



January 16, 2008

Conrad Van Oord
C & J Enterprises Ltd., dba Alaska Way
637 Yellowhead Hwy. 16
Burns Lake, BC V0J 1E0

REGISTERED MAIL

Dear Licensee:

Re: C&J Enterprises Ltd., dba Alaska Way, Burns Lake BC
Liquor Primary Licence No. 301030

Case: EH07-096

This letter constitutes a decision by the General Manager of the Liquor Control and Licensing Branch pursuant to Section 20 of the *Liquor Control and Licensing Act* (the "Act"), regarding Notice of Enforcement Action ("NOEA") EH07-096 issued to the above named licensee.

Alleged Contraventions

The Branch alleges the following:

That on the business day of Friday, June 22/23, 2007, the licensee authorized or permitted drunkenness or violent, quarrelsome, riotous or disorderly conduct in the licensed establishment, contrary to section 36 (2)(a) of the *Liquor Control & Licensing Act*. The proposed penalty is a ten (10) day suspension of the liquor licence (item 7, Schedule 4 of the *Regulation*).

In the alternative, if the general manager does not find that the above contravention took place, the inspector has asked that the general manager find:

That on the business day of Friday, June 22/23, 2007, the licensee permitted an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied, contrary to section 43(2)(b) of the *Liquor Control & Licensing Act*. The proposed penalty is a four (4) day suspension of the liquor licence (item 11 of Schedule 4, *Liquor Control and Licensing Regulation*).

**Ministry of Public Safety
and Solicitor General**

Liquor Control and
Licensing Branch

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Background

On June 29, 2007, the inspector advised the licensee that a contravention notice had been sent via registered mail regarding the alleged incident.

In early October, the licensee told the branch that the licensee was probably going to sign a waiver. After waiting several weeks for this to take place, the branch scheduled a pre-hearing conference for November 15. That pre-hearing conference was cancelled when the licensee informed the branch that it would sign a waiver. Then, on November 27, the licensee informed the branch that it had changed its mind and had decided not to sign a waiver because it did not want to serve a suspension during the Christmas season. A second pre-hearing conference was scheduled for December 4 at 1:30pm.

A letter informing the licensee of the pre-hearing conference, dated November 27, 2007, was sent to the establishment address. That letter explains that if the licensee fails to participate in the pre-hearing conference, the general manager may make a decision without conducting an enforcement hearing.

The December 4 pre-hearing conference could not proceed because the licensee failed to participate. The branch attempted to reach the licensee at the three phone numbers that the branch has in its records. Two of the numbers are out of service and the other was a voice message for an unrelated business. The licensee has not contacted the branch to explain its failure to participate in the pre-hearing conference.

On December 6, 2007, the branch registrar sent the licensee a registered letter (including a copy of the NOEA) advising that due to his failure to participate in the pre-hearing conference, a decision regarding the alleged contraventions would be made without an oral hearing. The letter invited the licensee to provide a written response by December 17, if he had anything to add before a decision was made. Canada Post records indicate that the licensee has failed to claim the letter at the post office.

To date, the licensee has not contacted the branch to explain his failure to participate in the pre-hearing conference, to respond to the allegations, or to request additional time to do so.

Applicable Statutory Provisions

Prohibition against gambling

36 (2) A person holding a licence or the person's employee must not authorize or permit in the licensed establishment

(a) gambling, drunkenness or violent, quarrelsome, riotous or disorderly conduct,

Drunkenness

43 (2) A licensee or the licensee's employee must not permit

(b) an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied.

Issues

1. Whether the licensee contravened sections 36(2)(a) or 43(2)(b) of the *Act*?
2. If so, what penalty, if any, is appropriate?

Particulars of Allegation

The hours of liquor sale permitted for Liquor Primary Licence No. 301030 are 9:00 a.m. to 2:00 a.m. Monday through Sunday. The terms and conditions of the licence include those contained in the publication "A Guide for Liquor Licensees in British Columbia."

The full particulars of the alleged contravention are contained in the NOEA. In summary, on June 23, 2007, at approximately 1:40 a.m., three liquor inspectors conducted a covert inspection of the establishment. All three observed a male patron consuming beer from two beer bottles. The patron displayed the following symptoms of intoxication: poor balance (wobbling on his seat) slow and deliberate movements, staggering when walking to the bar area, flushed face, bloodshot and watery eyes.

One of the inspectors also observed a female patron displaying the following symptoms of intoxication: staggering while moving towards the washroom, losing her footing on a bar stool and almost falling, slurred speech, eyelids half closed.

At 2:00 a.m. a fight broke out between two male patrons in the establishment within view of the three inspectors table. Approximately 20 other patrons became involved. The inspectors observed that the staff did not intervene, the patrons were not evicted and the police were not called.

Licensee's Response

The licensee has provided no information to dispute what the Branch alleges took place. I have reviewed the branch's means of communicating these allegations to the licensee. I am satisfied that the licensee is aware of the branch's allegations, has had the opportunity to respond and has chosen not to do so.

Decision

I find, based on the information before me which is contained in the NOEA, and absent any response from the licensee, that on June 23, 2007, the licensee contravened section 36(2)(a) of the *Act*.

Penalty

Having found that the contravention is proven, section 20(2) of the *Act* gives me the 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 minimum set out in Schedule 4 of the *Regulation*. I am not bound by the maximum and may impose higher penalties when it is in the public interest to do so. I am not bound to order the penalty proposed in the NOEA.

This contravention is a first contravention of this type for the purposes of the penalty schedule.

I have reviewed the branch's records for the licence and for the licensee. The licensee has held this licence since April 23, 2003. The branch's records reveal the following information about non-compliance for which the branch did not pursue enforcement action:

- March 2, 2007 – Contravention Notice B0001651 – permit minor in premises (s. 35 Act) and contravene terms and conditions of the licence (insufficient door and bar control, s. 12 Act).

In addition, on August 2, 2005, the liquor inspector held a compliance meeting with the licensee to address issues pertaining to permitting patrons to become intoxicated, s. 43(2)(a).

I have considered the licensee's recent actions, as well as its past compliance history, and I find that a ten (10) day suspension of the liquor licence is appropriate.

Order

Pursuant to Section 20(2) of the *Act*, I order a suspension of Liquor Primary Licence 301030 for a period of ten (10) days, to commence as of the close of business on Thursday, January 31, 2008, 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*).

To ensure this order is effective, I direct that Liquor Primary Licence 301030 be held by the branch or the R.C.M. Police Burns Lake Detachment from the close of business on Thursday, January 31, 2008, until the licensee has demonstrated to the branch's satisfaction that the suspension has been served.

Yours truly,

[ORIGINAL SIGNED]

Gary Barker
A/Deputy General Manager
Compliance and Enforcement Division
Liquor Control and Licensing Branch

cc: Burns Lake RCMP
Holly Belanger, Liquor Inspector
Mike Clark, Regional Manager
Sonja Okada, Branch Advocate