



**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:	665070 B.C. Ltd. dba Flamingo Motor Hotel 10768 King George Hwy. Surrey, BC
Case:	EH05-051
For the Licensee	Kanwar Sodhi Amarjit Jaswal
For the Branch	Shahid Noorani
Enforcement Hearing Adjudicator	M. G. Taylor
Date of Hearing	June 22, 2005
Place of Hearing	Surrey, B.C.
Date of Decision	July 19, 2005

INTRODUCTION

The licensee, 665070 B.C. Ltd., operates the Flamingo Motor Hotel ("the Flamingo") which holds two Liquor Primary Licenses (LPL) for a lounge and a pub, and one Liquor Retail Store Licence (LRS). The subject of this hearing is the Liquor Primary Licence No. 083030. In addition to the terms on the face of the licence, the LPL is subject to the terms and conditions contained in the publication 'Guide for Liquor Licensees in British Columbia' ("the Guide").

The branch conducted covert trade practices illicit liquor investigations from October 2004 to April 1, 2005. This enforcement action arose from that investigation.

ALLEGED CONTRAVENTIONS

By Notice of Enforcement Action (NOEA) dated April 27, 2005, the branch alleged that:

1. on February 28, 2005, the licensee contravened Section 35 (3) of the *Liquor Control and Licensing Regulation* by failing to maintain a register of all liquor purchased and received by the licensee under its licence.

The recommended enforcement action is a \$3000 penalty.

In the alternative,

2. on February 28, 2005, the licensee contravened the terms and conditions of its licence, contrary to Section 12 of the *Liquor Control and Licensing Act*. On page 5 of the NOEA, the branch explained the alleged breach as
... either accepted free product or accepted product without recording it in its liquor registry, or failed to permit inspection of its liquor registry; any one of these is contrary to the terms and conditions of a
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liquor primary licence set out pp. 6, 19 and 24 of the Guide for liquor primary licences.

The recommended enforcement action is a \$3000 penalty.

RELEVANT STATUTORY PROVISIONS

Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267 (the "Act"), excerpts from Section 12:

Licences

12 (1) The general manager, having regard for the public interest, may, on application, issue a licence for the sale of liquor.

(2) The general manager may, in respect of any licence that is being or has been issued, impose, in the public interest, terms and conditions

(a) that vary the terms and conditions to which the licence is subject under the regulations, or

(b) that are in addition to those referred to in paragraph (a).

(3) Without limiting subsection (2), the terms and conditions referred to in that subsection may

(k) specify requirements for reporting and record keeping, and

Liquor Control and Licensing Regulation, B.C. Reg. 244/2002 (the "Regulation")

Purchase of liquor

35 (1) A licensee must not purchase liquor for the licensed establishment unless, at the time of the purchase, the licensee identifies himself or herself as a licensee and that purchase is made from

(a) a liquor store designated in writing by the general manager, or

(b) another person designated by the Liquor Distribution Branch.

(2) Subsection (1) does not apply to a licensed manufacturer of wine in respect of purchases of wine by that licensee from another licensed manufacturer of wine.

(3) A licensee must maintain a register of all liquor purchased and received by the licensee under a licence.

ISSUES

1. Does the evidence support the allegation that the licensee failed to maintain a registry for all liquor purchases?
2. If yes, is the recommended enforcement action appropriate?

EXHIBITS

Exhibit No. 1	Book of Documents of the branch
Exhibit No. 2	Letter from the branch to the licensee dated March 24, 2005

EVIDENCE

The branch provided evidence from the branch investigator (the "investigator") and the liquor inspector (the "investigative inspector") involved in the investigation. I have sometimes referred to them collectively as the "investigators." The licensee provided evidence from both of the corporate partners (the "licensees") and called as a witness the branch liquor inspector who has responsibility for their area (the "area liquor inspector").

The investigator testified that during the course of a routine Trade Practices investigation on November 10, 2004, he set up surveillance of the Flamingo in the parking lot, approximately 100 yards from the main building. He was joined in the afternoon by the investigative inspector. They both testified that they observed a white unmarked van quickly pull into the loading dock and park by the LRS cooler room. The investigator testified that he went to the building and

stood by the back of the van where he watched people unload five kegs of beer. The investigative inspector walked around the building to stage a meeting with the investigator by the back of the van. By the time he reached the van, the delivery was underway; he observed at least two kegs of beer being delivered to the cooler room.

They testified that the driver did not use a trolley, as is usual practice, but rather bounced the kegs off the van and rolled them into the cooler room. They stated that the kegs were "PG PWB", meaning Prince George Pacific Western Brewery. The investigator testified that he saw four empty kegs loaded into the van. He testified that the delivery took only about seven minutes whereas most deliveries take about 20 minutes. He said there was insufficient time to photograph the delivery. Both witnesses testified that they watched for, but did not see, the driver carrying any paperwork or any paperwork being signed. The investigator recorded the licence number of the van. This was, subsequently, included in the information in the NOEA. The investigator confirmed that the breweries sometimes use independent contractors for deliveries and that could account for the unmarked white van. He testified that he had no reason to believe there was anything illegal about the delivery, until the subsequent inspection to review records.

The investigative inspector testified that he conducted surveillance at the Flamingo on October 29, November 10, December 1, 8, 10, 15, 2004, and January 5 and 7, 2005. He made notes of deliveries observed on those occasions. On December 15, 2004, he observed 30 kegs of PWB beer being delivered.

On February 28, 2005, the branch conducted an unannounced illicit liquor inspection during which inspectors inventoried all the liquor in the lounge and pub and examined the licensee's registry. As a result of this inspection, they found that the licensee had no documentation for receiving the five kegs on

November 10, 2004, and had a receipt for 29 kegs on December 15, 2005. They were able to reconcile all other stock with documentation. The investigators discussed the results of the inspection with the corporate partners and asked them to produce documents for both purchases. By letter dated March 24, 2005, (Exhibit No. 2), the branch provided an overview of the investigation, the request for the missing documents, and cautioned that failure to provide the documents by March 30, 2005, could result in enforcement action.

The evidence concerning the 29/30 kegs on December 15, 2005, was not in dispute. On March 29, 2005, the branch received a short form bill of lading No. 412510 from Container World Forwarding Services Inc. indicating "CASE General Merchandise 1 x 1L 80kg" was delivered to the Flamingo Motor Hotel on December 15, 2004, and indicating there was no money owing for the delivery. The branch investigative inspector testified that he had previously received this document and was expecting to receive documentation from the licensee's records, which he did not. However, he accepted this bill of lading as supporting the licensee's contention that a defective keg of beer had been returned to PWB, that this was the replacement and that it was one of the 30 kegs in the December 15, 2005, delivery.

The licensee did not have documents to indicate the returned keg or the replacement keg, other than the bill of lading provided by the shipper. The licensees testified that they did not know they had to keep paperwork for a faulty keg. Rather, their practice was to phone the brewery and arrange to have it picked up and replaced.

The licensees testified that they became aware in March 2004, as a result of a similar investigation by the branch, that they were not keeping a proper register. Since then, they have maintained the register, recording daily inventory. Neither corporate partner was present on November 10 or December 15, 2004. When staff receive product they check the product against the invoice and then leave

the paperwork out for the partners. Additionally, there is always a computer-generated order before a delivery and the incoming product is input into the system. The licensees testified that despite all of that standard record keeping, there was no record of the alleged delivery on November 10, 2004.

The licensees brought file folders to the hearing containing lists and invoices for all product received since March 2004. I reviewed the files. The documentation was too voluminous to be entered as exhibits.

The area inspector testified that over the past year when she has done inspections of all three licensed areas, she has found things to be in good order. Although there have been some minor issues, she has not encountered any major contraventions. She looked at the file folders provided by the licensees and identified them as their liquor register in which they keep receipts for liquor. She testified that some establishments keep a running list showing the dates of purchases, quantities, etc., in addition to the receipts. However, in her practice, if the licensee has receipts, she accepts that as sufficient compliance with the requirement to keep a registry.

SUBMISSIONS

The licensee submitted that they have maintained a proper liquor register since March 2004, as attested to by the area liquor inspector, and as produced at the hearing. They were unaware of the requirement to document replacement kegs but are now documenting those deliveries as well.

The licensee submitted that the issue of the 30 kegs on December 15, 2004, was fully answered with the invoice indicating the one replacement keg. Concerning the five kegs on November 10, 2004, the licensee noted, that there are no photographs of the delivery and no other substantial proof that the delivery occurred.

The licensees submitted that the contravention did not occur as alleged, or in the alternative.

ANALYSIS AND DECISION

In hearings before the branch, the standard of proof is a balance of probabilities, which means I make findings of fact of what most probably occurred, based on the evidence presented.

The licensee submitted that there is no proof that the five kegs were delivered on November 10, 2004, as alleged. The licensee made much of the fact that the investigators did not take photographs, although they had on other occasions. In order to accede to the licensees' submission, I would have to find that the investigator and the investigative inspector had fabricated their observations and their notes (Exhibit No. 1, tabs 4 and 5).

I have no reason to question the credibility of the evidence presented by the investigator and the investigative inspector. Their evidence was clear and well documented in their notebooks at the time. Neither of them was shaken on questioning. Their evidence was corroborative, one to the other. They provided full particulars in the NOEA to the licensee of the date, time, and the licence number of the van that made the delivery.

Based on the preponderance of evidence, I find as fact that the licensee received five kegs of beer on November 10, 2004, as testified to by the investigators. There is no paper work for that delivery. That suggests either that the licensee did not maintain a proper register or that the licensee received illicit liquor, contrary to Section 39 of the *Act*, which I discuss below.

Concerning the alleged contravention on December 15, 2004, the investigative inspector testified that he accepted the invoice from Container World Forwarding

Services Inc. as sufficient explanation of the 29/30 keg issue. That means that the investigative inspector was satisfied that the one keg was not illicit liquor. I would tend to agree that the benefit of the doubt should go to the licensee on that keg. However, it still leaves open the allegation of not keeping a proper register.

There is no dispute over the essential evidence from the February 28, 2005, inspection and the subsequent correspondence. It is a given that the licensee was not able to produce documentation from its liquor register of receiving five kegs of beer on November 10 or the 30th keg on December 15, 2004.

On page 6 of the Guide, licensees are provided detailed information on the requirement of keeping a liquor register:

You must keep a detailed, written record of every liquor purchase made under your licence by date and storage location (if you store liquor off-site), in a liquor register. This is usually a book or binder where you keep your copies of the documentation you receive every time you buy liquor.

You must also keep a record in your liquor register of all faulty or damaged kegs of beer or cider or kegs containing spoiled product that you receive and replace.”

Section 39 of the *Act* makes it illegal for anyone to take liquor from another person except in accordance with the *Liquor Distribution Act*. The minimum penalty for a first contravention of Section 39 is 10 to 15 days licence suspension and \$7,500 to \$10,000 monetary penalty. The branch has not alleged a contravention of that section. I note Section 39 to show the distinction between allegations of illicit liquor versus failing to maintain a proper register, contrary to *Regulation* Section 35(3), or breach of a term and condition of the licence.

For both the November 10 and December 15, 2004 liquor deliveries, I find that the product was received as alleged and that the licensee did not record the deliveries in a liquor register.

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 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 minimums set out in Schedule 4 of the *Regulation*.

There is no record of prior proven 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 range for first contraventions is 1 to 3 day licence suspension, or \$1,000 to \$3,000 monetary penalty.

The branch’s primary goal in determining the appropriate penalty is achieving voluntary compliance. Among the factors that are considered in determining the appropriate penalty is whether there is a 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.

The branch issued a Contravention Notice (CN) on February 26, 2004, for failing to keep a proper liquor register and related contraventions. The branch did not take enforcement action on that CN. I have given weight to that CN not as proof of a previous contravention, but as proof that the branch has told the licensee in the past of its concerns and has attempted to assist the licensee in achieving compliance.

The licensees submitted that they were not aware of the need to maintain a register of returned product, until this enforcement action, but have corrected that. I have taken this as a submission going to mitigation of penalty. However, I give very little weight to that submission because the Guide is explicit in telling licensees that they are required to document replacement product.

The branch has recommended the maximum monetary penalty for a first contravention. Given that there were two occurrences within a short time and that the branch had issued a CN within a year of these of occurrences, I find that the branch's recommendation at the high end of the range to be appropriate.

ORDER

Pursuant to Section 20 (2) of the *Act*, for the contravention of Section 35(3) of the *Regulation*, I impose a monetary penalty of three thousand dollar (\$3,000) and I order the licensee, 665070 B.C. Ltd., to pay three thousand dollar (\$3,000) to the general manager on or before August 18, 2005.

Original signed by

M. G. Taylor
Enforcement Hearing Adjudicator

Date: July 19, 2005

cc: R.C.M.Police Surrey Detachment

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

Liquor Control and Licensing Branch Surrey Regional Office
Attn: Shahid Noorani, Branch Advocate
