



**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:	Snow Riders Holdings Ltd. dba Raakel's Ridge Restaurant & Lounge Whiskey Jack Road Big White, BC V1X 9T1
Case:	EH10-177 and EH11-001
For the Licensee:	Martin Sennott Boughton Law Corporation
For the Branch:	Peter Mior
Enforcement Hearing Adjudicator:	Edward Owsianski
Date of Hearing:	Written Submissions
Date of Decision:	March 2, 2012

**Ministry of Energy
and Mines**

Liquor Control and
Licensing Branch

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INTRODUCTION

The licensee, Snow Riders Holdings Ltd. holds Liquor Primary Licence No. 121017 for the operation of a liquor primary establishment with liquor sales from 11:00 a.m. to 1:00 a.m. Monday through Saturday and to midnight on Sunday. The maximum capacity is 150 persons. Grant Thornton Limited has been appointed as the Receiver of the licensee by the Supreme Court of British Columbia. The licence is, as are all liquor licenses issued in the province, subject to the terms and conditions contained in the publication "Guide for Liquor Licensees in British Columbia".

ALLEGED CONTRAVENTIONS AND PROPOSED PENALTIES

The branch's allegations and proposed penalties are set out in the Notices of Enforcement Action (the "NOEAs") dated March 3, 2011 (EH10-177) and November 8, 2011 (EH11-001).

The branch alleges that:

EH10-177

1. On December 9, 2010, 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 12 day licence suspension given that this is a second contravention in a 12 month period (item 11 of Schedule 4, *Liquor Control and Licensing Regulation*).

Item 11 provides a range of penalties for a second contravention in a 12 month period of a licence suspension for ten to fourteen days.

2. On December 9, 2010, the licensee contravened section 41(2)(b) of the *Liquor Control & Licensing Regulation* by using a sales strategy that is likely to promote or encourage intoxication. The proposed penalty is \$7,000 (item 30, Schedule 4 of the *Regulation*).

Item 30 provides a range of penalties for a first contravention of a licence suspension for four to seven days and/or a monetary penalty of \$5,000 - \$7,000.

EH11-007

3. On December 30, 2010, the licensee contravened section 6(4) of the Regulation by permitting more persons in the licensed establishment than the person capacity set by the general manager and the number of persons was less or equal to the occupant load. The proposed penalty is \$3,000 (item 14, Schedule 4 of the Regulation).

Item 14 provides a range of penalties for a first contravention of a licence suspension for one to three days and/or a monetary penalty of \$1,000 - \$3,000.

4. On December 30, 2010, the licensee contravened section 41(2)(b) of the *Liquor Control & Licensing Regulation* by using a sales strategy that is likely to promote or encourage intoxication. The proposed penalty is a 14 day licence suspension given that this is a second contravention in a 12 month period (item 30, Schedule 4 of the *Regulation*).

Item 30 provides a range of penalties for a second contravention of a licence suspension for ten to fourteen days.

The licensee does not dispute the contraventions but does dispute the proposed penalties.

RELEVANT STATUTORY PROVISIONS

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

Drunkenness

43 (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.

Liquor Control and Licensing Regulation, B.C. Reg. 244/2002

Capacity

6 (1) Before the general manager

- (a) approves the issuance of a licence,
- (b) approves a structural alteration of or a change to the size of any area of a licensed establishment,
- (c) approves a transfer of a licence under section 21 (3) of the Act, or
- (d) approves an application for an increase in the person capacity of a licensed establishment,

the general manager must set the person capacity of the establishment, having regard to the public interest and the views of a local government or first nation if provided under section 10 or 53 of this regulation.

...

(3) Despite subsection (2), if the occupant load of an establishment is less than the person capacity of the establishment set under subsection (1), the general manager may issue, amend or transfer the licence for that establishment after reducing the person capacity to equal the occupant load.

(4) It is a term and condition of a licence that there must not be, in the licensed establishment at any one time, more persons than the person capacity set under subsection (1) or (3).

...

Liquor prices

41 (2) A licensee must not

...

(b) use a sales strategy that is likely to promote or encourage intoxication, or

ISSUES

1. Did the contraventions occur?
2. If so, what penalties, if any, are warranted?

EXHIBITS

- Exhibit No. 1:** EH10-177, dated March 3, 2011.
- Exhibit No. 2:** EH11-001 (Amended), dated November 8, 2011.
- Exhibit No. 3:** March 21, 2011 letter from branch registrar summarizing prehearing conference for EH10-177.
- Exhibit No. 4:** November 21, 2011 receivership order appointing Grant Thornton Ltd. as the receiver for Snow Riders Holdings Ltd., the licensee.
- Exhibit No. 5:** November 28, 2011 letter from the legal counsel for Grant Thornton Ltd.
- Exhibit No. 6:** December 20, 2011 letter from branch registrar setting out the submission procedure.
- Exhibit No. 7:** Branch disclosure package dated December 30, 2011 (19 tabs).
- Exhibit No. 8:** January 27, 2012 email submission from the legal counsel for Grant Thornton Ltd.

EVIDENCE AND SUBMISSIONS

The Branch

The branch's evidence and submissions are summarized as follows:

EH10-177 (Contraventions 1 and 2)

On December 9, 2010, at approximately 8:55 p.m. two liquor inspectors posing as patrons attended at the establishment for the purpose of conducting a covert inspection. There were approximately 30 people in the establishment at the time. They were told by the server that the place would get pretty wild as it was Thursday, the regular night for beer drinking contests known as boat races. A boat race involves teams of four people competing to speedily drink glasses of draft beer. The winning team moves on to the next round.

At approximately 10:37 p.m. the patron count had increased to 125. A staff member went through the crowd signing up contestants and collecting \$5 for the drinking contests. At this point in time the noise level had increased and the crowd was becoming more animated. Several patrons were noted walking around drinking from beer jugs. The drinking contests got underway shortly after 11:00 p.m. and by 11:46 p.m. the inspectors had observed five rounds of the contest. Several of the contestants were exhibiting signs of intoxication, staggering, speaking loudly and pushing and shoving each other. One young male appeared to be grossly intoxicated. He was disoriented, was yelling and had to be assisted in standing. At approximately 11:50 p.m. five intoxicated males were observed in the washroom and were overheard commenting how wasted they were getting.

The inspectors left shortly after midnight. One of the inspectors later spoke with the principal of the licensee corporation who told him that the beer was non-alcoholic but the patrons were unaware of this. He advised the inspector that he would continue to hold the contests. The inspector later established that the beer served that night was the regular house draft beer containing 4.5 % alcohol.

Contravention 1 - Permitting an intoxicated person to remain

The branch has recommended a 12 day suspension as this is the second contravention of this type in the past 12 months. A previous contravention occurred in March, 2010, with a hearing held in November, 2010, for which a monetary penalty was assessed. The contravention is a serious public safety matter. One patron was observed in a severely intoxicated state yet was ignored by staff on duty. His safety and others were put at risk.

Contravention 2 - Sales strategy likely to encourage intoxication.

The branch has recommended a \$7,000 monetary penalty. The beer drinking contests lead to the intoxication of several of the patrons, one of whom was observed to be severely intoxicated. The licensee lied to the inspectors about the nature of the beer being used for the drinking contests and defiantly told them that the drinking contests would continue.

EH11-001 (Contraventions 3 and 4)

On December 30, 2010, at approximately 10:31 p.m. a liquor inspector and an auxiliary police officer posing as patrons attended at the establishment for the purpose of conducting a covert inspection. One staff member was observed walking through the establishment signing up contestants for the beer drinking contests known as the boat races. A server confirmed that the beer for the contests was to be the regular house draft containing 4.5% alcohol. The drinking contests got underway shortly before

11:00 p.m. At approximately 11:30 p.m. the inspector and the officer conducted separate counts of 169 and 171 people respectively in the establishment including the patio area. Several of the patrons appeared to be underage.

At approximately 11:35 p.m. two liquor inspectors and a uniformed police officer entered the establishment. Upon seeing the uniformed officer several patrons left via the patio. The drinking contests were immediately stopped and the jugs of beer used for the contest were put into the cooler. One of the inspectors spoke with the person in charge of the establishment. He advised the inspector that they had only used non-alcoholic beer for the drinking contests. Challenged on this, he admitted that he had lied. The licensee principal was contacted and he attended the premises. Asked about exceeding the licensed capacity, he said that an increase in capacity had been approved by the regional district but that the change was being held up by the branch. He told the inspector that he had only five months in which to make a year's earnings.

Contravention 3 – Exceeding licensed capacity

The branch has recommended a monetary penalty of \$3,000. The licensee was well aware that although the regional district had approved an increase to capacity, the branch had not and would not make changes to the licence while serious contraventions were being addressed and enforcement proceedings were pending. The licensee nonetheless knowingly exceeded its licensed capacity.

Contravention 4 - Sales strategy likely to encourage intoxication

The branch has recommended a 14 day suspension penalty. This is the second contravention of this type within a short period of time. The licensee lied to the inspectors about the nature of the beer being used for the drinking contests and defiantly continued to hold the beer drinking contests after being advised by the inspector to discontinue them.

The Licensee

The licensee's evidence and submissions were made by legal counsel acting on behalf of the receiver and are summarized as follows:

The licensee principal has been removed from the operations of the corporate licensee. A reputable accounting firm has been appointed as receiver-manager with an experienced licensed trustee in bankruptcy in direct control. The secured lender has taken decisive steps to rectify the problems identified with the operation of the establishment. It is unlikely that the licensee principal will be able to repay any amounts of the outstanding loan to the secured lender thus any penalties incurred will only impact the secured lender and not the licensee principal.

The protection of the public has been accomplished with the removal of the licensee from the operation with the receiver now in control. Specific deterrence to the licensee is no longer possible with the removal of the licensee. General deterrence to other licensees and the community has been demonstrated with the receiver agreeing to serve a 15 day suspension for a previous contravention. [I pause to note that the previous contravention and subsequent suspension penalty did not form part of the evidence in this hearing.] Penalties are unnecessary as the drinking contests have been discontinued and the maximum license capacity complied with. If any penalties are levied they should be the minimum monetary penalties and not license suspensions as suspensions will serve to disrupt the ability of the receiver to stabilize the business. If licence suspensions are levied they should be the minimum suspensions.

REASONS AND DECISION

I have considered all of the evidence and the submissions of the branch and counsel for the licensee.

The licensee has not disputed the contraventions. Having considered all of the evidence, I find that:

1. On December 9, 2010, 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.
2. On December 9, 2010, the licensee contravened section 41(2)(b) of the *Liquor Control & Licensing Regulation* by using a sales strategy that is likely to promote or encourage intoxication.
3. On December 30, 2010, the licensee contravened section 6(4) of the Regulation by permitting more persons in the licensed establishment than the person capacity set by the general manager and the number of persons was less than or equal to the occupant load.
4. On December 30, 2010, the licensee contravened section 41(2)(b) of the *Liquor Control & Licensing Regulation* by using a sales strategy that is likely to promote or encourage intoxication.

Due Diligence

The licensee is entitled to a defence to the allegations of the contravention, if it can be shown that it was duly diligent in taking reasonable steps to prevent the contravention 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 are dealt with. Here the issue of due diligence has not been raised nor has any evidence going to due diligence been provided. The evidence as a whole is quite to the contrary, the licensee knowingly and deliberately contravened the Act and Regulations as alleged.

I find that the licensee has not been 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 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 minimums set out in Schedule 4 of the *Regulation*. I am not bound by the maximums and may impose higher penalties when it is in the public interest to do so, and I am not bound to order the penalty proposed in the Notice of Enforcement Action.

The branch's primary goal in bringing enforcement action and imposing penalties 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 the public safety and the well being of the community.

Here the contraventions found are serious and represent significant threats to public safety. All reasonable measures to ensure both general and specific deterrence within society at large should be undertaken. Giving consideration to all of the evidence and submissions and the seriousness of the contraventions, I find that penalties are necessary to ensure future voluntary compliance. That the penalties will impact the receiver and the secured lender and not the licensee principal is in my view not sufficient reason to avoid imposing penalties. Insofar as the administration of the Liquor Control and Licensing Act and Regulations apply, the receiver stands in the place of the licensee. It would be bad public policy to allow a licensee to defiantly contravene the Act and Regulations without consequence.

Any penalty imposed must be sufficient to ensure compliance in the future. Schedule 4 of the Regulations provides a range of penalties for contraventions of these types. The branch has proposed penalties that in the circumstances of this case I find are necessary, appropriate and reasonable.

ORDER

Pursuant to Section 20(2) of the *Act*, I order a suspension of Liquor Primary Licence No. 121017 for a period of twenty-six (26) days, to commence as of the close of business on Wednesday, March 14, 2012, and to continue each succeeding business day until the suspension is completed.

In providing this amount of notice of the commencement of the suspension period, I am cognizant that this establishment is located within the Big White Mountain ski resort area which operates seasonally and is shown on their internet site as closing for the season on April 15, 2012. The commencement date will allow the suspension to be completed during this season thus allowing the licensee or receiver to begin the following season anew without a lingering unserved suspension penalty.

To ensure this order is effective, I direct that the liquor licence be held by the branch or the Kelowna RCMP Detachment from the close of business on Wednesday, March 14, 2012, until the licensee has demonstrated to the branch's satisfaction that the suspension has been served.

Signs satisfactory to the general manager notifying the public that the licence is suspended will be placed in a prominent location in the establishment by a branch inspector or a police officer, and must remain in place during the period of suspension.

In addition, pursuant to Section 20(2) of the *Act*, I order that the Licensee pay a monetary penalty in the sum of Ten Thousand Dollars (\$10,000) to the General Manager of the Liquor Control and Licensing Branch on or before April 2, 2012.

Signs satisfactory to the general manager showing that a monetary penalty has been imposed will be placed in a prominent location in the establishment by a Liquor Control and Licensing Branch inspector or a police officer.

Original signed by

Edward W. Owsianski
Enforcement Hearing Adjudicator

Date: March 2, 2012

cc: Kelowna RCMP

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

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