



**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**

Licensee: E-Chu Food & Beverage Inc.  
dba Monkey's Restaurant  
200 - 4200 No. 3 Road  
Richmond, BC

Case: EH04-115 & 131

For the Licensee: Scott K. Chang, Licensee

For the Branch: Sonja Okada, Advocate

Enforcement Hearing Adjudicator: Edward W. Owsianski

Date of Hearing: February 25, 2005

Place of Hearing: Vancouver, BC

Date of Decision: April 13, 2005

## **Introduction**

E-Chu Food & Beverage Inc. (dba Monkey's Restaurant) holds Food Primary Licence No. 181982. The hours of sale are Noon to 2:00 a.m., seven days a week. The maximum capacity is 102 patrons. The establishment is located in Richmond, BC on the second floor of a strip mall in an area that is primarily commercial. Although licensed from Noon the establishment does not open for business until 8:00 p.m.

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

The branch's allegations and recommended enforcement action are set out in the Notices of Enforcement Action (NOEA) dated October 6 and November 8, 2004. The branch alleges that

1. On September 17, 2004, the licensee contravened Section 20(1)(d) of the *Liquor Control and Licensing Act* (the *Act*) and Section 11(1) of the *Liquor Control and Licensing Regulation* by operating the licensed establishment in a manner that is contrary to the primary purpose of the business as stated on the licence. The recommended enforcement action is a ten (10) day suspension of the liquor licence.

Schedule 4 of the *Liquor Control and Licensing Regulation* provide a range of penalties for a first contravention of this type, a licence suspension for ten (10) – fifteen (15) days and/or a monetary penalty of seven thousand five hundred (\$7500) to ten thousand (\$10,000) dollars.

2. On October 7, 2004, the licensee contravened Section 73 of the *Liquor Control and Licensing Act* by failing to produce a document, record or thing for inspection. The recommended enforcement action is a \$7500 monetary penalty.

Schedule 4 of the *Liquor Control and Licensing Regulation* provide a range of penalties for a first contravention of this type, a license suspension for ten (10) – fifteen (15) days and/or a monetary penalty of seven thousand five hundred (\$7500) to ten thousand (\$10,000) dollars.

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The licensee disputes the alleged contraventions.

The relevant sections of the *Liquor Control and Licensing Act* are as follows:

### **Action against a licensee**

**20** (1) In addition to any other powers the general manager has under this Act, the general manager may, on the general manager's own motion or on receiving a complaint, take action against a licensee for any of the following reasons:

- (d) the existence of a circumstance that, under section 16, would prevent the issue of a licence;

### **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

(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.

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The relevant sections of *the Regulations to the Act (the Regulation)* are as follows:

### **Food primary licences**

**11** (1) A food primary licence in respect of an establishment may be issued, renewed or transferred if the primary purpose of the business carried on in the establishment is the service of food during all hours of its operation.

(2) The following terms and conditions apply to a food primary licence:

(a) minors are allowed in the establishment;

(b) liquor must not be served unless the establishment is open for service of a varied selection of food items, including both appetizers and main courses, or their equivalent;

(c) subject to limitation by the general manager, hours of liquor service must start no earlier than 9:00 a.m. and end no later than 4:00 a.m. the next day.

(3) The general manager may consider, in determining whether the primary purpose of the business carried on in the establishment is or will be the service of food during all hours of its operation, any or all of the following:

(a) kitchen equipment;

(b) furnishings and lighting;

(c) menu;

(d) type and hours of entertainment and games offered by the licensee;

(e) advertising;

(f) hours of operation;

(g) financial records;

(h) the ratio of receipts from food sales to receipts from liquor sales in the establishment;

(i) any other relevant consideration that may assist in the determination.

### **Issues**

1. Whether the licensee contravened Section 20(1)(d) of *the Act* and Section 11(1) of the *Regulation* on September 17, 2004; and/or Section 73 of the *Act* on October 7, 2004?
2. If so, are the recommended penalties appropriate in the circumstances?

### **Exhibits**

The following exhibits were presented:

1. Book of Documents;
  2. Letter dated January 12, 2005, from Canada Post Customer Service to unnamed customer.
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**Evidence** - The Liquor Control and Licensing Branch**Operating Contrary to Primary Purpose**

**Testimony was received from two liquor inspectors and two police officers** who had conducted an inspection of the establishment between 10:55 p.m. and 11:30 p.m. on September 17, 2004. They were part of a multi-agency inspection team conducting inspections of several licensed establishments in Richmond, looking for Criminal Code, Liquor Act, Fire Regulation and By-law offences. All were familiar with Monkey's Restaurant from previous inspections there. This establishment was chosen for inspection because previous inspections had revealed problems with the manner in which it was being operated.

Upon entering the establishment they noted that it was dimly lit and loud music was playing. There were no table settings, condiments, menus or food other than bowls of peanuts on any of the tables. Some of the tables had clean highball type glasses stacked on the tables. There were a total of 29 patrons inside.

One table of eight patrons had eight bottles of beer on the table and a bowl of peanuts. There was no food, dishes or menus on the table. The patrons said that they had ordered some deep fried chicken. Two of the patrons were playing a dice game.

A table of five patrons had three empty glasses on the table as well as two glasses that the patrons said contained Crown Royal Rye Whiskey. The contents of the glasses smelled like rye whiskey. The patrons said that they had ordered and consumed chicken wings and that the dirty plates had been removed from the table.

A table of eight patrons had neither food nor beverages on it. The patrons said that they had just arrived. Another table was occupied with two patrons who also said that they had just arrived. Three other patrons were just arriving.

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There were five employees present, one of whom was the manager, the remaining four were servers one of whom said that he could cook. During the course of the inspection the cook arrived.

The kitchen was clean. There was no evidence of food being or having been prepared nor was there evidence of food having been recently consumed. There were no dirty dishes or cooking utensils. Neither the deep fryer nor the stove had been turned on. Both were cold to the touch. The only fresh food in evidence was a package of tofu, a bunch of green onions and a bucket containing a dark coloured liquid in which were approximately nine chicken wings. The freezer contained frozen food that was described by one of the inspectors as appearing to have been in there for a long time and appeared to be freezer burned.

The employees were asked whether any food had been ordered by the patrons. They advised that there had been neither food ordered nor was there food being prepared.

The owner/licensee arrived just prior to the departure of the inspection team and was given a Contravention Notice that the establishment was operating contrary to its primary purpose (Exhibit 1, tab 3).

### **Failing to Produce Documents**

The inspector responsible for the area in which the establishment is located testified that following the inspection at the restaurant he spoke with his regional manager about the problems noted at the establishment. A decision was made that pursuant to Section 73(1) of the *Act* the licensee be required to produce documents regarding the operation of the establishment. A letter dated September 21, 2004, (Exhibit 1, tab 13) was directed to the licensee at the establishment address. It was requested that the following documents be produced by October 1, 2004, patron table receipts for the past six months, liquor purchase receipts for the past six months and food purchase receipts for the past six months.

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When none of the documents were received as requested the inspector completed a Contravention Notice on October 7, 2004, (Exhibit 1, tab 12) for failing to produce the documents. It was mailed to the establishment address.

When no response was received the inspector telephoned the licensee on October 13, 2004. The licensee advised the inspector that he had not received the letters. The inspector then attended at the licensee's residence and provided him with a copy of the letter of September 21, 2004, with the advice that the documents were to be provided within the following week. A letter was forwarded to the licensee at his residence via registered mail the following day confirming the request for documents to be received by October 20, 2004, (Exhibit 1, tab 14).

When the documents were not received as requested the inspector completed a Notice of Enforcement Action on November 8, 2004, and mailed it to the licensee at the establishment address (Exhibit 1, tab 10).

The inspector testified that nothing was received from the licensee until November 22, 2004, when an envelope of documents was received via regular mail service. The inspector testified that the documents received some of which have been reproduced and presented as evidence at Exhibit 1, tab 9, were not as requested and were not useful in determining whether the establishment was operating within its primary purpose. The patron table receipts appeared to be incomplete. All patron table receipts for the business day of September 17, 2004, have been reproduced at Exhibit 1, tab 9. The times shown on the receipts are all after 1:45 a.m. of September 18, 2004, none relate to the time of the inspections which occurred between 10:55 p.m. and 11:30 p.m. of September 17, 2004. Further, none of the receipts are for the purchase of Crown Royal Rye Whiskey which was noted on the tables during the time of the inspection. The inspector had previously met with the licensee and advised him that it was necessary to maintain receipts that show the type of food and liquor ordered. Here the receipts just showed "food" and this was not helpful. The inspector was satisfied that the liquor purchase receipts for the past six months were complete as

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received. The food purchase receipts did not appear to be complete and some were faded, old and illegible. They did not coincide with what he observed in the kitchen. [Neither the liquor purchase receipts nor the food purchase receipts were presented as evidence.]

The inspector testified that he was responsible for keeping the branch files for the establishment. He referred to Exhibit 1, tab 19 which was a letter dated May 11, 2004, providing the branch's approval for a transfer of shares to the current licensee. The inspector testified that the current licensee had been operating the establishment without approval from the branch since February 2003 and had only completed the transfer process when the inspector became aware of the change in ownership. The inspector subsequently completed an interview with the licensee and the manager of the establishment on May 12, 2004, (Exhibit 1, tab 21) during which they were given copies of a number of branch publications including that titled, "Food-Primary Licence, Terms and Conditions, A Guide for Liquor Licensees in British Columbia" (the Guide) (Exhibit 1, tab 20).

The inspector referred to a number of Contravention Notices (CN) issued by the branch and Licensed Premises Checks (LPC) issued by the R.C.M. Police Richmond Detachment to the licensee as a result of inspections conducted at the establishment:

- March 1, 2003 – CN issued for failing to clear liquor from tables within ½ hour of closing and allowing liquor consumption ½ hour beyond closing (Exhibit 1, tab 22);
  - October 9, 2003 – CN issued for contravening a term and condition of the liquor licence by selling a full bottle of spirits to a table of patrons (Exhibit 1, tab 23);
  - December 18, 2003 – LPC issued for failing to clear patrons and liquor within ½ hour of closing, selling liquor to intoxicated persons and permitting intoxicated persons to remain in the establishment (Exhibit 1, tab 24);
  - February 26, 2004 - CN issued for failing to keep a liquor register (Exhibit 1, tab 25);
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- August 7, 2004 - CN for failing to clear liquor within ½ hour after closing and allowing employees to consume liquor on the premises (Exhibit 1, tab 26).

The CNs and LPCs lead to three Compliance Meetings held with the licensee. The first was held on February 11, 2004, with the inspector responsible for the area at that time and dealt with the CNs and LPCs issued prior to that date (Exhibit 1, tab 27). The second meeting was held on March 10, 2004, with the current inspector who, having taken over responsibility for the area met with the licensee to discuss problems occurring at the establishment. Particular attention was paid to the requirements of operating a food primary class of establishment and maintaining food and liquor sales records available for inspection. The licensee was again provided with a copy of the Guide for Food Primary Licensees. A third Compliance Meeting was held on September 1, 2004. It dealt with the CNs received to that date and the necessity of maintaining table receipts showing the cost and type of food and liquor purchases by patrons. It was stressed that further contraventions would lead to the branch taking enforcement action.

The inspector testified that he has made several inspections of this establishment and has never seen patrons eating there, nor has he seen any food being cooked by staff. The only food that he has observed patrons eating is from bowls of nuts on the tables. He described the atmosphere as that of a clubhouse with a liquor licence.

The inspector testified, that in reaching his decision to recommend that enforcement action be taken, he took into account the number and type of Contravention Notices issued and the fact that there had been three Compliance Meetings held with this licensee. He was satisfied that the branch had done everything possible to bring about compliance but the licensee was ignoring their efforts. The recommended penalty of a ten (10) day liquor licence suspension was the minimum for the first contravention of operating outside of primary purpose. The recommended monetary penalty of \$7,500.00 was the minimum for failing to produce documents. The licensee failed to

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produce any documents until 1 & 1/2 months following the request and then produced only a portion of the documents requested.

**Evidence** - The Licensee

**Operating Contrary to Primary Purpose**

**The owner/licensee testified** that although the establishment opens for business at 8:00 p.m. patrons do not arrive until later. The cook does not start work until 11:00 p.m. however one of the servers performs as a cook until that time if necessary. Although some customers will order food first, customers normally order beverages first. While there may not have been much activity in the kitchen at the time of the inspection there is lots of food going out from the kitchen later. The deep fryer is not turned on until there is food to be cooked as it uses a lot of gas unnecessarily. The pilot light remains on and it only takes five minutes to heat to cooking temperature. The restaurant serves both stewed and deep-fried chicken wings. Stewed chicken wings are marinated in a soy-based sauce then taken out and stewed. Deep-fried chicken wings are frozen but can be quickly prepared. The restaurant does not serve "major main courses" but serves mainly fast Chinese foods or quick snacks. Menu items include pork-chops that are kept frozen in individual amounts in the freezer. Once ordered they are defrosted for 30 seconds and then cooked for two to three minutes in the deep fryer. Instant noodles take only 30 seconds to prepare with boiling water. Rice has been pre-cooked and then is fried when ordered. Patrons are not given menus, as all of the regular customers know what is on the menu.

At the time of the inspection of September 17, 2004, only the patrons at two of the tables had any liquor on the tables, the remaining patrons had just arrived. The licensee testified that he did not arrive at the establishment on September 17<sup>th</sup> until approximately 11:26 p.m. just prior to the departure of the inspection team. He understands that prior to that time stewed chicken wings had been ordered and served to some of the customers and that deep fried chicken wings had been ordered but not

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yet prepared. He testified that when a food order is taken and goes out from the kitchen it is noted on a printed form in Chinese characters as shown in Exhibit 1, tab 9 at the 2<sup>nd</sup> page. These forms were not shown to the inspectors or police officers at the time of the inspection on September 17, 2004, as he has been told in the past that they can't understand them and don't wish to see them. Cash register food and liquor receipts are not made-up until the patrons are leaving and request their bills.

### **Failing to Produce Documents**

**The licensee testified** that there is no mailbox for the restaurant, which is located on the second floor of the building. The mail is kept in a box downstairs which anyone can access. He believes that mail for the restaurant has been stolen in the past. He provided a copy of a letter from Canada Post dated January 12, 2005, advising that some mail had been recovered by the police (Exhibit 2). Thus he was unaware of the letter requesting documents until he was handed a copy by the inspector. It was difficult and took some time to put together the documents requested. He believed that he was given an extension of time to produce the documents during the pre-hearing conferences. He testified that the documents provided were "a mess". His wife had previously kept the records for the establishment but has not done so since becoming pregnant. Thus the records for the past year were a mess. This is his first experience with the restaurant business. He is on site two to three days a week, the remainder of the time the business is handled by the manager.

He testified that he was familiar with the "Guide for Food Primary Licensees" and the requirement that the establishment must operate as a restaurant at all times as indicated in the Guide and that food/liquor ratios must support a primary focus on food. He is aware of the requirement to produce documents and records when requested and agreed that it was his mistake not to have the documents together on a day by day basis. He testified that it was difficult to satisfy the requirements for sales receipts during an inspection as the cash register receipts are not produced until a customer calls for the bill just prior to leaving. The only receipts kept to that point are those on the

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printed forms in Chinese characters. He has not addressed that problem with his manager or staff. He testified that he provided the documents received from his food suppliers. He has one main supplier from whom he receives food supplies totalling approximately \$600.00 per month. Additionally he has other suppliers from whom he receives food supplies of approximately \$100.00 per month each.

## **SUBMISSIONS**

The licensee submitted that since meeting with the inspector he has attempted to operate in compliance with the inspector's requests. The problems identified have been minimized. There is no after hours consumption of liquor, no minors are served liquor, identification is checked prior to serving liquor and staff are not permitted to consume liquor. Entry is refused to persons who may cause trouble, which has resulted in damage to his vehicle on several occasions. The small restaurant is barely surviving economically. He agrees that changes are necessary but money is short. While mistakes have been made they have not been intentional.

## **Findings and Decision**

### **Operating Contrary to Primary Purpose**

The liquor licensing scheme for the province provides two main types of liquor licenses for establishments where liquor may be consumed. Food primary licenses are issued for restaurant style establishments where the primary purpose is the service of food. Liquor primary licenses are issued for bar style establishments where the primary purpose is the service of liquor, as opposed to food.

The rules of operation for each class of licence are different. For example minors are permitted in restaurants but not in bars. Adult entertainment is permitted in bars but not in restaurants.

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The approval process is different for each type. Liquor primary licenses are more difficult and time consuming to obtain as the process requires input from the public and the local government whereas food primary licenses generally do not require such input.

A licensee who operates the establishment contrary to the primary purpose of the business of the licence issued contravenes the *Act*. The penalty schedule of the *Regulation* underlines the importance of the provision by providing the highest range of penalties for contraventions.

The Food Primary Licence issued to this establishment contains the following terms and conditions:

- “For the sale and consumption of all types of liquor in establishments with a primary focus on the service of food.”
- “This licence is subject to the terms and conditions contained in the publication ‘Guide for Liquor Licensees in British Columbia’.”

The main condition in the “Guide” is that the establishment must maintain the service of food as its primary purpose at all hours of operation.

I am satisfied and so find that at the time of the inspection on September 17, 2004, the establishment was not operated in accordance with the primary purpose of the business. The establishment had been open for business since 8:00 p.m. The kitchen, while equipped to meet the primary purpose was not in a ready state to do so. It was anticipated that food preparation and service would not be necessary until later in the evening. The deep fryer, which appears to be the main cooking utility, was not in a ready state. Although there is a cost to maintaining it in a ready state during all business hours, that is the cost of doing business. The cook was not scheduled to commence work until later in the evening. Once again, having a cook on duty during all business hours is a necessary cost to doing business. Having a server on duty “who could cook” and a deep fryer that could be fired up does not meet the test.

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The only fresh food ready for preparation consisted of a package of tofu, a bunch of green onions and a bucket containing a dark coloured liquid in which were approximately nine chicken wings. The remainder of the food was frozen.

On the evidence heard, namely the lack of dirty dishes or food remnants, and the comments of the staff, I am satisfied that there had been no food consumed or ordered by the patrons at the establishment at the time of the inspection.

The atmosphere was described as having dim lighting and loud music, of being more like a clubhouse with a liquor licence than a restaurant.

While some of the tables had clean glasses ready for arriving guests, none were set with cutlery or other eating utensils. None of the guests had been provided with menus.

I have carefully examined the patron receipts for the business day of September 17, 2004, I concur with the inspector's testimony that they do not include a receipt for the Crown Royal Rye Whiskey and thus cannot be considered as complete. Further, they do not have the appearance of authenticity. The receipts are machine printed from what appears to be an electronic cash register. They consist of five individual table receipts and one titled "Full Report". The cumulative totals of the five individual table receipts equal the total shown on the "Full Report". The five table receipts each have a date and time on them. The dates are all shown as September 18, 2004, the times are respectively 1:48 a.m., 1:49 a.m., 1:49 a.m., 1:50 a.m. & 1:50 a.m. The "Full Report" shows the date and time as September 18, 2004, 1:51 a.m. If these represent the complete patron table receipts for the business day as the evidence states, it would indicate that the only patrons at the establishment were those at the five tables at the time of the inspection. No other patrons arrived after 11:30 p.m. and the five tables all received their bills within a two minute period. It is quite frankly beyond credibility. I am left with the conclusion that the patron receipts produced to the branch were neither complete nor authentic and

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therefore not useful in determining whether the establishment was operating within the primary business purpose at the time of the inspection.

Having considered all of the evidence I find that at the time of the inspection on September 17, 2004, the licensee contravened Section 20(1)(d) of the *Liquor Control and Licensing Act* and Section 11(1) of the *Liquor Control and Licensing Regulation* by operating the licensed establishment in a manner that is contrary to the primary purpose of the business as stated on the licence.

### **Due Diligence**

The licensee is entitled to a defence to the allegations of the contravention if it can be shown that he was duly diligent in taking reasonable steps to prevent the contravention from occurring. The licensee must not only establish procedures to identify and deal with problems, he must ensure that those procedures are consistently acted upon and problems dealt with. I am satisfied that that has not occurred in this instance. The licensee attended Compliance Meetings at branch offices that dealt with several issues including the requirements of operating a food primary establishment. There was no evidence of what follow-up, if any, was taken by the licensee following the meetings. He could have set an atmosphere to impress upon patrons that this is a restaurant where the primary purpose is consuming food. He could have ensured that the kitchen was ready and staff prepared for the preparation and service of food during all hours of business. The problems continued as noted by the evidence received at this hearing. In conclusion, I am satisfied that the licensee was not duly diligent.

### **Failing to Produce Documents**

To obtain information regarding the administration or enforcement of the *Act* Section 73(1) allows the general manager or a person designated by the general manager to require a licensee to produce documents prescribed under Section 34 of the *Regulation*. This authority provides an important tool for the branch in carrying out its

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responsibilities. A licensee who neglects or refuses to produce the documents contravenes the *Act*. The penalty schedule of the *Regulation* underlines the importance of the provision by providing the highest range of penalties for contraventions.

For a licensee to meet the requirement he/she must provide all of the documents requested within the timelines provided in the request.

In this case the regional manager wrote to the licensee at his place of business on September 21, 2004, requesting that the following documents be produced by October 1, 2004:

- patron table receipts for the past six months,
- liquor purchase receipts for the past six months, and
- food purchase receipts for the past six months.

When the documents had not arrived on October 7, 2004, the liquor inspector prepared a Contravention Notice and mailed it to the licensee.

The evidence is that the licensee did not receive the letter until it was hand-delivered to him at his residence by the inspector on October 13, 2004, and he was told that he must provide the documents within a week. A further letter was sent via registered mail to the licensee at his residence on October 14, 2004, requiring the documents be produced by October 20, 2004. The branch did not receive the documents until they were delivered by regular post on November 22, 2004.

For the following reasons, I find that the contravention of Section 73 of the *Liquor Control and Licensing Act* on October 7, 2004, as alleged has not been proven.

On October 7, 2004, the licensee was unaware that he was required to produce the documents as he had not received the notice from the branch. Further, the actions of the inspector in delivering the letter of notice to the licensee on October 13, 2004, and

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advising him that the documents must be produced in a week's time, together with the regional manager's letter of October 14, 2004, requiring that the documents be produced by October 20, 2004, effectively extended the deadline to October 14, 2004. While a contravention may have occurred when the branch did not receive the documents until November 22, 2004, that is not the contravention alleged.

## **Penalty**

### **Operating Contrary to Primary Purpose**

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

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*.

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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.

There were however several previous Contravention Notices and Licensed Premise Checks issued to the licensee. Enforcement action was not pursued by the branch however the branch did follow up with three separate Compliance Meetings in an attempt to assist the licensee in bringing the operation of the establishment into compliance, to no avail.

The purpose of the branch in bringing about enforcement action and in determining the appropriate penalty is to encourage voluntary compliance. Having considered the evidence, I am satisfied that a penalty for the contravention of operating the licensed establishment in a manner that is contrary to the primary purpose of the business as stated on the licence, is necessary to ensure future voluntary compliance.

I find that the recommended minimum ten (10) day suspension penalty to be is appropriate.

### **Order**

Pursuant to Section 20 (2) of the *Act*, I order the suspension of Food Primary Licence No. 181982 for ten (10) business days starting as of the close of business Thursday, May 19, 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 May 20, 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 R.C.M. Police Richmond Detachment from the close of business Thursday, May 19, 2005, until the licensee has demonstrated to the branch's satisfaction that the licensed establishment has been closed for ten (10) 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

April 13, 2005

cc: R.C.M. Police Richmond Detachment

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

Liquor Control and Licensing Branch, Vancouver Regional Office  
Attention: Sonja Okada, Branch Advocate

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