



**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:	GFX Enterprises Ltd. dba Insomnia Karaoke Restaurant 100 – 7911 Alderbridge Way Richmond, BC V6X 2A4
Case Number:	EH03-068
Appearances:	
For the Licensee	Rick Fung
For the Branch	Peter Jones, Advocate
Enforcement Hearing Adjudicator	Suzan Beattie
Date of Hearing	July 29, 2003
Place of Hearing	Vancouver, BC
Date of Decision	December 4, 2003

**Ministry of Public
Safety and Solicitor
General**

Liquor Control and
Licensing Branch

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INTRODUCTION

The licensee, GFX Enterprises Ltd. doing business as Insomnia Karaoke Restaurant, is located at 100 – 7911 Alderbridge Way, Richmond, B.C. In March 2003, the licensee held "B" Dining Lounge Licence No. 217966 for the sale and consumption of all types of liquor with meals.

The hours of the liquor licence are Monday to Sunday 11:00 A.M. to 12:00 Midnight. The maximum patron capacity is Area 1 - 62; Area 2 - 54; Area 3 - 10; Area 4 - 8; Area 5 - 8; and Area 6 - 9.

ALLEGED CONTRAVENTION AND RECOMMENDED PENALTIES

The Liquor Control and Licensing Branch alleges that on March 21, 2003, the licensee contravened section 36(2)(a) of the *Liquor Control and Licensing Act* by permitting gambling in the premises, and section 12 of the *Liquor Control and Licensing Act* by contravening a term and condition, contrary to the *Act*. With respect to the alleged contravention of section 12 of the *Act*, the branch alleges the licensee contravened the requirements outlined in the "Guide for Liquor Licensees in British Columbia - Food Primary Licence" with respect to drink sizes and drink prices.

Schedule 4 of the *Liquor Control and Licensing Regulations*, provides a range of licence suspensions and monetary penalties for each contravention. For the contravention of section 36(2)(a), the penalty range is 4 to 7 days or \$5,000.00 to \$7,000.00 for the first contravention. In this case, the branch is recommending a monetary penalty of \$5,000.00. For the contravention of section 12, the penalty range is 1 to 3 days or \$1,000.00 to \$3,000.00 for the first contravention. In this case, the branch is recommending a monetary penalty of \$1,000.00.

In summary, the branch is recommending a total monetary penalty of \$6,000.00

The relevant statutory provisions of the *Liquor Control and Licensing Act and Regulations* state, in part:

12 Licences

- (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).

36 Prohibition against gambling

- (2) A person holding a licence or the person's employee must not authorize or permit in the licensed establishment
 - (a) gambling, drunkenness or violent, quarrelsome, riotous or disorderly conduct.

The relevant provisions of the Guide for Liquor Licensees in British Columbia - Food-Primary Licence Terms and Conditions, state, in part:

Drink Sizes

Bottled beer: You may serve a maximum of two standard-sized or one large-sized (.5 litre or more) bottle of beer to a single patron at one time.

Drink Prices

You must not provide unlimited or unspecified quantities of liquor for a single price or use a sales strategy that is likely to promote or encourage over-consumption.

Gambling

Gambling is defined as playing or gaming, for money or other stakes, on an uncertain event; it involves chance and the hope of gaining something more than the amount paid to participate.

You may not allow gambling in your establishment. You may not authorize gambling (such as by receiving a portion of the bets, collecting a fee from participants or providing tables or a room for games to take place). You are also responsible for exercising care and vigilance so gambling does not take place without your knowledge.

Wheels of Fortune and other games of chance are not permitted. Sports pools are prohibited under the Criminal Code of Canada.

ISSUES

1. Whether the standard of proof in these proceedings is on the civil standard of a balance of probabilities
2. Whether the licensee contravened section 12 of the *Liquor Control and Licensing Act*.
3. Whether the licensee contravened section 36(2)(a) of the *Liquor Control and Licensing Act*.
4. If so, are the recommended penalties appropriate in the circumstances?

COMPLIANCE HISTORY

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 ("compliance history"). Therefore, these contraventions, if proved, would be considered first contraventions for the purposes of the Penalty Schedule.

In March 2003 the branch issued a Contravention Notice for failure to clear liquor within one-half hour after liquor service hours and recommended a 4-day license suspension. In April 2003, the branch issued another Contravention Notice. This contravention Notice, amended at the pre-hearing conference, alleged two contraventions: that the licensee allowed consumption of liquor beyond one-half hour after liquor service hours and that the licensee permitted an intoxicated person to remain on the premises. The branch recommended a 4-day license suspension for each of these two contraventions. In total, the March 2003 and April 2003 Contravention Notices recommended a 12-day license suspension.

The licensee signed a waiver with respect to the March 2003 and April 2003 contraventions and served a 12 day suspension.

WITNESSES

The branch called one R.C.M. Police Sergeant and three R.C.M. Police Constables as its witnesses. The licensee called its current manager as its witness.

EXHIBITS

The branch and the licensee presented the following exhibits:

Exhibit 1**Book of Documents**

- Tab 1 Notice of Enforcement Action dated May 20, 2003
- Tab 2 Contravention Notice Nos. B004065 and B004063
- Tab 3 Enforcement Action Recommended dated April 22, 2003.
- Tab 4 Notes and other documentation from a Corporal and Constables of the RCMP Richmond Detachment.
- Tab 5 Compliance and Enforcement history of the establishment
- Tab 6 Liquor Licence #217966 dated September 24, 2002
- Tab 7 Official floor plan of the establishment

EVIDENCE, SUBMISSION AND FINDING ON CONTRAVENTION**Evidence**

The R.C.M. Police Sergeant testified that he and a Corporal put together a team of individuals to combat alleged contraventions in certain establishments in the City of Richmond. This team included two plain-clothes police officers, two police officers in uniform and inspectors from the branch and the City of Richmond. On the evening of March 21, 2002, this team conducted a covert operation as well as a routine inspection.

When instructing the plain clothes officers on issues relating to this licensee, the Sergeant asked them to be aware of a "3 drink offer" which was described as buying three beers and receiving a fourth beer free of charge. The two plain clothes officers commenced their covert operation at this establishment at approximately 22:30 hours. The Sergeant and a uniformed police officer entered the establishment at approximately 22:58 hours. I will outline the evidence of the officers in the order in which they appeared in this hearing.

The Sergeant explained that, when the establishment first opened, he was asked by the shareholders to meet with them and give them his advice. When he stopped by the establishment for his meeting, he immediately noticed several infractions of the *Liquor Control and Licensing Act and Regulations*. He explained the infractions and advised the shareholders he would not issue a licensed premise check (LPC) at this time, as he was there to give his advice. However, if he returned on another occasion and noticed infractions he would issue an LPC.

When the Sergeant entered the establishment on March 21, 2003, he noticed two tables playing a dice game. He asked the patrons what game they were playing and they told him it was called "liar's dice". The patrons explained that the dice have miniature cards on them from a 9 to an ace. The dice are put in a receptacle, shaken and rolled out (or not, depending on the rules). It is a game of bluff, or chance like poker with the objective of not losing your hand. As part of the rules for this "reverse game", if your bluff is called and you are a "liar" then you must drink a shooter.

Almost every table in the establishment had dice on it. At the table identified as Table 1 in this hearing there were 9 patrons (only 8 patrons were drinking). The Sergeant testified that there was more than 1 drink per person on the table, including 4 non-alcoholic drinks as well as full and empty beer bottles. An additional 12 shooters were delivered to Table 1 while the Sergeant was present. The Sergeant commented that it was too much liquor for the patrons at that hour of the evening

A uniformed Constable entered the establishment with the Sergeant. This Constable's responsibility was to keep an eye on the establishment while the liquor inspector and the Sergeant were conducting their inspection.

With respect to Table 1, the Constable said there were in excess of 2 drinks per person on the table, it was a loud table and a dice game was being played. While the Constable watched the table a tray of approximately 10 - 12 shooters arrived for the patrons. This Constable referred to the game of liar's dice as "bullshit poker" and explained that if an individual's bluff is call, then they lose and must drink a shooter.

Under cross-examination, this Constable confirmed they were in the establishment from approximately 22:58 until 05:50 hours. This Constable wrote the Occurrence Report from the combined notes of the team members.

The next Constable to testify was one of the plain clothes officers in the covert operation. This Constable entered the establishment at approximately 22:30 hours. This Constable stated a male server seated him and his partner, and a female server took their order. Each officer ordered a beer and was told by Angela that the cost was \$5.25, but if they ordered 3 beers they would get one beer free. In essence, they could have 4 beers for \$15.00. The Constables declined and ordered a beer each.

This Constable and his partner observed other patrons playing dice games. They asked their server to bring them dice and explain to them how to play the same game as the other patrons. The server explained how, if a patron "lost" then they would have to drink a shooter. This Constable observed three tables playing the dice game.

On cross-examination this Constable stated there were dots on his dice but no replicas of playing cards such as a 9 - ace.

The last Constable to testify was the second undercover officer. He confirmed that at Table 1 the ratio of liquor to patrons was in excess of two drinks per person. He also confirmed their waitress said there was a "special" if you paid for 3 beers you got 4 beers, but you had to buy all the beers at the same time.

Under cross-examination this Constable stated he did not observe any patrons order 4 beers at one time and pay for 3 beers.

The licensee's current manager is one of the six shareholders in the establishment. Up until April 2003, all of the shareholders had full time jobs outside the establishment and the management of the establishment was left to an employee. The establishment had a series of contraventions from early 2002 until March 2003 culminating in the 12 day suspension served in August 2003. Since the shareholder has taken over as manager there have been no contraventions.

The manager explained that, even before they opened the establishment they spoke to officers in the Richmond Detachment of the R.C.M. Police. The manager agreed that the Sergeant had attended at the establishment and given them operating advice. He testified that none of the shareholders had received the terms and conditions for a food-primary licence or any other information from the branch.

When the manager did get to meet a liquor inspector he asked her about having dice in the restaurant. He stated the liquor inspector did not give them any advice other than to say no gambling was allowed. The manager explained that the karaoke rooms are not charged on an hourly basis, but on a minimum fee of \$15.00. Patrons are asked to spend this minimum room fee on food or drink.

While patrons are waiting for a song, the manager explained that they play cards, dice or hand games. The establishment has 50 sets of dice and 3 decks of cards available for its patrons. The manager explained that there are no poker chips or money involved. Other named karaoke establishments also have cards, dice and hand games claimed the manager.

SUBMISSION

The licensee raised five points in its submission on the contraventions. First, with respect to the standard of proof, the licensee disputes that the burden of proof is on a balance of probabilities. It submitted an excerpt from a legal argument put forward by another licensee on judicial review in support of its position. Second, the licensee submits that the branch is really focusing on the contravention of operating outside the purpose of a food primary license. Its third point is that the enforcement system is inflexible and incapable of resolution prior to a formal hearing. Fourth, the licensee points to the incomplete licensing process in this case resulting in the licensee's receiving information from the police rather than the liquor inspector. Last, the licensee argues that there is no evidence of gambling nor is there evidence of a sales strategy for selling beer.

REASONS AND FINDING ON CONTRAVENTION

I will deal with each of the licensee's points in turn. First, with respect to the standard of proof, I am not prepared to accept the licensee's argument. The branch has consistently held that its standard of proof is on a balance of probabilities. I am not persuaded to find otherwise in this case.

I agree with the licensee that there is some evidence before me that the licensee is operating outside the purpose of its food primary license. However, that contravention is not before me. The evidence before me will only be considered as it relates to the alleged contraventions.

The licensee's third point refers to its perception of the inflexibility of the hearing process. By this I take the licensee to mean its inability to resolve outstanding allegations short of a hearing. In this regard the licensee is correct.

The thrust of the licensee's fourth point is that it should not be penalized for alleged contraventions if the branch itself has not provided it with operating guidelines or terms and conditions. I acknowledge the licensee's proactive actions in contacting and maintaining communications with the R.C.M. Police Richmond Detachment. The licensee's could have also engaged in proactive measures in contacting the branch. I find the fact the branch was not in immediate contact with the licensee after they received their licence is not a ground for dismissing the alleged contraventions.

I turn now to the licensee's submission that there is no evidence of either a violation of a term or condition of their licence or of gambling in the establishment. The licensee argues that, with respect to the alleged contravention of section 12 of the *Liquor Control and Licensing Act*, there was no evidence that more than two bottles of beer were served to a single patron at one time. Nor was there evidence of a sales strategy that was likely to promote or encourage over-consumption.

Having reviewed the evidence I find the licensee is correct. There is no evidence before me that a patron was served four beers each at once as stated in the Notice of Enforcement Action.

I do however have evidence from both Constables that their server offered them 4 beers if ordered at once for the price of 3 beers. The next question is whether this offer of 4 beers for the price of 3 beers is a sales strategy as that term is used in the *Food-Primary Licence Terms and Conditions* that is likely to promote or encourage over-consumption.

The licensee agrees that there is a sales strategy if a table pays \$15.00 for 4 beers instead of \$21.00 for 4 beers. I find it can also be a sales strategy to charge \$15.00 for the karaoke room and, as the manager explained, ask patrons to spend that room fee on food or drink. The real question under section 12 of the *Liquor Control and Licensing Act*, is whether this sales strategy is likely to promote or encourage over-consumption. Again, I agree with the licensee that there was no evidence linking this sales strategy to promoting or encouraging over-consumption.

As a result I do not find a violation of section 12 of the *Liquor Control and Licensing Act* in these circumstances.

I turn now to the alleged violation of authorizing or permitting gambling in a licensed establishment contrary to section 36(2)(a) of the *Liquor Control and Licensing Act*. I start by noting there is no allegation that the licensee is receiving a portion of the bets or collecting a fee from participants as outlined in the *Food Primary Licence Terms and Conditions*. At issue is whether "gambling" as defined in the *Food Primary Licence Terms and Conditions* was permitted by the licensee.

I find that there was "playing or gaming, for money or other stakes, on an uncertain event" on the evidence before me. The server described, and the Sergeant and other Constables observed, patrons playing with dice on the uncertain event that one of the patrons was lying about their "hand". I also find that the patron who was caught lying had a "chance or the hope of gaining something more than the amount paid to participate" when they gained the opportunity to drink a shooter purchased by all the patrons (including themselves) at the table. On the facts before me I do not find this game of dice is compatible with the licensee's primary operating purpose of food service.

The next question is whether the licensee "permitted" the gambling to take place in the establishment. The term "permit" has been defined by the Liquor Appeal Board in the *Ed Bulley Ventures Ltd.*, decision dated June 28, 200 (L-9905) as:

A licensee may be said to permit something where the licensee does not exercise as high a degree of diligence as it should have in the circumstances, or where the licensee shuts its eyes to the obvious or allows something to go on, not caring whether an offence is committed or not.

Following this definition, I find the licensee did permit gambling in its establishment contrary to section 36(2)(a) of the *Liquor Control and Licensing Act*. I find on the evidence before me that this licensee did not exercise as high a degree of diligence as it

should have, shut its eyes to the obvious and allowed the gambling to go on without caring whether an offence was committed or not. I am persuaded by the easy availability of dice, the fact the server explained the game to the undercover officers and the evidence of the large amount of alcohol, in particular the shooters at Table 1. Based on this evidence, I find on a balance of probabilities, that gambling was taking place in the establishment. As a result I find the licensee has contravened section 36(2)(a) of the *Liquor Control and Licensing Act*.

In summary, I do not find a violation of section 12 of the *Liquor Control and Licensing Act* in the circumstances of this case. I do find the licensee has contravened section 36(2)(a) of the *Liquor Control and Licensing Act*.

PENALTY SUBMISSIONS AND DECISION

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*.

Submissions

The licensee argues that, even if I find a contravention, there should be no penalty imposed as it has already recognized the mistakes in its operation and has served a twelve day suspension. The licensee submits that the contraventions it signed a waiver for (failure to clear liquor within one-half hour after liquor service hours, allowing consumption of liquor beyond one-half hour after liquor service hours and permitting an intoxicated person to remain on the premises) occurred within the same time frame and under the same management as the contraventions before me.

Decision

Schedule 4 of the *Liquor Control and Licensing Regulations*, provides a range of licence suspensions and monetary penalties for each contravention. For the contravention of permitting gambling in premises, contrary to section 36(2)(a) of the *Act*, the penalty range is 4 to 7 days or \$5,000.00 to \$7,000.00 for the first contravention. In this case, the branch is recommending a monetary penalty of \$5,000.00, the minimum penalty for this contravention.

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 this case I find that the licensee permitted gambling contrary to the *Food Primary Licence Terms and Conditions*. This type of activity in a food primary licensed restaurant is not compatible with the licensees' primary operating purpose of food service. I find the recommended monetary penalty is warranted in this case to impress upon the licensee the necessity to voluntarily comply with the terms and conditions of its license.

ORDER

Pursuant to section 20(2) of the *Act*, concerning the Class "B" Dining Lounge Licence No. 217966, I order as follows:

For the contravention of section 36(2)(a) of the *Liquor Control and Licensing Act* on March 21, 2003, I order a monetary penalty of \$5,000.00, to be paid on or before January 8, 2004.

Original signed by

Suzan Beattie
Enforcement Hearing Adjudicator

Date: December 4, 2003

cc: R.C.M.Police Richmond Detachment

Liquor Control and Licensing Branch, Vancouver Regional Office
Attention: Wendy Jones, Regional Manager

Liquor Control and Licensing Branch, Victoria Office
Attention: Peter Jones, Branch Advocate
