



**DECISION OF THE  
GENERAL MANAGER  
LIQUOR CONTROL AND LICENCING 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**

<b>Licensee:</b>	Stasia's Restaurant Ltd. dba Stasia's Restaurant 33157 - 1 Avenue Mission, BC
Case:	EH04-107
<b>Appearances:</b>	
For the Licensee	Michael Exarhopoulos, Licensee
For the Branch	Peter Mior, Advocate
Enforcement Hearing Adjudicator	Edward W. Owsianski
Date of Hearing	November 17, 2004
Place of Hearing	Surrey, BC
Date of Decision	January 25, 2005

## **Introduction**

Stasia's Restaurant Ltd. (dba Stasia's Restaurant) holds Food Primary Licence No. 115019. The hours of sale are Noon to 2:00 A.M. Monday – Saturday, and 11:00 A.M. to Midnight on Sunday. The patron capacity is 58 in Area 1, 54 in Area 2, 32 in Area 3, 24 in Area 4 and 16 in Area 5. The establishment is located in Mission, BC.

## **ALLEGED CONTRAVENTION AND RECOMMENDED ENFORCEMENT ACTION**

The branch's allegations and recommended enforcement action are set out in the Notice of Enforcement Action (NOEA) dated September 3, 2004. The branch alleges that

on July 28, 2004, the licensee contravened section 73(2)(c) of the *Liquor Control and Licensing Act* by neglecting or refusing to allow the premises to be inspected.

The recommended enforcement action is a fifteen (15) day suspension commencing on a Wednesday.

The licensee disputes that this contravention took place.

Schedule 4 of the *Liquor Control and Licensing Regulation* provides as a penalty for this contravention that if the licence is not cancelled or transferred in accordance with section 69 of the Regulation, a period of suspension of at least 15 days.

Section 73 of the *Act* states as follows:

### **Power to retain documents and inspect books and premises**

**73 (1)** To obtain information respecting the administration or enforcement of this Act or the regulations, the general manager or a person designated by the general manager may

- (a) require the licensee to produce any prescribed document relating to the operation of the business licensed under this Act, and

- (b) inspect any of the following:

- (i) records in the possession of any person that may contain information relating to goods shipped, carried or consigned or received for shipment or carriage in British Columbia,
- (ii) premises of any person set apart or used as a warehouse for the storage of liquor, and
- (iii) establishments licensed under this Act and records, liquor and other things associated with the operation of the establishment.

(1.1) A person requiring the production of documents or carrying out an inspection under subsection (1) may

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(a) retain the documents produced or remove records or things relevant to the inspection for the purpose of making copies or extracts, and

(b) take reasonable samples of liquor for testing and analysis.

(1.2) A person who retains the documents produced, removes records or things or takes a sample must

(a) give a receipt for the documents retained, records or things removed or the sample taken, and

(b) make any copy or extract, and return the documents, records or things retained or removed, within a reasonable time.

(1.3) A copy made or extract taken under this section, certified by the person carrying out the inspection as a true copy of or extract from the original, is admissible in evidence to the same extent as, and has the same evidentiary value as, the record of which it is a copy or from which it is an extract.

(1.4) When acting under the authority of this section, a person shall carry identification in a form authorized by the general manager and present it on request to the owner or occupant of the premises referred to in subsection (1).

(1.5) A person when acting under the authority of this section may request and receive the assistance of a peace officer.

(2) A person commits an offence if the person neglects or refuses to do any of the following under this section:

(a) produce a document required to be produced;

(b) produce and submit a record or thing for inspection or a sample of liquor;

(c) allow premises to be inspected.

## **Issues**

1. Whether the licensee contravened Section 73(2)(c) of *the Act* on or about July 28, 2004?
2. If so, is the recommended penalty appropriate in the circumstances?

## **Exhibits**

The following exhibit was presented:

1. Book of Documents

## **Evidence** - The Liquor Control and Licensing Branch

A **Liquor Inspector** testified that she is the Inspector responsible for the area in which this establishment is located. Her responsibilities require that she make onsite inspections of each food primary licensed establishments within her jurisdiction every six months. The inspections are to be made unannounced at a time when the

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establishment is operating with patrons in attendance in order to observe whether it is operating within the terms and conditions of the liquor licence and the requirements the *Act* and *Regulation*. On July 28, 2004, she attended at the establishment at approximately 12:25 P.M. for the purpose of conducting her inspection. Upon entering she checked the liquor licence and floor plan and while waiting for assistance walked through the establishment. She requested to speak with the Manager and was told that he was busy. She made a further request to speak with the Manager as she wished to check the liquor register and stock and the Responsible Beverage Service Certificates. A staff person went into the kitchen to check with the Manager and returned to say that he was busy. The Manager whom she knows to be the principal of the corporate licensee shortly came out of the kitchen, very upset and shouted, "get lost, you have been here twice before without an appointment, get lost". The Inspector told the Manager that this was part of her job and if he had a complaint to contact the Regional Manager of the branch. He again responded, "get lost". The Inspector asked the staff person for her name so she could include it in her report. The Manager told the staff member not to provide any information to her. The Manager then apologized to customers waiting at the cash register and again told the Inspector to "get lost" and walked towards her. The Inspector testified that she felt intimidated and left the establishment. She found the experience demeaning and humiliating.

Once outside the establishment the Inspector contacted the local R.C.M. Police Detachment for assistance. A Police Constable arrived shortly thereafter. She advised the Constable about the nature of the problem and they entered the establishment together and were met by the Manager. She told him that they were there to conduct the inspection and requested to see the liquor register and RBS certificates. He said that he was too busy. The Constable asked him whether he had assistance in the kitchen. He replied that he did but that he must supervise and he was too busy, they could wait outside and come back in an hour. The Inspector then left the establishment. The Inspector testified that the inspection could have been carried out within 5 – 7 minutes with the co-operation of the Licensee. A Contravention Notice (exhibit 1, tab 3) was subsequently mailed to the Licensee. The Regional Manager for the branch

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received a letter dated August 10, 2004, (exhibit 1, tab 6) from the Licensee complaining of the Inspector's actions. This resulted in a meeting between the Regional Manager, the Inspector and the Licensee on August 11, 2004, which was followed up with a letter from the Regional Manager to the Licensee (exhibit 1, tab 7).

The Inspector testified that she is responsible for maintaining branch files for each licensed establishment within her jurisdiction. She referred to excerpts from the branch publication, "A Guide for Liquor Licensees" (exhibit 1, tab 9) which had been provided to all licensees. The Guide outlined the inspection processes carried out by liquor inspectors and the requirements of licensees to allow inspectors make inspections of their premises and to be provided with documents related to the operation of their establishments. The Inspector referred to two Contravention Notices previously issued to this establishment. The first (exhibit 1, tab 17) was issued on May 6, 2003, for not having a floorplan available at the time of an inspection. The second (exhibit 1, tab 18) was issued November 17, 2003, for not having a floor plan or the licensee's RBS Certificate available at the time of an inspection. These notices resulted in a written request to the Licensee (exhibit 1, tab 19) to attend a Compliance Meeting at branch offices on December 8, 2003. When the Licensee failed to attend or to respond to the request a further request was made on January 27, 2004, (exhibit 1, tab 20) which resulted in a Compliance Meeting held between the Licensee and the Inspector at branch offices on February 4, 2004. An Administrative Inspection Form (exhibit 1, tab 21) and a Compliance Meeting Report (exhibit 1, tab 22) were completed and placed on file. The branch took no further action on the Contravention Notices.

An **R.C.M. Police Constable** testified that on July 28, 2004, at approximately 12:55 P.M. she was dispatched to the licensed establishment to assist the Liquor Inspector. They entered the establishment and requested to see the owner. He came out of the kitchen and said that he was the only cook and was too busy, and for the Liquor Inspector to return later. He told the Inspector that she knew where the records were behind the bar and that he was returning to his cooking. The Liquor Inspector than left the establishment. The Constable told the Owner that he must co-operate with the

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Inspector and provide the records she was requesting. He said that he was too busy. The Constable told him that the time that he spent talking to her could have been spent with the Inspector. She then left the establishment.

**Evidence** - The Licensee

The **principal of the corporate licensee** (the Licensee) testified that he has been in the restaurant business for more than thirty years and has been the sole shareholder of this establishment since January 1999. He is familiar with the requirements of holding a liquor licence and the provisions of the "Guide to Licensees". He is aware that liquor inspectors must make unannounced visits to licensed establishments. He testified that on July 28, 2004, at approximately 12:30 P.M. he was cooking in the kitchen of the restaurant when one of his staff told him that the Liquor Inspector wished to see him. As he was the only cook it was impossible for him to leave the kitchen immediately so he told his employee to tell the Inspector to wait for a few minutes. He heard the Inspector respond in a loud voice to the employee that if he didn't come out of the kitchen now he would have to go to the office to see her. He left the kitchen and asked the Inspector what was the problem that couldn't wait for a few minutes. He told her that the Liquor Licence and floor plans were behind the bar for her to see. The Liquor Inspector told him that he was jeopardizing his liquor licence to which he responded that she could "get lost". He then apologized to his customers for the argument with the Inspector. The Inspector left and he phoned the branch offices to make a complaint with the Regional Manager. The Inspector returned with a Police Officer at approximately 1:15 – 1:30 P.M. He told the Inspector that he was too busy to leave the kitchen and for her to return around 2:00 P.M. The Inspector told him that he hadn't seen the last of her and left the establishment.

The Licensee testified that he works at the restaurant every day between 7:00 A.M. and 12:00 Midnight. He is the only cook during the lunch hour and can't drop everything upon the Inspector's arrival. The Inspector has come on three occasions at the same time to make inspections. He did not refuse to co-operate with the Inspector but just

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asked her to wait and to give him some time. Since the meeting in February 2004 he has kept the liquor licence, floor plans, RBS Certificates and the liquor register behind the bar ready for inspection. On this occasion the Inspector was upset because he didn't drop everything and run out to see her. She raised her voice and he raised his. He denied telling the Inspector to "get lost" on four occasions and believes that it was only twice. By "get lost" he meant, "just leave me alone".

## **SUBMISSIONS**

The Licensee submitted that the incident arose because of the ego of the Liquor Inspector who would not wait five minutes. He submitted that he never refused to show the required documents to the Inspector, all of the documents were in the establishment and she knew their location. It was a matter of timing and all he needed was for her to wait five minutes. It was not a case of him intimidating the Inspector but she intimidated him in front of his customers. He submitted that while he does not have a large amount of liquor sales the recommended 15 day suspension will cause him to lose customers.

## **Findings and Decision**

Having considered all of the evidence I find that on July 28, 2004, the Licensee contravened section 73(2)(c) of the *Liquor Control and Licensing Act* by refusing to allow the premises to be inspected.

In reaching this decision, I accept the evidence of the Liquor Inspector. I am satisfied that the actions and demeanour of the Licensee intimidated the Liquor Inspector and thus prevented her from carrying out her responsibilities to inspect the premises. I am satisfied that his actions and demeanour constituted "refusing to allow the premises to be inspected". Given the behaviour of the Licensee it is not sufficient that the Liquor Inspector may have known where the documents that she wished to see were located.

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**Penalty**

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;
- impose terms and conditions to a license or rescind or amend existing terms and conditions;
- impose a monetary penalty; and
- order a licensee to transfer a license.

Imposing any penalty is discretionary. If I decide that the contravention(s) did occur and that enforcement action is appropriate, I may accept the penalty recommended in the Notice of Enforcement Action, impose a higher penalty, impose a lesser penalty or impose no penalty. However, if I find that either a licence suspension or monetary penalty is warranted, I am bound to follow the minimums set out in Schedule 4 of the Regulation to the Act.

There is no record of prior contraventions, offences or enforcement actions of the same type for this Licensee or this establishment within the year preceding these incidents ("compliance history"). Pursuant to *Liquor Control and Licensing Regulation*, Schedule 4, section 1(1)(b), the branch has treated the allegations as first contraventions.

The purpose of the branch in bringing about enforcement action and in determining the appropriate penalty is to encourage 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.

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There were two previous contravention notices issued to the Licensee. The branch did not pursue enforcement action and while they do not represent proven contraventions, they do indicate that the branch has attempted to assist the Licensee in bringing the operation of the establishment into voluntary compliance.

Having considered the evidence, I am satisfied that a penalty for this contravention is necessary to ensure future voluntary compliance.

The *Act* places a duty on the general manager of the branch to “supervise the conduct and operation of licensed establishments”. Liquor inspectors carrying out inspections of licensed establishments fulfil this duty on behalf of the general manager. It is necessary in the public interest that all liquor inspectors are able to carry out their responsibilities secure from harassment or intimidation. Schedule 4 of the *Regulation* provides for a minimum suspension penalty of 15 days for the contravention of not allowing a licensed premise to be inspected. This speaks to the seriousness of the contravention.

For this contravention I find that the recommended minimum suspension penalty of 15 days to commence on a Wednesday is appropriate.

### **Order**

Pursuant to Section 20 (2) of the Act, I order the suspension of liquor licence No. 115019 for fifteen (15) business days starting as of the close of business Tuesday, February 22, 2005, and continuing on successive business days until the suspension is completed. “Business Day” means a day on which the Licensee’s establishment would normally be open for business (section 54(1) of the Regulation to the Liquor Control and Licensing Act.)

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Since I do not know whether the establishment would normally be open seven (7) days per week as of February 22, 2005, I do not know what the "business day" will be. To ensure that this order is effective, I direct that the liquor licence be held by the branch or the Mission Detachment of the R.C.M. Police from the close of business Tuesday, February 22, 2005, until the Licensee has demonstrated to the branch's satisfaction that the licensed establishment has been closed for liquor service for fifteen (15) business days. A suspension sign notifying the public shall be placed in a prominent location by a liquor inspector or police officer.

*Original signed by*

Edward W. Owsianski  
Enforcement Hearing Adjudicator

Date: January 25, 2005

cc: R.C.M. Police Mission Detachment

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

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

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