



**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:	Royal King Seafood Restaurant 3560 Fraser Street Vancouver, BC
Case No.	EH03-106
Appearances:	
For the Licensee	Peter Lee, Licensee Representative
For the Branch	Shahid Noorani, Advocate
Enforcement Hearing Adjudicator	Suzan Beattie
Date of Hearing	September 16, 2003
Place of Hearing	Vancouver, BC
Date of Decision	December 16, 2003

**Ministry of Public
Safety and Solicitor
General**

Liquor Control and
Licensing Branch

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INTRODUCTION

The licensee, Royal King Seafood Restaurant, is located at 3560 Fraser Street, Vancouver, BC. It holds Food Primary Licence No. 209714 with hours of operation Monday to Thursday from 10:00 A.M. to 12:00 Midnight, Friday to Saturday from 11:00 A.M. to 1:00 A.M., and on Sunday from 11:00 A.M. - 12:00 Midnight. The maximum licensed capacity is 312 patrons.

This licence does allow for patron non-participation entertainment.

ALLEGED CONTRAVENTION AND RECOMMENDED PENALTIES

The Liquor Control and Licensing Branch alleges that on June 19, 2003, the licensee contravened section 43 of the *Liquor Control and Licensing Regulations* by failing to comply with beverage training service, contrary to the *Regulations*.

The Liquor Control and Licensing Branch further alleges that on June 19, 2003, the licensee contravened section 50 of the *Liquor Control and Licensing Act* by permitting prohibited entertainment, contrary to the *Act*.

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 43, the penalty range is a one (1) to three (3) day licence suspension or one thousand (\$1,000) to five thousand (\$5,000) monetary penalty for the first contravention. In this case, the branch is recommending a monetary penalty of three thousand (\$3,000.00) dollars.

For the contravention of section 50, the penalty range is a one (1) to three (3) day licence suspension or one thousand (\$1,000) to five thousand (\$5,000) monetary penalty for the first contravention. In this case, the branch is recommending a monetary penalty of three thousand (\$3,000.00) dollars.

In summary, the branch is recommending a total monetary penalty of six thousand dollars (\$6,000.00) dollars.

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

43 Beverage service training

- (1) For the purposes of this regulation and section 13 of the Act. "**training program**" means one of the following programs delivered under the auspices of a person or organization approved by the general manager.
 - (a) The training program entitled "Serving It Right: The Responsible Beverage Service Program" Licensee Manual ISBN 0-7726-1063-3
 - (b) the training program entitled "Serving It Right: The Responsible Beverage Service Program" Server Manual ISBN 0-7726-1035-5

13 Training

- (3) A person must not manage a licensed establishment unless the person has successfully completed a prescribed training program.
- (4) A person must not serve liquor in a licensed establishment unless the person has successfully completed a prescribed training program.

50 Entertainment

- (1) If entertainment is permitted under the regulations or the terms and conditions of a licence, a municipality or regional district may restrict or prohibit any or all of the types of entertainment permitted.
 - (2) Without limiting section 12, the general manager may, at the time of the issue of a licence or at any time during the term of the licence, impose as a condition of it the restrictions and limitations that the general manager considers necessary on any type or form of entertainment performed or carried on in the establishment for which the licence is issued
 - (1) Without limited section 12, the general manager may, at the time of the issue of a licence or at any time during the term of the licence, impose as a condition of it the restrictions and limitations that the general manager considers necessary on any type or form of entertainment performed or carried on in the establishment for which the licence is issued.
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ISSUES

The licensee conceded that it contravened section 43 of the *Liquor Control and Licensing Regulations* and section 50 of the *Liquor Control and Licensing Act* but disputed the proposed total monetary penalty of six thousand (\$6,000.00) dollars.

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, this contravention, if proved, would be considered a first contravention for the purposes of the Penalty Schedule.

However, the contravention notice does indicate that on January 12, 2000, the licensee was issued a Compliance Notice with respect to three allegations. The licensee signed a waiver with respect to two allegations and proceeded to an enforcement hearing with respect to the third allegation.

The contraventions, and their penalties, are as follows:

- For the contravention of permitting an intoxicated person to remain the licensee paid a five thousand (\$5,000) monetary penalty.
- For the contravention of failing to comply with the Responsible Beverage Service requirements the licensee served a four (4) day licence suspension.
- For the contravention of prohibited entertainment the licensee served a four (4) day licence suspension.

WITNESSES

The branch called a liquor inspector as a witness and the licensee called its assistant manager as a witness.

EXHIBITS

The branch and the licensee presented the following exhibits:

Exhibit 1	Book of Documents
Tab 1	Food Primary Licence No. 209714
Tab 2	Red Line Floor Plan date stamped January 30, 2001
Tab 3	Inspection Interview Sheet dated January 25, 2001
Tab 4	Administrative Inspection Form dated October 18, 2001
Tab 5	Contravention Notice A013633 dated January 12, 2002
Tab 6	Waiver Notice dated March 27, 2002
Tab 7	Enforcement Hearing Decision Letter dated September 30, 2002
Tab 8	Penalty Letter dated April 8, 2002
Tab 9	Contravention Notice B004765 dated June 19, 2003
Tab 10	Handwritten notes of the Inspector
Tab 11	Excerpts from the Guide for Liquor Licensees in BC
Exhibit 2	Food-Primary Licence Terms and Conditions - A Guide for Liquor Licensees in British Columbia dated March 2003
Exhibit 3	Letter dated September 12, 2003 from the Director, Royal King Seafood Restaurant to the Liquor Control & Licensing Branch with attachments.

EVIDENCE, PENALTY SUBMISSIONS AND DECISION**Evidence**

The inspector testified he was doing a routine inspection on his own in the early evening of June 19, 2003. As he entered the establishment he heard music and saw a television screen set up with Chinese characters on the bottom of the screen. Several patrons were singing into a microphone that one patron was holding.

The inspector initially contacted the male host. In the course of conversation he determined that the host had been employed for one and a half years and did not have his responsible beverage service designation. The licensee then spoke with the cashier. She also did not have a responsible beverage service designation.

The host and the cashier referred the inspector to the licensee. The licensee also did not have a responsible beverage service designation. I pause to note that the attachments to the licensee's letter to the branch dated September 12, 2003, (exhibit 3) are photocopies of responsible beverage service designations for the cashier, the assistant manager and the licensee

With respect to the patron participation/karaoke entertainment, the inspector advised the licensee that the only entertainment allowed was patron non-participation such as musicians. The licensee advised the inspector that it was a special occasion and a 70th birthday party. The inspector asked that the karaoke/patron participation immediately stop. He made his request three times to the licensee, host and cashier to stop the karaoke/patron participation during his one-half hour inspection. The karaoke/patron participation was still continuing as he left the establishment.

The inspector agreed there appeared to be a language barrier and explained how he communicated with the licensee through the cashier and assistant manager.

The assistant manager explained the difference management styles of the former licensee and the current licensee. I pause to note that the branch has no records of the licensee transfer.

Submission

The licensee makes two arguments. First, the licensee argues that it has a language barrier due to its low level of understanding English. This is one of the reasons for the contraventions of the *Act* and *Regulations*. For this reason the licensee argues that I should exercise my discretion and not impose a penalty.

Secondly, the licensee says it has been going through a change of ownership and the management and operation of the establishment have also changed. As a result, the licensee argues the new ownership should have an opportunity to receive education before it receives a penalty for its contraventions of the *Act* and *Regulations*.

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.

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 am not persuaded by the licensee's argument that a language barrier resulted in the two contraventions of the *Act* and *Regulations*. I note that the licensee was able to secure representation for this hearing, and also secured representation for its September 12, 2003, application for an entertainment endorsement (exhibit 3).

Nor am I persuaded to exercise my discretion by the licensee's argument that it has been going through changes in its ownership, management, and operation. The licensee says its new owners should receive an opportunity to be educated on the *Act* and *Regulations* before it receives a penalty for its contraventions. I note that the licensee has not yet advised the branch of its change in ownership. Once the branch has approved new ownership, there is an information and education session provided for new owners.

In the circumstances of this case I find the total recommended monetary penalty of six thousand (\$6,000.00) dollars is appropriate. I base my decision on the fact that the licensee has not been persuaded to voluntarily comply with the *Liquor Control and Licensing Act and Regulations*. In this case the licensee, in January 12, 2000, violated the same two sections of the *Act* and *Regulations* and served a total of an eight (8) day suspension penalty.

My decision is also based on the fact that patron participation entertainment impacts the community and community standards. Such entertainment may cause noise, nuisance and other negative impacts. For this reason an application for patron participation entertainment must be completed. I note that, as of September 12, 2003, the licensee has made such an application. That application however, does not excuse the licensee from allowing patron participation such as karaoke to take place in its establishment. Nor is there any excuse for such entertainment to continue when an inspector has requested it to cease.

In further support of my decision I note one of the benefits of the Responsible Beverage Service program is that it educates licensees, managers and servers about their legal responsibilities when serving liquor. It appears on the evidence before me that the

licensee has continued to operate without at least one person on duty in the establishment during service hours who has completed this program.

In summary, for all of the reasons noted above, I find the total recommended monetary penalty of six thousand (\$6,000.00) dollars is appropriate

Order

Pursuant to section 20(2) of the Act, concerning Food-Primary Licence No. 209714, I order as follows:

For the contravention of section 43 of the Liquor Control and Licensing Regulations on June 19, 2003, I order a monetary penalty of three thousand (\$3,000.00) dollars; and

For the contravention of section 50 of the Liquor Control and Licensing Act on June 19, 2003, I order a monetary penalty of three thousand (\$3,000.00) dollars.

In summary, I order a total monetary penalty of six thousand (\$6,000.00) dollars to be paid on or before January 21, 2004.

Original signed by

Suzan Beattie
Enforcement Hearing Adjudicator

Date: December 16, 2003

cc: Vancouver Police Department

Liquor Control and Licensing Branch, Surrey Regional Office
Attention: Mike Clark, Regional Manager

Liquor Control and Licensing Branch, Surrey Office
Attention: Shahid Noorani
