



**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:	Wet Restaurant and Lounge Inc. dba Wet Restaurant 165-8460 Alexandra Road Richmond BC V6X 3L4
Case:	EH06-183
For the Licensee:	Vincent Chan, a principal of the corporate licensee
For the Branch:	Shahid Noorani
Enforcement Hearing Adjudicator:	Edward Owsianski
Date of Hearing:	February 15, 2007
Place of Hearing:	Vancouver, BC
Date of Decision:	March 5, 2007

**Ministry of Public
Safety and Solicitor
General**

Liquor Control and
Licensing Branch

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INTRODUCTION

Wet Restaurant and Lounge Inc. holds Food Primary Licence number 300898. Food Primary liquor licenses are issued for the sale and consumption of all types of liquor in establishments with a primary focus on the service of food. The hours of sale are 11:30 am to midnight seven days per week. The person capacity is 84 in area 1, and 16 in the lounge exterior. The licence is, as are all liquor licences in the province, subject to the terms and conditions contained in the publication, 'Guide for Liquor Licensees in British Columbia'. The establishment is located in Richmond, British Columbia.

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The branch's allegations and proposed penalty are set out in the Notice of Enforcement Action (NOEA) dated December 6, 2006.

The branch alleges that on November 11, 2006, the licensee contravened Section 44(1)(b) of the *Liquor Control and Licensing Regulation* by failing to ensure that liquor is taken from patrons within ½ hour after the time stated on the licence for the hours of liquor service.

The proposed penalty is a cancellation of the liquor licence (Section 20(2)(e) of the *Act*).

The licensee disputes the contravention.

RELEVANT STATUTORY PROVISIONS

Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267

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:

(a) the licensee's contravention of this Act or the regulations or the licensee's failure to comply with a term or condition of the licence;

(2) If the general manager has the right under subsection (1) to take action against a licensee, the general manager may do any one or more of the following, with or without a hearing:

(e) cancel all or any part of the licensee's licence;

Liquor Control and Licensing Regulation

44 (1) Unless otherwise authorized by the general manager,

(b) food primary licensees must ensure that liquor is taken from patrons within 1/2 hour after the time stated on the licence for the hours of liquor service, unless the liquor is a bottle of wine that is sealed in accordance with section 42 (4) (a).

ISSUES

1. Whether the licensee contravened the *Act* as alleged by the Branch.
2. If so, what penalty if any, is appropriate?

EXHIBITS

1. LCLB Book of Documents

EVIDENCE

The Liquor Control and Licensing Branch

Two RCMP Constables, A & B testified that during the late night and early morning hours of November 10 and 11, 2006, they were part of a police inspection team conducting inspections of licensed establishments in the city of Richmond. They attended a briefing prior to commencing the inspections during which they synchronized the time on their watches and determined the list of establishments to be inspected. The Wet Restaurant was included, as it had been the site of previous problems.

Upon arriving at the restaurant they noted the restaurant sign still lit and several persons standing outside smoking. The restaurant appeared to be still open for business. They entered the establishment at 12:50 AM. Inside music was playing loudly, the lights were dim. Approximately 30 patrons were noted seated at tables with large quantities of liquor present. Some of the patrons were consuming what appeared to be liquor. There were three staff members present, a male and a female server and the manager (licensee representative). None of the patrons were preparing to leave nor were staff members taking any action to clear the tables or to prevent patrons from consuming liquor. Several of the patrons were smoking which is contrary to the City of Richmond bylaws. No action was being taken by staff to prevent this activity.

Constable A testified that his responsibilities during the inspections included photographing evidence. He referred to the first photograph at exhibit 1, tab 4 which depicts four persons seated at tables with a large number of bottled beer and several mixed drinks which appeared to contain liquor. One of the male persons is depicted preparing to drink from one of the bottles of beer. The constable testified that he picked up and smelled the contents of three of the glasses, which he confirmed to contain liquor. The second photograph depicts tables with several drinks that appeared to contain liquor. He testified that when he was advising patrons to leave the

establishment one asked whether he could finish his drink before doing so. The constable made notes of his observations (exhibit 1, tab 5) and a report was submitted to the liquor inspector (exhibit 1, tabs 3 & 4).

Constable B testified that during the course of the inspection he issued a bylaw violation ticket to the manager (licensee representative). He overheard the manager speaking to one of the police corporals in attendance about why liquor was still on the tables and had not been cleared. He overheard the manager tell the corporal that times were difficult to make some money. The constable made notes of his observations (exhibit 1, tab 6).

Constables A & B testified that they advised the patrons and staff to leave the restaurant. The constables departed the establishment at 1:30 AM by which time all the patrons and the two staff servers had left. The manager was the only person remaining.

A branch Liquor Inspector testified that he is the liquor inspector responsible for the geographical area in which the establishment is located. His primary responsibilities are to ensure that licensees operate in compliance with the terms and conditions of their liquor license and to conduct inspections of licensed establishments. The main problem with licensed establishments in the City of Richmond is the after-hours service of liquor. The area has become notorious for establishments serving liquor after hours. This can lead to a change of focus for restaurants (food primary establishments) where they operate like a bar (liquor primary establishment). It may result in unruly patrons.

He is familiar with the Wet Restaurant. It has been licensed by the branch since April 2004 during which time it has compiled a poor compliance record with consistent after hours service of liquor being identified. The licensee has been made aware of the problems on many occasions. The Food Primary Liquor Licence issued to the establishment (exhibit 1, tab 7) is subject to the terms and conditions contained in the branch publication, "Guide for Liquor Licensees". A copy of the Guide has been provided to all licensees. The Guide in effect at the time of the alleged contraventions is

found at exhibit 1, tab 8. He referred to an excerpt from the Guide dealing with “Hours of Sale” which contains the requirement: “All liquor (in bottles or glasses) must be removed from the tables within half an hour of liquor service ending” (p.9).

Prior to the license being issued the licensee representatives attended an information session at branch offices on April 7, 2004. The purpose of the session was to acquaint them with the terms and conditions of their license. Following the session the licensee representatives signed the branch Inspection Interview Sheet acknowledging the terms and conditions of the license and that they agreed to abide by them (exhibit 1, tab10). The license was subsequently issued on April 15, 2004 (exhibit 1, tab 11).

The Inspector testified that he is responsible for maintaining the Branch records for this licensed establishment. He referred to copies of documents from Branch files:

- October 9, 2004 Contravention Notice (CN) issued for operating contrary to primary purpose; licensee/employee consuming liquor; permit intoxicated person to remain; and fail to clear liquor ½ hour after liquor service hours (Exhibit 1, tab 12). As this was the first contravention for this licensee the inspector did not recommend that it proceed to enforcement action. He felt that a compliance meeting with the licensee representatives would be sufficient to get agreement for compliance.
- October 20, 2004 – Compliance meeting held with the licensee representatives during which time the contraventions were discussed with the representatives and a commitment for compliance obtained (exhibit 1, tab 13).
- January 9, 2005 – CN issued for fail to clear liquor ½ hour after liquor service hours (Exhibit 1, tab 14). The inspector did not recommend that it proceed to enforcement action as the amount of liquor involved was one glass of beer and seven patrons. The contravention was discussed with the licensee representative and the inspector believed that future compliance was forthcoming.

- June 4, 2005 – CN issued for fail to clear liquor ½ hour after liquor service hours (exhibit 1, tab 15). The inspector felt that in the circumstances there was no alternative but to recommend that the contravention proceed to enforcement action. He recommended a four day suspension which was the minimum suspension penalty under the Schedule to the Regulations for a first contravention of this type. The licensee representative signed a “Waiver Notice” agreeing to the recommended penalty (exhibit 1, tab 16) and the suspension took effect during July 14-19, 2005 (exhibit 1, tab 17).
- August 26, 2005 - CN issued for fail to clear liquor ½ hour after liquor service hours (exhibit 1, tab 18). The inspector felt that in the circumstances there was no alternative but to recommend that the contravention proceed to enforcement action. He recommended a ten day suspension which was the minimum suspension penalty under the Schedule to the Regulations for a second contravention of this type. The matter proceeded to an enforcement hearing resulting in a decision of a ten day suspension (exhibit 1, tab 19). The suspension took effect commencing January 4, 2006 (exhibit 1, tab 20).
- April 8, 2006 - CN issued for fail to clear liquor ½ hour after liquor service hours (exhibit 1, tab 21). The inspector felt that in the circumstances there was no alternative but to recommend that the contravention proceed to enforcement action. He recommended a twenty day suspension which was the minimum suspension penalty under the Schedule to the Regulations for a third contravention of this type. A decision to suspend the license for twenty days was made without a hearing when the licensee representative failed to participate in a pre-hearing conference or to make a written submission (exhibit 1, tab 22). The suspension took effect commencing August 11, 2006 (exhibit 1, tab 23).
- September 9, 2006 - CN issued for fail to clear liquor ½ hour after liquor service hours (exhibit 1, tab 24). The inspector felt that in the circumstances there was no alternative but to recommend that the contravention proceed to enforcement action.

He felt that he had exhausted every avenue for voluntary compliance and recommended that the license be cancelled (NOEA dated September 25, 2006, exhibit 1, tab 25). The matter proceeded to a hearing. The contravention was dismissed in a decision dated January 10, 2007. The branch had proceeded in the mistaken belief that the licensee acknowledged that the contravention had occurred and there was insufficient evidence on which to find a contravention (exhibit 1, tab 26).

- November 11, 2006 - CN issued for fail to clear liquor ½ hour after liquor service hours (exhibit 1, tab 2). This CN was issued during the time that the previous CN (September 9, 2006) and the ensuing enforcement action were in progress. He testified that this further lead him to believe that this licensee simply was not going to comply with the requirements of the liquor license. He had tried without success, compliance meetings and conversations with the licensee representative and license suspensions. The establishment continually failed to comply. Maintaining inspections was taking up municipal, police and branch resources. He was concerned that continued non-compliance could lead to safety concerns. He recommended that the license be cancelled.

EVIDENCE - The Licensee

No evidence was presented on behalf of the licensee.

SUBMISSIONS

The licensee representative submitted that if the license is not cancelled the establishment would restrict the sale of liquor to that of beer and wine only. They will co-operate with police officers and liquor inspectors. They will agree to voluntarily surrender the liquor license if further contraventions are found.

REASONS AND DECISION

Having considered all of the evidence, I find that on November 11, 2006, the licensee contravened Section 44(1)(b) of the *Liquor Control and Licensing Regulation* by failing to ensure that liquor is taken from patrons within ½ hour after the time stated on the licence for the hours of liquor service.

The evidence of the police officers is clear and uncontroverted. They made their inspection of the establishment at 12:50 AM, a period of 20 minutes following which all consumption of liquor was to have ceased and all glasses and bottles containing liquor were to have been removed. They witnessed approximately 30 patrons in the establishment several of whom were consuming liquor. There was a large quantity of liquor in bottles and glasses remaining on several of the tables. Music was playing and it appeared to be business as usual. At least some of the patrons were unaware of the requirements prohibiting the consumption of liquor after 12:30 AM and there was no effort being made by staff to comply with the requirements.

DUE DILIGENCE

The licensee is entitled to a defence to the allegations of the contraventions, if it can be shown that it was duly diligent in taking reasonable steps to prevent the contraventions from occurring. The licensee must not only establish procedures to identify and deal with problems, it must ensure that those procedures are consistently acted upon and problems dealt with. Here, there is no evidence upon which I can find that the licensee was duly diligent.

PENALTY

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

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 *Regulations*.

The branch's primary goal in bringing enforcement action is to achieve voluntary compliance. The *Act* at Section 6(a) directs that the general manager must supervise the conduct and operation of licensed establishments. The general manager carries out this responsibility thru branch staff, particularly those appointed as liquor inspectors and investigators. The branch issues in excess of 9,000 liquor licences per year. It employs 32 liquor inspectors and 4 investigators located throughout the province. Police agencies throughout the province assist the branch by making regular inspections of licensed establishment within their jurisdiction and reporting any irregularities to the branch. It is obvious that the general manager must greatly rely on licensees to voluntarily comply with the requirements of the *Act*, *Regulations* and the terms and conditions of the liquor licence. Education and guidance is available and provided to licensees needing assistance.

In this case, the licensee has demonstrated an inability to operate the establishment properly and has compiled a considerable history of non-compliance. This has occurred despite repeated efforts and assistance by branch staff. The liquor inspector responsible for the area has taken all reasonable measures to bring the operation of the establishment into compliance without success. The licensee representative in his submission has promised to take measures to ensure compliance with the

requirements. I note that such promises were given during meetings held with the liquor inspector in the past. The representative has provided no reason to believe that he can be more successful in complying with the requirements in the future than he has in the past. In the circumstances, I am satisfied that future compliance by this licensee is unlikely. A licensed establishment that continually fails to comply with the requirements of the *Act and Regulations* can create nuisance in the community and safety risks to its staff and patrons as well as police and regulatory officials. There is a public interest in ensuring that an establishment operates within the rules. In the circumstances, I am satisfied that the cancellation of the liquor license is necessary and appropriate.

ORDER

Pursuant to Section 20(2) of the *Act*, I order the cancellation of Food Primary Licence number 300898 effective as of the date of this decision. To ensure this order is effective, I direct that the Liquor Licence be taken into possession by a liquor inspector or a police officer and returned to the branch.

Edward W. Owsianski
Enforcement Hearing Adjudicator

Date: March 5, 2007

cc: RCMP Richmond Detachment

Liquor Control and Licensing Branch, Vancouver Office
Attention: Donna Lister, Regional Manager

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