



**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:	Jens Nielsen dba Ballroom Billiards 100 – 19335 Langley Bypass Surrey, BC
Case Number:	EH03-153
Appearances:	
For the Licensee	Jens Nielsen
For the Branch	Peter K. Jones
Adjudicator	Edward W. Owsianski
Date of Written Submissions	Licensee – December 12, 2003 Branch – December 17, 2003
Date of Decision	March 8, 2004

Introduction

The licensee, Jens Nielsen operates the Ballroom Billiards located at 100 – 19335 Langley Bypass, Surrey, BC. It is a 22 seat restaurant located within a billiards hall.

It holds Food Primary Liquor License No. 181406, hours of sale of liquor Monday to Saturday from 12:00 Noon - 2:00 A.M. and on Sunday from 11:00 A.M. - Midnight with a maximum capacity of 22 patrons.

The billiards hall is part of the same business entity; however, it is not licensed for the sale, service or consumption of liquor.

ALLEGED CONTRAVENTION AND RECOMMENDED PENALTIES

The Branch alleges that on October 1, 2003, the licensee contravened section 43 of the *Liquor Control and Licensing Regulations* by failing to ensure that it had a licensee level Responsible Beverage Service – Serving it Right (RBS) certificate available for inspection by a liquor inspector. The recommended enforcement action is a \$1000 penalty.

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 of the *Regulations* the penalty range is a one to three day licence suspension and a one thousand dollar (\$1000) to three thousand dollar (\$3000) monetary penalty for the first contravention. In this case, the branch is recommending the minimum monetary penalty of one thousand dollar (\$1000).

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

Beverage service training

43 (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.

(2) For the purposes of section 13 (1) of the Act, the following licence categories are prescribed:

- (a) winery licences containing an endorsement referred to in section 18 of this regulation;
- (b) winery licences and brewer's licences issued to establishments that provide samples in a sampling room designated by the general manager under section 53 (1) of the Act;
- (c) liquor primary licences, liquor primary club licences, food primary licences and special occasion licences.
- (3) For the purposes of section 13 (1) of the Act, the training program referred to in subsection (1) (a) of this section is prescribed.
- (4) For the purposes of section 13 (3) or (4) of the Act, the training program referred to in subsection (1) (a) of this section or the training program referred to in subsection (1) (b) of this section is prescribed.
- (5) Successful completion of the training program by each person must be evidenced by a certificate of completion issued in the name of that person by an authority approved by the general manager.
- (6) A person referred to in one of the following paragraphs of this subsection is, for the periods indicated in that paragraph, exempt from the requirement to complete a training program:
- (a) an applicant for a new licence, for a period of 120 days after the licence is issued;
- (b) an applicant for the transfer of a licence, for a period of 120 days after the transfer is granted;
- (c) a licensee who applies for the renewal of a licence, for a period of 120 days after the renewal is issued, less the number of days the licensee has held the licence;
- (d) a director, officer or employee of a corporation that is licensed to operate an establishment, if that person is responsible for controlling the sale of liquor for that corporation, for a period of 120 days after that person becomes responsible for controlling the sale of liquor for the corporation;
- (e) a manager of a licensed establishment, for a period of 120 days after that person becomes a manager of the licensed establishment;
- (f) a server in a licensed establishment, for a period of 120 days after that person becomes a server in the licensed establishment.
- (7) The following persons in the following situations are exempt from the requirement to complete a training program:
- (a) an unpaid manager or unpaid server in a club that is operated under a liquor primary club licence;
- (b) subject to any terms and conditions imposed under section 12 (2) and (3) of the Act, a server in a food primary establishment;
- (c) an unpaid server in an establishment licensed under a private special occasion licence or a public special occasion licence;
- (d) a person in whose name a private special occasion licence is issued, unless that person is acting on behalf of an organization, association or other organized group of persons.
- (8) Subject to subsections (6) and (7) of this section, before allowing a person to manage or serve liquor in a licensed establishment to which section 13 of the Act applies, the licensee must verify that the person has successfully completed a required training program.
- (9) A person who claims to have successfully completed a training program must produce his or her certificate of completion when requested to do so by the general manager, an officer of the Liquor Control and Licensing Branch or a peace officer.
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ISSUE

The licensee admitted that the contravention occurred, but disputed the proposed monetary penalty of one thousand dollars (\$1000).

Exhibits

1. Notice of Enforcement Action from the Branch to the licensee dated November 3, 003.
2. Reporting Out letter from the Branch to the licensee dated November 28, 2003.
3. Written submission of the licensee dated December 12, 2003.
4. Written submission of the Branch dated December 17, 2003.

EVIDENCE, PENALTY SUBMISSIONS AND DECISION**Evidence**

The branch's evidence is contained in Appendix A to the Notice of Enforcement Action. On October 1, 2003, two liquor inspectors attended at the establishment at 8:03 P.M. Upon entering the establishment they observed 12 patrons, most of who were in the billiards area. There was only one employee on duty at the time. She produced her Responsible Beverage Service certification card. It was for the "Server" component. She was unaware that there were two levels of certification.

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 Schedule 4 of the *Regulations*.

On February 26, 2002, the licensee completed an interview with a liquor inspector during which he was advised of his responsibilities as a licensee including the Responsible Beverage Service (RBS) certification requirements.

On June 29, 2002, the branch issued a Contravention Notice alleging that the licensee failed to comply with the RBS requirements and did not have a have a red-lined floor plan available. The branch did not pursue enforcement action on these allegations.

On July 18, 2003, the branch again issued a Contravention Notice alleging that the licensee failed to comply with the RBS requirements and did not have a have a red-lined floor plan available. The branch did not pursue enforcement action on these allegations. A compliance meeting was scheduled for July 25, 2003, with the licensee to discuss the issues. The licensee failed to attend the meeting or to make alternate arrangements.

On September 19, 2003, the branch issued a Contravention Notice alleging that liquor was being consumed outside the red-lined area. The branch did not pursue enforcement action on the allegation. A compliance meeting was scheduled for September 23, 2003, with the licensee to discuss the issues. The licensee failed to attend the meeting or to make alternate arrangements.

On October 1, 2003, the branch issued the Contravention notice which is the subject of this enforcement action. An administrative review was scheduled for October 15, 2003. The licensee failed to attend or to make alternate arrangements.

Submission

The licensee submitted that he should not be fined for “all these minor offences”. He has now paid for himself and all staff to have the proper RBS certificates. He has done what he can to prevent further contraventions and was unaware of the seriousness of the issues.

Findings of Fact

I find that on October 1, 2003 the licensee contravened Section 43 of the *Regulation to the Liquor Control and Licensing Act*.

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 the circumstances of this case, there were previous contravention notices issued. The branch did not recommend enforcement action, but scheduled compliance meetings to educate the licensee. The licensee repeatedly failed to avail himself of these opportunities or to take remedial action until the branch proceeded with enforcement action.

Having considered all of the circumstances of this case, I find no reason to exercise my discretion to not impose a penalty. I find that the recommended minimum monetary penalty of one thousand dollars (\$1,000) is appropriate.

ORDER

Pursuant to section 20(2) of the *Act*, concerning the Food Primary Licence No. 181406, I order as follows:

For the contravention of Section 43 of the *Liquor Control and Licensing Regulations* on October 1, 2003, I order the licensee, Jens Nielsen, to pay a monetary penalty of one thousand dollars (\$1,000) dollars to be paid no later than April 19, 2004.

Original signed by

Edward W. Owsianski
Enforcement Hearing Adjudicator

Date: March 8, 2004

cc: R.C.M. Police Surrey Detachment

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

Liquor Control and Licensing Branch,
Attention: Peter K. Jones, Advocate
