



**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:** Royal Drake Investments Ltd.  
dba Drake Hotel  
606 Powell Street  
Vancouver, BC

**Case Number:** EH04-018

**Appearances:**

**For the Licensee:** Kenneth Wong, General Manager  
Sheldon Ephraim, Assistant Manager

**For the Branch:** Peter Mior, Advocate

**Enforcement Hearing Adjudicator:** Suzan Beattie

**Dates and Place of Hearing:** May 17, May 31, 2004, in Vancouver, BC  
July 2, 2004, via Teleconference  
July 21, 2004, in Vancouver, B.C.

**Date of Decision** October 21, 2004

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**Ministry of Public  
Safety and Solicitor  
General**

Liquor Control and  
Licensing Branch

**Mailing Address:**  
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Victoria BC V8W 9J8  
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**INTRODUCTION**

- 1] The licensee, Royal Drake Investments Ltd., doing business as Drake Hotel, is located at 606 Powell Street, Vancouver, BC. It holds Liquor Primary Licence No. 025361 with hours of operation Monday to Saturday from 11:00 A.M. until 1:00 A.M. and on Sunday from 11:00 A.M. to Midnight.
  
- 2] The maximum licensed capacity is 220 patrons in Area 1 plus 30 patrons on the patio (Area 2). The Licence has an endorsement for off premises sales. As with all liquor primary licences, it is subject to the terms and conditions contained in the publication 'Guide for Liquor Licensees in British Columbia'.

**ALLEGED CONTRAVENTION AND RECOMMENDED PENALTIES**

- 3] The Liquor Control and Licensing Branch alleges that on the business day of Friday, January 16, 2004, the licensee contravened section 50 of the *Liquor Control and Licensing Act* by permitting dancer-prohibited acts including touching between an exotic dancer and a patron in the licensed establishment.
  
  - 4] Schedule 4 of the *Liquor Control and Licensing Regulation*, provides a range of licence suspensions and monetary penalties for contraventions. For the contravention of section 50, the penalty range is a four (4) to seven (7) day suspension or a five thousand (\$5,000.00) to seven thousand (\$7,000.00) dollar monetary penalty for the first contravention. In this case, the branch is recommending the maximum suspension of the liquor licence for seven (7) days, to be served starting on a Friday and continuing on successive business days until completed.
  
  - 5] The relevant statutory provisions of the *Liquor Control and Licensing Act and Regulation* states:
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**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 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.

**12 Licences**

- (3) (e) approve, prohibit or restrict games and entertainment in an establishment.

**Liquor- Primary Licence: Terms and Conditions (page 16 – 17).**

Exotic dancers/strippers may not:

- touch, share food and beverages, or pass objects to members of the audience

**ISSUE**

1. Whether the licensee contravened section 50 of the *Act* and the terms and conditions of its licence by permitting dancer-prohibited acts including touching between an exotic dancer and a patron in the licensed establishment.
2. If so, is the recommended 7 (seven) day license suspension penalty appropriate in the circumstances.

**EXHIBITS**

The branch presented the following exhibits:

**Exhibit 1****Book of Documents**

Tab 1 Notice of Enforcement Action dated February 23, 2004

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- Tab 2 Enforcement Action Recommended dated February 10, 2004
- Tab 3 Contravention Notice No. B004453
- Tab 4 Hand written notes from the Liquor Control and Licensing Branch Inspector
- Tab 5 Liquor Primary Licence Number 025361
- Tab 6 Excerpts from Liquor Primary Licence Terms and Conditions
- Tab 7 Official floor plan of the establishment
- Tab 8 Letter to Drake Hotel dated February 27, 2002
- Tab 9 Register of Directors Sheet
- Tab 10 Contravention Notice B004415 dated October 25, 2003
- Tab 11 Compliance Meeting report dated December 3, 2003
- Tab 12 Contravention Notice A013613 dated 2002

**Exhibit 2** Hand written notes from the Liquor Control and Licensing Branch Acting Regional Manager

## **WITNESSES**

6] The branch called a liquor inspector and an acting regional manager as its witnesses. The licensee called its owner and its doorman as its witnesses.

## **EVIDENCE, SUBMISSIONS AND FINDINGS ON CONTRAVENTIONS**

### **Evidence of the Branch**

7] The branch's evidence, as outlined in the narrative to the Notice of Enforcement Action in Exhibit 1, and in the testimony of its witnesses, is summarized as follows.

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8] The liquor inspector testified that he and the acting regional manager entered the establishment on a routine inspection at approximately 12:30 A.M. on Saturday, January 17, 2004, (business day of Friday January 16, 2004) and asked for the general manager. When the general manager appeared, he and the liquor inspector proceeded to the three (3) VIP booths and opened the curtains. The liquor inspector testified there was a female dancer wearing a thong sitting on a male patron. The male patron had his arms around the dancer and was touching and fondling her breasts. The nearest staff person to the VIP booths was the bartender who was approximately 10 – 15 feet away.

9] The liquor inspector recalled previous inspections and stated the general manager knew full well that, as outlined in the terms and conditions for liquor primary licences, dancers may not touch member of the audience or a patron. The general manager did ask the dancer and patron to stop.

10]The liquor inspector and general manager proceed to the bar area where the liquor inspector wrote up a contravention notice. They were joined by the acting regional manager who observed that more patrons and dancers were going into the VIP booths. Again the general manager and the liquor inspector went to the VIP booths, pulled the curtains of the middle booth and saw a male patron with a dancer lying on his body with his arms around the dancer.

### **Evidence of the Licensee**

11]The doorman explained that part of his job is to ensure that the patrons do not touch the dancers while they are performing. The door staff provide security for the dancers from the time they arrive for work until they are safely in their vehicles after leaving the premises. During the evening the door staff also check the VIP rooms by viewing a camera monitored by the DJ.

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12]The doorman testified that, in his two (2) years of employment, he has never seen a dancer sit on the lap of a patron. The doorman recalled that, on a couple of occasions, dancers have left the VIP rooms and the door staff have escorted the dancers' patrons out of the premises. The doorman was aware that patrons are not allowed to touch or have other contact with dancers while they are performing.

13]The general manager recalled working in his office on the premises on the evening of the business day of Friday, January 16, 2004, and seeing the liquor inspector. He recalled the liquor inspector as being very angry and mad after they opened the curtains on the VIP booths. The general manager did not see the acting regional manager until he was signing the contravention notice. He explained that the establishment has a video camera to ensure the dancers are not abused by their customers. He was aware that, among other things, there was to be no touching or drinking inside a VIP booth.

14]The general manager confirmed that, during the second examination of the VIP booths with the liquor inspector, there was a dancer in the middle booth sitting on a patron's lap with her arms around his neck.

### **Finding of Fact and Due Diligence**

15]I find, on a balance of probabilities, that the female dancer wearing a thong was an exotic dancer as defined in the Liquor-Primary Terms and Conditions. I further find that she was involved in dancer-prohibited acts including touching between an exotic dancer and a patron, on the business day of Friday, January 16, 2004, as outlined on the contravention notice dated January 17, 2004.

16]As with all contraventions under this *Act and Regulation*, having found the contravention occurred, it is necessary to consider due diligence. In *The*

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*Plaza Cabaret v. General Manager, Liquor Control and Licensing Branch*, 2004 BCSC 248, the court set out criteria for a licensee to meet in demonstrating due diligence. Initially the licensee must show that “the employee was not the directing mind of the licensee in relation to that part of the licensee’s operations in connection with which the unlawful conduct arose”. In this case, the individual responsible for the licensee’s operation would be the general manager.

17]The next question posed in the *Plaza Cabaret (supra)* case is whether “those who were in fact responsible for that part of the licensee’s operations were duly diligent in attempting to prevent the occurrence of unlawful conduct or activities.” I find the evidence of the licensee falls short of establishing a sufficient degree of due diligence. I accept the general manager’s evidence with respect to the camera as well as the doorpersons’ evidence regarding the security of the dancers. However, I find the licensee has not demonstrated a defence of due diligence through policies, procedures or the actions of its staff on the business day of January 16, 2004.

### **Finding on Contravention**

18]In summary, I find that the branch has proven that the licensee allowed dancer-prohibited acts on the business day of Friday, January 16, 2004.

### **PENALTY SUBMISSIONS AND DECISION**

19]Pursuant to section 20(2) of the *Act*, having found that the licensee has contravened the *Act*, the *Regulation* 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
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- 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

20] 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 *Regulation*.

21] Schedule 4 of the *Liquor Control and Licensing Regulation*, provides a range of licence suspensions and monetary penalties for each contravention. For the contravention of section 50 the penalty range is four (4) to seven (7) days or five thousand (\$5,000.00) to seven thousand (\$7,000.00) dollars for the first contravention. In this case, the branch is recommending the maximum suspension penalty of seven (7) days.

22] The *Regulation* provides 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 *Regulation*.

23] 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 the public safety and the well being of the community.

### **Compliance History**

24] 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

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incident ("compliance history"). Therefore, this contravention is a first contravention for the purposes of the Penalty Schedule.

25]The Notice of Enforcement Action, Appendix B, indicted that contravention notices had been issued for the following:

| <b>Date</b>      | <b>Finding of Contravention</b> | <b>Enforcement Action</b> |
|------------------|---------------------------------|---------------------------|
| November 5, 2003 | Dancer prohibited Acts, s.50    | None recommended          |
| November 1, 2002 | Dancer prohibited Acts, s.50    | None recommended          |

26]As well, there were complaints recorded by liquor inspectors on April 20, 2003, and September 3, 2003, with respect to entertainment.

### **Submission**

27]The licensee submitted that the recommended seven (7) day licence suspension was excessive. It acknowledged that it knew that dancer patron touching was prohibited and said it did its best to control any prohibited acts. The licensee explained that it did have a camera and that its dancers simply did not listen or care about the terms and conditions of its licence.

28]The licensee pointed to its history of running the establishment and argued that, because it is a first contravention, it should just receive a warning.

### **Decision**

29]The licensee argued the appropriate penalty should be a warning. Under the existing legislation, warnings are not an alternative. In circumstances such as these that involve a contravention of a term and condition of the licence, the legislative scheme outlined in Schedule 4 of the *Regulation* indicates the seriousness with which this contravention is viewed. Under item 34 of

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Schedule 4, the penalty range is a four (4) to seven (7) day suspension or a five thousand (\$5,000.00) to seven thousand (\$7,000.00) dollar monetary penalty for the first contravention.

30] As noted earlier, I accept the general manager's evidence with respect to the video camera as well as the doorpersons' evidence regarding the security of the dancers. However, I find the licensee has not demonstrated a defence of due diligence through policies, procedures or the actions of its staff on the business day of January 16, 2004.

31] The next question is whether the licensee should receive the recommended maximum seven (7) day licence suspension penalty for a first contravention. I look first to the licensee's demonstrated attempts at compliance. In 2002 and again in 2003, the licensee is alleged to have contravened section 50 of the *Act*. No enforcement action was recommended as a result of those allegations. It is apparent based on its compliance history that the contravention notices in November 2002 and November 2003 have not persuaded this licensee to comply voluntarily with the entertainment provisions of the *Act*. One of the primary considerations of the branch is achieving voluntary compliance. As a result I find a suspension penalty if appropriate.

32] The next question is what level of suspension penalty is required on these facts to achieve voluntary compliance. This is a serious contravention that the licensee has been made aware of by past compliance notices. I do not agree that, in this case, the licensee should receive the minimum suspension penalty. Nor do I agree that this case warrants the maximum suspension penalty.

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33] I find that, considering the public safety and well being of the community as well as the seriousness of the contravention and the licensee's compliance history, that a medium suspension penalty of five (5) days is appropriate.

**ORDER**

34] Pursuant to section 20(2) of the *Act*, I order a suspension of the Liquor Primary Licence No. 025361, for a period of five (5) days to commence as of the close of business on Friday, November 26, 2004, and to continue each succeeding business day until the suspension is completed. "Business day" means a day on which the licensee's establishment would normally be open for business (section 67 of the Regulation).

35] Since I do not know whether the establishment would normally be open five (5) days per week as of November 26, 2004, I do not know what the "business days" will be. To ensure that this Order is effective, I direct that Liquor Primary Licence No. 025361 be held by the branch or the Vancouver Police Department from the close of business on Friday, November 26, 2004, until the licensee has demonstrated to the branch's satisfaction that it has been closed for five (5) business days.

*Original signed by*

Date: October 21, 2004

Suzan Beattie  
Enforcement Hearing Adjudicator

cc: Vancouver Police Department

Liquor Control and Licensing Branch, Vancouver Regional Office  
Attention: Lee Murphy, Regional Manager

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

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