is located in Richmond, BC.

Effective March 31, 2006, the licensee sold the restaurant equipment and transferred the lease of the premises to a third party who assumed the operation of the establishment. An application to transfer the liquor licence has been made to the branch. Branch policy requires that all outstanding enforcement matters be finalized prior to a licence transfer application being considered.

Alleged Contravention and Proposed Penalty

The branch's allegations and proposed penalty are set out in the Notices of Enforcement Action ("NOEA"):

EH06-091 - NOEA dated July 10 (re-issued August 8)

The branch alleges that:

1. On June 11, 2006, the licensee contravened section 43 (1) of the *Liquor Control and Licensing Act* by selling or giving liquor to an intoxicated person or a person apparently under the influence of liquor.

The proposed penalty is a cancellation of the liquor licence (section 20 (2)(e) of the *Act*).

2. On June 11, 2006, the licensee contravened section 43 (2)(b) of the Liquor Control and Licensing Act by permitting an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied.

The proposed penalty is a cancellation of the liquor license (section 20 (2)(e) of the *Act*).

EH06-125 - NOEA dated August 21, 2006.

The branch alleges that:

3. On July 2, 2006, the licensee contravened section 20 (2.6) of the *Liquor Control and Licensing Act* by failing to pay a monetary penalty owing as a result of a waiver that was signed in June 2006 for File No. EH06-052. That penalty was due by July 1, 2006.

The proposed penalty for this alleged failure to pay is the cancellation of the liquor licence (section 20(2)(e) of the *Act*).

The licensee disputes the contraventions.

RELEVANT STATUTORY PROVISIONS

Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267

Action against a licensee

20 (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:

- (a) the licensee's contravention of this Act or the regulations or the licensee's failure to comply with a term or condition of the licence;
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(2) If the general manager has the right under subsection (1) to take action against a licensee, the general manager may do any one or more of the following, with or without a hearing:

(e) cancel all or any part of the licensee's licence;

(2.6) A monetary penalty imposed under this section must be paid within 30 days after the date on which the notice referred to in subsection (4) (a) is provided to the licensee or within any longer period specified by the general manager.

Drunkenness

43 (1) A person must not sell or give liquor to an intoxicated person or a person apparently under the influence of liquor.

(2) A licensee or the licensee's employee must not permit

(b) an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied.

ISSUES

Preliminary Issue:

Request for Adjournment

The enforcement hearing was originally scheduled for October 26, 2006. It was rescheduled at the request of the adjudicator to November 7, 2006. The hearing commenced on that date with the licensee, the current operator of the establishment and a friend acting as translator present. Evidence was received from several witnesses. The licensee made a request for an adjournment, as one of the licensee's witnesses was not available. The witness had been available for October 26, 2006, but was subsequently out of the country for approximately three weeks. An adjournment was granted. It was agreed that the hearing would be reconvened on December 8, 2006, and that the witness would be available on that date.

The hearing was reconvened on December 8, 2006, with the licensee and a friend acting as translator present. The licensee made a request for a further adjournment as the current operator of the establishment was out of the country on an urgent family matter and could not be in attendance. It was unknown when he would be returning. The current operator was responsible for contacting the witness for which the previous adjournment was granted.

A decision was made that no further adjournment would be granted. It was not necessary that the current operator be in attendance. He had given evidence on the previous day of hearing, November 7, 2006. The adjournment had been granted to allow the attendance of a further witness. There had been more than sufficient opportunity for the licensee to contact the witness and arrange for his attendance at the hearing. The hearing proceeded on that basis.

Substantive Issues:

1. Whether the licensee contravened the *Act* as alleged by the Branch.
2. If so, what penalties, if any, are appropriate?

EXHIBITS

1. LCLB Book of Documents for EH06-091
2. LCLB Book of Documents for EH06-125
3. Document titled, "BC Company Summary for Cribs Entertainment Ltd."

EVIDENCE - The Liquor Control and Licensing Branch

EH06-091

Three liquor inspectors presented evidence that during the early morning hours of June 11, 2006, they were part of an inspection team conducting routine inspections of licensed establishments in the city of Richmond.

Inspector A testified that the inspection team arrived at the establishment at approximately 2:50 a.m. The establishment appeared to be in the process of closing. A vehicle was noted leaving upon their arrival with two or three other vehicles remaining in the parking lot. There were several persons standing outside of the establishment. A young male was slumped on an outside bench near a puddle of vomit, a beer can lying beside the bench. He appeared to be severely intoxicated. One of the persons whom the inspector believed to be the manager of the establishment spoke with one of the inspectors (Inspector C). He overheard the manager tell inspector C that the intoxicated person had been inside of the establishment and that he had served the intoxicated person "a little bit". A female in the group standing outside said that the person was intoxicated when he arrived. The inspection team was on site for approximately 10 to 15 minutes. Inspector A made notes of his observations (exhibit 1, tab 7).

Inspector B testified that she was part of the inspection team. They arrived at the establishment shortly after 2:30 a.m. and left prior to 3:00 a.m. Upon their arrival it appeared that the establishment was closed or in the process of closing. Several persons, three males and a female were standing outside. A woman was seated on an outside bench beside a male with his head on her lap. The male smelled of liquor and appeared to be very intoxicated. One of the persons in the group identified himself as the manager whom she recognized as witness D. He spoke with the inspector (inspector C) in whose area the establishment is located.

Inspector B testified that she overheard most of the conversation between the manager and inspector C although one of the other males in the group who appeared to be intoxicated was speaking at the same time. The woman in the group was assisting the manager with translation. The manager admitted to Inspector C that the persons in the group had been drinking inside. He said that there was a lot of food available and that they had been eating.

One of the males in the group standing outside also appeared to be intoxicated. He was also talking to the inspector C. He said that he worked at the establishment but

was not working that night. He and the intoxicated male on the bench had been inside drinking but the male on the bench couldn't hold his liquor. It was his (the male on the bench) birthday and they had been inside partying.

She testified that the manager appeared to know the male doing the talking and was telling him to "shush" and to leave.

Inspector C testified that he is the liquor inspector responsible for the geographical area in which the establishment is located and was part of the inspection team during the early morning hours of June 11, 2006. They arrived at approximately 2:50 a.m. The establishment appeared to be closing. He noted a group of persons standing in front of the entrance to the establishment and one male person who was lying passed out in a pool of vomit, a beer can beside him. One of the persons in the group appeared to be borderline intoxicated, he was aggressive in his tone and volume of voice. One of the other persons in the group identified himself as the manager.

The manager told him that the person passed out was drunk when he came into the establishment. The manager admitted that the person was served liquor and allowed to remain in the establishment. The inspector testified that he warned the manager about serving liquor to intoxicated persons and allowing intoxicated persons to remain in the establishment. He made notes of his observations (exhibit 1, tab 6).

The inspector did not complete a Contravention Notice (CN) that night as the inspection team was proceeding to other establishments. A CN (exhibit 1, tab 5) was subsequently mailed July 6, 2006, following his return to work from a period of medical leave.

He subsequently completed an Enforcement Action Report (EAR) (exhibit 1, tab 2) and Notice of Enforcement Action (NOEA) (exhibit 1, tabs 3 & 4). He recommended that the liquor licence be cancelled as a result of the problems with its operation. The establishment was first licensed in 2000 and has had problems in its operation during

the tenure of several licensees. The current licensee commenced operation in January 2005 and has served a total of 64 days of licence suspension penalties and has been assessed a \$5,000 monetary penalty for contraventions. The compliance history for this licensee is found at page 10 of the NOEAs (exhibit 1, tabs 3 & 4) and is as follows:

1. Fail to clear liquor within 1/2 hour after liquor service hours, Reg. s. 44(1)(b)
April 09, 2006; \$5000 monetary penalty
2. Operate contrary to primary purpose, s. 20(1)(d), Reg. s. 11(1)
October 14, 2005; 30 day suspension
3. Operate contrary to primary purpose, s. 20(1)(d), Reg. s. 11(1)
September 24, 2005; 20 day suspension
4. Overcrowding beyond patron capacity more than
occupant load, s. 12(2), Reg s. 71(2)(b)
September 24, 2005; 4 day suspension
5. Operate contrary to primary purpose, s. 20(1)(d), Reg. s. 11(1)
August 25, 2005; 10 day suspension

The inspector testified that in making the recommendation that the licence be cancelled he considered that the branch had exhausted all means available to bring about compliance in the operation of the establishment. The branch has received an application to transfer the licence. That application has been placed on hold until the enforcement processes have been completed. The current operator was in charge of the operation during the April 9, 2006, contravention and the alleged contraventions of June 11, 2006, subject of this hearing. The licensee remains responsible.

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Inspector C testified that On June 1, 2006, the licensee signed a “Waiver” agreeing that on April 9, 2006, a contravention of Section 44(1)(b) of the *Regulations*, “ fail to clear liquor within 1/2 hour after liquor service hours”, occurred. The licensee accepted the proposed \$5000 monetary penalty that was to be paid by July 1, 2006. The monetary penalty was not paid, consequently he completed a Contravention Notice (exhibit 2, tab 3) which was mailed to the licensee on August 5, 2006. A Notice of Enforcement Action dated August 21, 2006, was subsequently completed and mailed to the licensee. He recommended that the liquor licence be cancelled, as this was just another in the series of contraventions for this licensee. He considered that the branch had exhausted all means available to bring about compliance in the operation of the establishment. The branch has received an application to transfer the licence. That application has been placed on hold until the enforcement processes have been completed. The current operator was in charge of the operation during the April 9, 2006, contravention and this alleged contravention of July 2, 2006, subject of this hearing. The licensee remains responsible. The monetary penalty remains unpaid.

EVIDENCE - The Licensee

Witness D testified that he has operated the establishment since March 25, 2006, and is awaiting the transfer of the liquor licence.

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He was present during the early morning hours of June 11, 2006. Sometime between 2:00 and 2:30 a.m. a party of four, two males and two females arrived at the establishment. They were refused service and told that the establishment could not sell liquor after 2:00 a.m. and must close by 2:30 a.m. He believed that they had previously been at a party where one of the males had become intoxicated. He was trying to get them to leave the parking area so that he could lock the gate and go home. When the inspectors arrived, one of the males was sitting on the bench with one of the females.

The other male who was previously known to him as a customer was standing out front of the establishment.

He recalls looking at his watch as the Inspectors arrived. It was 2:28 a.m. and he was surprised that they were early as they normally come about 3:00 a.m. He recognized inspector C with whom he has dealt on previous occasions. The inspector asked what was wrong with one of the males and he responded that he was drunk. The inspector asked him other questions to which he did not respond. The inspector then said to the other persons accompanying him, "His English is not good, we don't need to talk to him, I'll talk to the licensee later." The witness then told the inspector that the intoxicated person had been at a party and wanted to come into the restaurant but that he had been refused because they were closed.

He denied that he had told the inspector that he had been in the restaurant and served liquor. The inspectors left at approximately 2:40 a.m. He left shortly thereafter arriving home at 2:50 a.m.

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Witness D testified that when the contravention of April 9, 2006, occurred (fail to clear liquor within 1/2 hour after liquor service hours) he had only been operating the restaurant for 10 days and didn't understand the requirement to clear liquor within 1/2 hour. He did not have the money to pay the monetary penalty and asked inspector C for a suspension penalty instead. The inspector refused and said that he didn't wish to speak with him, as he wasn't the licensee. The witness testified that he spoke with the licensee about the monetary penalty and was told that he, as the operator, must pay it. He has not paid it because he wants a suspension penalty instead.

SUBMISSIONS

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The licensee submitted that he is unable to contact the witness who was present at the time of the alleged contraventions. The identity of the witness is only known to the current operator (witness D) who is out of the country on a family matter and it is unknown when he will return.

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The licensee submitted that when he was advised by Inspector C of the monetary penalty arising out of the April 9, 2006, contravention (fail to clear liquor within 1/2 hour after liquor service hours) he requested a suspension penalty instead. The inspector refused. He signed the waiver agreeing to the contravention and the penalty because of the branch policy that a licence transfer would not be completed with an enforcement matter outstanding. He would now like to have the licence transfer cancelled and be allowed to pay the penalty in \$500 monthly installments.

REASONS AND DECISION

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Having considered all of the evidence, I find on a balance of probabilities that on June 11, 2006, the licensee contravened section 43 (1) and section 43 (2)(b) of the *Liquor Control and Licensing Act*.

I prefer the evidence of the three liquor inspectors to that of witness D for the licensee. Although there were minor inconsistencies in the inspector's evidence they were consistent on the main points, namely that at the time of their inspection an intoxicated person was found outside the establishment. Conversation with the manager and others revealed that the intoxicated person had arrived at the establishment in an intoxicated condition and had been permitted into the establishment where he was served liquor.

The evidence of inspector B is particularly compelling. She was able to identify witness D as the manager at the time in question. She also provided evidence of the statement made by one of the persons outside of the establishment at the time. That person said that he and the intoxicated male were celebrating a birthday and had been inside drinking but the intoxicated male couldn't hold his liquor. She testified that the manager attempted to quiet this person and have him leave.

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The facts of this alleged contravention are not in dispute. The licensee signed a "Waiver" agreeing that on April 9, 2006, a contravention of Section 44(1)(b) of the *Regulations*, "fail to clear liquor within 1/2 hour after liquor service hours", occurred. The licensee accepted the proposed \$5000 monetary penalty that was to be paid by July 1, 2006. The monetary penalty was not paid on that date and has not been paid to the date of the hearing, December 8, 2006. I find that On July 2, 2006, the licensee contravened section 20 (2.6) of the *Liquor Control and Licensing Act*.

Due Diligence

The licensee is entitled to a defence to the allegations of the contraventions, if it can be shown that it was duly diligent in taking reasonable steps to prevent the contraventions from occurring. The licensee must not only establish procedures to identify and deal with problems, it must ensure that those procedures are consistently acted upon and problems dealt with. Here, there is insufficient evidence upon which I can find that the licensee was duly diligent.

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 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 branch's primary goal in bringing enforcement action is to achieve voluntary compliance. The *Act* at Section 6(a) directs that the general manager must supervise the conduct and operation of licensed establishments. The general manager carries out this responsibility thru branch staff, particularly those appointed as liquor inspectors and compliance and enforcement investigators. The branch issues in excess of 9,000 liquor licences per year. It employs 32 liquor inspectors and 4 investigators located throughout the province. Police agencies throughout the province assist the branch by making regular inspections of licensed establishment within their jurisdiction and reporting any irregularities to the branch. It is obvious that the general manager must rely on licensees to voluntarily comply with the requirements of the *Act, Regulations* and the terms and conditions of the liquor licence.

In this case, the licensee has demonstrated an inability to operate the establishment properly and has compiled a considerable history of non-compliance with the requirements of the *Act and Regulations*. In the circumstances, I am satisfied that future compliance by this licensee is unlikely. A licensed establishment that continually fails to comply with the requirements of the *Act and Regulations* can create nuisance in the community and safety risks to its staff and patrons as well as police and regulatory officials. There is a public interest in ensuring that an establishment operates within the

rules. In the circumstances, I am satisfied that the cancellation of the liquor licence is necessary and appropriate.

Order

Pursuant to Section 20(2) of the *Act*, I order the cancellation of Food Primary Licence number 189735 effective immediately. To ensure this order is effective, I direct that the Liquor Licence be taken into possession by a liquor inspector or a police officer and returned to the branch.

[ORIGINAL SIGNED]

Edward W. Owsianski
Enforcement Hearing Adjudicator

Date: December 22, 2006

cc: RCMP Richmond Detachment

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

Liquor Control and Licensing Branch, Surrey Office
Attention: James Macdonnell, Branch Advocate
