



**DECISION OF THE  
GENERAL MANAGER  
LIQUOR AND CANNABIS REGULATION BRANCH**

**IN THE MATTER OF**

**A hearing pursuant to Section 51 of  
*The Liquor Control and Licensing Act, S.B.C. 2015, c. 19***

Permittee: Pakar Singh  
3863 Hastings Street  
Burnaby, BC V1Y 7E9

Case: EH19-032

For the Permittee: Edna Lizotte  
Rising Tide Consultants

For the Branch: Hugh Trenchard

General Manager's Delegate: Dianne Flood

Date of Hearing: Written Submissions,  
closing October 10, 2019

Date of Decision: November 1, 2019

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**Liquor and Cannabis  
Regulation Branch**

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## INTRODUCTION

Pakar Singh (the "Permittee") applied for and was issued a Special Event Permit ("the Permit") to sell liquor at a family event to be held January 25, 2019 at 3863 Hastings St, Burnaby, a location known as the Pure Hookah Lounge.

According to the terms of the Permit, the Permittee was permitted to sell a specified amount of liquor on January 25, 2019, from 9:00 p.m. to 2:00 a.m. The Permit provides for a total of 30 attendees in the service area and at the event.

The Permit is, as are all Special Event Permits issued in the Province, subject to the terms and conditions contained in the publication Special Event Permit Terms and Conditions (the "SEP Terms and Conditions").

## ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Branch's allegations and proposed penalty are set out in the Notice of Enforcement Action dated April 23, 2019 (the "NOEA") (Exhibit 1, tab 1).

The allegation is that the Permittee contravened the Permit by exceeding the occupant load for the service area at an event site, contrary to Section 117(k) of the *Liquor Control and Licensing Regulation*, B.C. Reg. 241/2016.

As at the date of the contravention, the range of penalties for a first contravention of section 117(k) was a 4 to 7-day suspension and/or a \$5,000 to \$7,000 monetary penalty (item 16 of the then applicable Schedule 2 of the *Regulation*). The Branch proposes a monetary penalty of \$5,000.

## RELEVANT STATUTORY PROVISIONS

### *Liquor Control and Licensing Regulation*, B.C. Reg. 241/2016

#### Rules and requirements

117 A special event permit is subject to the following rules and requirements:

- (k) if there is an occupant load for the service area, the number of people in the service area at one time must not exceed the occupant load;

## ISSUES

1. Did the contravention occur?
2. If so, has the Permittee established a defence to the contravention?
3. If the contravention is proven, what penalty, if any, is appropriate?

## EXHIBITS

Exhibit 1: Branch's Book of Documents, tabs 1 - 15

Exhibit 2: Email from the Permittee's Consultants, dated October 2, 2019, and attachments

In addition, both the Branch and the Permittee's Consultant made written submissions and the Permittee's Consultant filed a reply.

## EVIDENCE – BRANCH

The Permittee admits the contravention of exceeding the occupant load contrary to the permitted occupant load and is not claiming a defence of due diligence. Nor does the Permittee dispute any of the facts set out in the NOEA or any of the other Branch documents, except whether the Permittee had any prior contact with the RCMP, the City of Burnaby or the Branch other than about the allegation.

The Permittee is simply asking that no penalty be imposed and suggests a compliance meeting be held instead.

For these reasons, I will only briefly outline the facts, with attention to those facts that might influence whether and what penalty should be imposed.

### *The Incident*

On January 26, 2019, a liquor inspector attended at the Pure Hookah Lounge, 3863 Hastings St, Burnaby at about approximately 00:15 a.m. Approximately four males were standing by the entrance, smoking cigarettes. One of them advised the inspector he might have to stand for a short period of time before he could get a seat.

The inspector entered the premises and noted it was hot and filled with shiska tobacco and charcoal smoke. Patrons were seated at tables with drinks and hookahs, with at least two fully activated hot plates being used to heat charcoal. A DJ was playing music. When a male offered him a seat, the inspector identified himself as a Branch inspector and the male, later identified as the Permittee's son, identified himself as overseeing the premises.

The inspector proceeded to do a count of the number of persons in the premises. His first count was 56, excluding the Permittee's son and the DJ. His second count was 53, excluding the same persons. The Permittee's son was offered the opportunity to do his own count, but he declined.

The inspector saw open liquor behind the bar, together with red plastic glasses similar to those he saw on the tables. The inspector asked the Permittee's son for the Permit and the Occupancy Load Certificate. After the Permittee's son made some inquiries, a copy of the Permit and of the Occupancy Load Certificate issued by the Office of the Fire Commissioner were provided. Both showed a permitted occupancy of 30 persons.

The inspector identified a number of issues to the Permittee's son and advised him that a Contravention Notice would be issued. When he asked the Permittee's son to have the Permittee contact him, the Permittee's son advised his father did not speak English well. The Inspector then left the establishment.

Also, on January 26, 2019 at 1:44 a.m., the RCMP attended at the premises to deal with a complaint of loud noise and intoxicated persons outside.

#### *The Contravention Notice*

On January 29, 2019, a Contravention Notice was issued, identifying 10 contraventions including exceeding the permitted occupant load. A request for production of documents was also issued. Several attempts were made to serve the Contravention Notice and request for documents, with phone calls, emails and registered mail not being returned. Eventually a telephone conversation was held with the Permittee and another son and an email address provided to which the Contravention Notice and

request for documents could be and were sent. The requested documents were still not produced.

On March 14, 2019, the Branch's Regional Inspector attended an in-person meeting, arranged by the Burnaby City staff and the RCMP with the Pure Hookah Lounge operators. The Permittee and his two sons attended and the Contravention Notice and request for production of documents were physically issued to the Permittee.

The Permittee's consultant offered no reasons for the difficulty in service and the failure to produce documents as requested.

#### *The Special Event Permit*

This was not the Permittee's first special event permit. Between January 2018 and January 2019, ninety-eight individual special event permits were taken out for the Pure Hookah Lounge. The Permittee was the applicant in twenty-two of those. The other applicants were not identified to me. I also have no information about the other twenty-one permits obtained by the Permittee, other than they were for the same establishment.

Because this permit application was for only 30 people and for a family event that was not to be open to the public, the Permit would have been "auto approved" by the Branch, meaning none of the RCMP, Branch Inspectors or a Branch Case Manager would have reviewed it.

Page 7 of the SEP Terms and Conditions, to which all special event permits are subject, addresses the issue of overcrowding. Permittees are directed that they are responsible for staying within the lower of the occupancy set by the permit or the occupancy load set for the premises by the fire or other authorities.

I also note that the Regulation and the SEP Terms and Conditions also provide:

- a special event means a private special event or a public special event, and a private special event includes a celebration of a family or religious event including but not limited to a wedding, wedding anniversary or birthday.

- the applicant for a family celebration permit must be a member or a close friend of the family and attendance at the event is to be by prior invitation only, extended only to family members, friends of the family and those officiating at the event.

### *The Penalty*

The Branch proceeded with the allegation of overcrowding due to public safety concerns, the public interest, and community standards. Those public safety concerns include the potential risk to patrons in safely exiting the premises in a situation with service of liquor, loud music and dim lighting. Given the numbers by which the occupancy permit was exceeded, the risk of fire was heightened due to the hookahs, the charcoal burners and the hot plates. The Branch also notes that the occupant load is set by qualified fire safety personal, based on site factors and directly relates to the safety of the people inside.

Records from the Burnaby RCMP indicate that numerous complaints had been received about the Pure Hookah Lounge, including from residents in apartments located nearby. The establishment is located on the first floor of a three-storey building, in a neighbourhood of commercial and residential structures.

### **SUBMISSIONS – BRANCH**

The Branch advocate submits the contravention involves aggravating circumstances. The premises were overcrowded by almost double the number permitted, with a higher risk of fire due to the hotplates being used to warm charcoal.

The Branch also suggests the scope and purpose of a special event permit may be being abused by the Permittee and others in relation to these premises and says the RCMP identified on-going issues with the premises.

## **SUBMISSIONS – PERMITEE**

The Permittee's consultant says the overcrowding happened due to "a combination of several unfortunate circumstances, including a breakdown of communication and illness". The consultant says the Permittee had to leave the event because he was sick and could not remain on site to properly manage the event.

The Permittee's consultant says due to the Permittee's health challenges, which started in 2011 (and which, for privacy reasons, I do not repeat here), he cannot work and is on a disability pension and has limited financial resources to pay a fine.

The consultant says as this is a first contravention in the more than 20 special event permits issued to the Permittee, a compliance meeting would be more appropriate than a fine, if the Branch's stated approach of progressive discipline is applied. The consultant says the proposed monetary penalty would be very harsh and will have severe financial consequences for the Permittee due to his inability to work.

The consultant refers to two Branch decisions where a reduced suspension imposed for second offences, and suggests on a first offence, with a clean record, health issues and limited financial resources, no monetary penalty should be imposed.

## **REASONS AND DECISION**

### **Contravention**

On the basis of the Branch's evidence, which is accepted and unchallenged by the Permittee, I find the Permittee contravened section 117(k) of the *Regulation*.

### **Due Diligence**

The Permittee did not claim a defence of due diligence, but is entitled to that defence if he can show that he was duly diligent in taking reasonable steps to prevent the contravention from occurring. The Permittee must not only have established procedures to identify and deal with problems, he must ensure that those procedures are consistently acted upon and problems are dealt with.

The Permittee did not present any evidence on which I could find a defence of due diligence could apply. I find the defence of due diligence is not available to the Permittee.

## **PENALTY**

Imposing a penalty is intended to redress the Permittee's non-compliance and to encourage future compliance by this Permittee and others by way of deterrence.

Having found that the Permittee has contravened the Regulation and the terms and conditions of his Permit, pursuant to sections 53 and 51(2)(b) of the Act, I may take no enforcement action or impose a monetary penalty in accordance with Schedule 2.

On the evidence, I find this to be a first contravention by the Permittee of section 117(k) for the purposes of calculating a monetary penalty under Schedule 2. The range of monetary penalties for a first contravention of section 117 (k), as at the date of the contravention, is a \$5,000 to \$7,000 (item 16, of the then Schedule 2 of the *Regulation*). In the Notice of Enforcement Action, the Branch proposes a penalty of \$5,000.

I am not bound to order the penalty proposed in the Notice of Enforcement Action nor am I bound by the maximum set by the Schedule, and I may impose higher penalties when it is in the public interest to do so. However, if I find that a monetary penalty is warranted, I am bound to follow the minimums set out in Schedule 2 of the Regulation.

I do note section 4(4) of Schedule 1 provides that if I am satisfied that imposing the minimum period of suspension for a second contravention would create undue hardship on a licensee, I may impose a period of suspension that falls within the range of suspension for a first contravention. I also note that section 4(4) only applies to suspensions and only for a second contravention, not to monetary penalties and not on a first contravention by a permittee.



On this basis, I find that I am only able to order no penalty or a monetary penalty of at least \$5,000. If I find a monetary penalty is warranted, section 51(9)(c)(i) of the Act directs that I must set the date by which it is to be paid. Section 51(10) of the Act directs that the penalty must be within 30 days, unless I specify a longer period in the order.

The factors I considered in determining the appropriate penalty in this case include:

- the circumstances surrounding the contravention and the threat to the public safety
- the Permittee's past history of special event permits at this location and his responsibilities under this Permit and the others
- the Permittee's health and financial situation
- the RCMP comments, the pattern of special event permits and the well-being of the community.

I find this contravention to be very serious, simply by reason of the number of persons that were allowed in the premises - over 50 persons, when knowledgeable fire officials set the occupancy at a maximum of 30 persons. Patrons' ability to safely escape a fire or other life-threatening situation can be seriously compromised with such an overcrowded situation, especially when liquor is being served, the music is loud and the lights are dim, as was the case here. Further, in this case, an additional significant fire hazard added to the danger, with shiska tobacco being smoked and hot plates in use for burning charcoal. Additional care to avoid overcrowding needs to be taken in these circumstances but was sorely lacking here.

I am also influenced by the fact this Permit is the twenty-second obtained by this Permittee for this location in a twelve-month period. This is not a "one off" or first-time special event permit for this Permittee. If it was his first permit, he might be unfamiliar with his responsibilities, but with his history of a significant number of special event permits, the Permittee should be well aware of his responsibilities and the need to ensure that those responsibilities are being met.

I accept, in the absence of any evidence to the contrary, the Permittee was present at the establishment that night as required by the Permit and he had to leave the event because he was sick. However, I find that with his history of special event permits, he should have made clear, specific arrangements when he left, to ensure that the terms of

the Permit would be complied with in his absence. I have no evidence that he took any steps to do that, nor have I been provided with any explanation how, why or when the overcrowding happened. And given his history of poor health, the Permittee perhaps should have thought to make such arrangements, in advance.

Further, with respect to the Permittee's poor health, I am not convinced that is a valid reason to excuse or reduce the penalty for his failure to comply with the terms of the Permit. In part that is because, having apparently started in 2011, his poor health is not new or unexpected. With a history of ill health, he should have, but did not have in place, a contingency plan in case he was not be able to stay and oversee the event. In addition, the Permittee apparently felt well enough in the prior twelve months to apply for twenty-two special event permits. Had his poor health been that significant, I would not have expected that large number of permits.

With respect to ability to pay, I am not convinced that is a valid reason to avoid a monetary penalty in this case. I question why, with the Permittee's apparent financial difficulties, he would have applied for and obtained twenty-two special event permits in the proceeding twelve-month period - in effect almost twice a month. Without further evidence, it is hard to reconcile why or how a person with financial difficulties would be applying for so many special event permits. Further, the ability to pay may be addressed by me giving time to pay.

I also note the establishment is located in an area of mixed commercial and residential uses. I am concerned about the RCMP report of on-going calls by nearby residents to police, and the need, the very same night as the overcrowding contravention, for the RCMP to respond to complaints of loud noise and intoxicated persons outside. While the Permittee may not have had direct contact with the RCMP, this location has been problematic and was problematic on the night of the contravention.

These complaints, combined with the ninety-eight individual special event permits taken out for the Pure Hookah Lounge in a twelve-month period, concern me. When a liquor licence is applied for, community input is sought, given the potential impact on the community. It seems to me that the use of special event permits may be being used to circumvent the requirement to consult the community. And while I appreciate the

Permittee was the applicant in only twenty-two of the ninety-eight permits that is still over 20%, which is a significant number.

In this regard, I am also concerned that the application for this permit was for a family event, which the legislation defines as a celebration of a family or religious event (including, without limiting it, a wedding, wedding anniversary or birthday) and for which the applicant is to be a member or a close friend of the family, and attendance is to be by prior invitation only, extended only to family and friends of the family. On this basis, and with the low number of persons to be attending, the permit was issued without a high degree of scrutiny. Here, the uncontested evidence is that the inspector entered the premises without anyone asking if he was invited or a family member or friend. And the Permittee's son offered him a seat by, without any such question. The inspector does not mention or suggest there was any indication that the event appeared to be a family event, nor did the Permittee offer any such evidence. The Permittee seems not to have limited who could be permitted to enter, or left directions about that.

While progressive discipline may be the Branch's policy, I note that the Permittee failed to respond to numerous attempts made by the Branch to contact him. This made it difficult to have any meaningful discussions. Further, no reasons were offered for the difficulty in service of the Contravention Notice and the failure to produce documents as requested. This indicates to me that the Permittee was not amenable to meeting with the Branch and having meaningful discussions that might have been an alternative in the form of progressive discipline.

For all of these reasons, I find this proven and serious contravention requires some form of a monetary penalty. I find that the appropriate penalty is a monetary penalty of \$5,000. To address the Permittee's financial difficulties, I will give the Permittee time to pay, as set out below.

## **ORDER**

Pursuant to section 51(2)(b) of the Act, I order that the Permittee pay a monetary penalty in the sum of \$5,000 to the general manager of the Liquor and Cannabis Regulation Branch on or before June 1, 2020.

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 and Cannabis Regulation Branch inspector or a police officer.

*Original signed by*

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Dianne Flood  
General Manager's Delegate

Date: November 1, 2019

cc:     Liquor and Cannabis Regulation Branch, Victoria Office  
          Attn: Hugh Trenchard, Branch Advocate  
  
          Liquor and Cannabis Regulation Branch, Surrey Office  
          Attn: McKenzie Castle, Regional Manager