



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:

Bedford Hotel Ltd.
dba Bedford Regency (Jellyfish Lounge)
1140 Government Street
Victoria, BC V8W 1Y2

Case:

EH07-124

For the licensee:

Peter Jones

For the Branch:

Olubode Fagbamiye

Enforcement Hearing Adjudicator:

Sheldon M. Seigel

Date of Hearing:

February 25, 2008

Place of Hearing:

Victoria, BC

Date of Decision:

April 4, 2008

INTRODUCTION

The licensee holds a Food Primary Licence No. 129084. Under the terms of the licence the establishment is open for service from 10:00 a.m. Sunday through Thursday, and 11:00 a.m. to 1:00 a.m. Friday and Saturday.

Terms and conditions on the licence include:

- For the sale and consumption of all types of liquor in establishments with a primary focus on the service of food.
- The terms and conditions to which this licence is subject include the terms and conditions contained in the publication *Guide for Liquor licensees in British Columbia* as that publication is amended from time to time.

The licensee contracted the operation of the Jellyfish Lounge to a third party operator. The status of the third party operator and the contractual relationship between it and the licensee is not in issue in these proceedings.

On the evening of August 17, 2007, a liquor inspector and members of the Victoria Police department attended at the establishment to conduct a licensed premise check. As a result of that visit, the inspector formulated the opinion that the establishment was operating as a liquor primary establishment rather than as its licence requires - as a food primary establishment.

The branch alleged that the establishment was operating contrary to its primary purpose and proceeded to enforcement action.

A hearing was held on February 25, 2008. In attendance were the licensee, the contractual third party operator, and the licensee's agent. Also present was the branch advocate.

ALLEGED CONTRAVENTIONS

The branch's allegations are set out in the Notice of Enforcement Action dated October 9, 2007. The branch alleges that On August 17, 2007, the licensee contravened sections 12(1), 20(1), and 16 of the *Liquor Control and Licensing Act (Act)* 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 monetary penalty of seven thousand, five hundred dollars (\$7,500).

PRELIMINARY MATTER

The agent for the licensee made an application that the matter be dismissed on a summary basis. The thrust of his application, as I understood it, was that the licensee has been in business a mere five weeks and has not had the opportunity to fully establish a pattern of business that would be in full compliance with the terms and conditions of the licence. In particular, the agent submitted that the food menu had not been established by customer preference or word of mouth, and accordingly the ratio of liquor to food did not yet reflect the intentions of the licensee, and is therefore misleading.

I considered the application and ruled as follows:

The branch has conducted considerable process in order to arrive at this hearing today. The result of that process is the attendance this morning of both the branch and the licensee, with witnesses prepared to testify as to the current conduct of the licensee. The application is within the gambit of arguments that I will expect to hear from the parties today, and in particular, the evidence of the witnesses. I will consider this matter under the heading of due diligence in my decision. I order the hearing to proceed.

RELEVANT STATUTORY PROVISIONS

See Appendix A

ISSUES

1. Did the licensee operate the licensed establishment contrary to its primary purpose as a food primary establishment?
2. If so, is a penalty warranted and what is the appropriate penalty?

EXHIBITS

- Exhibit No. 1: Branch's book of documents
- Exhibit No. 2: Letter dated November 7, 2007
- Exhibit No. 3: Letter dated February 22, 2007
- Exhibit No. 4: Power-point presentation
- Exhibit No. 5: Menu (three separate leaves)
- Exhibit No. 6: Letter dated February 23, 2007

EVIDENCE

Police Witnesses

The branch called a sergeant and a constable from the Victoria Police department. They each testified that they are experienced police officers and accustomed to performing licensed premise checks. They also testified that they were each familiar with the operation of food primary and liquor primary establishments.

On August 17, 2007, both officers attended at the licensed establishment after 9:00 p.m. They identified it as the Jellyfish Lounge in the Bedford Regency Hotel.

Their observations of the establishment included the following:

- There were forty to fifty people in the establishment.
- The room had only low tables, suitable for lounge purposes.
- There was no food visible on the tables or elsewhere in the establishment, except for a plate of appetizers and some nuts.
- Most of the tables near which patrons were sitting had drinks on them. The drinks were in highball glasses, wine glasses, and beer bottles.
- Patrons appeared to be consuming liquor.
- The environment was what one would expect of a bar or lounge.
- The lighting was dim, as would be expected in a bar or lounge.
- The chairs were arranged with the low tables near them, but the chairs were not arranged as though designed for eating at the tables.
- There was no cutlery or eating utensils on the tables.
- There were no dishes, clean or dirty, on any of the tables.
- There was no noticeable smell of food in the establishment.

One of the officers asked the manager why there was no food evident on the tables. He was told that this was the end of a private party and the patrons had all eaten earlier in the evening. The officer asked for the evening's receipts. They showed \$647 total sales, composed of \$155 food sales with the remainder being alcohol.

On Canada Day, one of the police officers had attended the establishment and observed the presence of two bouncers and an individual who was collecting money at the door. When he asked the manager on site why the establishment did not appear to be operating as a restaurant, he was advised that there was a fundraiser in process. The officer found that answer to be dubious.

First liquor inspector

A liquor inspector testified that he met with the licensee and the third party operator prior to the opening of the establishment and explained in detail what was expected of the establishment. This included the emphasis on food and the need to avoid any shift to liquor primary purposes at any time of the day or night. He utilized a PowerPoint presentation (Exhibit No. 4) in that regard. The inspector indicated that he focussed on the food primary requirements of the licence because he was aware that the licensee had applied for a liquor primary licence for the premises and was denied it, prior to obtaining a food primary licence.

Second liquor inspector

Another liquor inspector testified. He identified all of the documents in Exhibit No. 1, the branch's book of documents. In particular, he pointed to the provisions of the Guide that instruct the licensee as to the requirements of a food primary licence.

He testified that he attended the Jellyfish Lounge on August 17, 2007, because of a call from one of the police officers, requesting his presence. When he arrived, there were three police officers present including the two that testified in this hearing. The officers were in conversation with the third party operator.

The inspector had a full view of the establishment and made the following observations:

- There was a dance floor.
- The room was only dimly lit. The lighting was not as he would expect to see in a restaurant (he noted that it was too dark for servers to safely serve food and too dark for patrons to see if their food was properly cooked).
- The tables were knee high, and not of the type designed for the full service of food.
- There was no cutlery or dishes on the tables.
- The tables did have bottles, glasses, and drinks on them.
- Two of the tables had bar nuts or fruit on them.
- The tables were not placed in such a way as to allow dining of full meals.
- The patrons were sitting in deep chairs as in a bar.

The inspector asked the police officers to leave, and then asked the third party operator if he could inspect the kitchen. He entered the kitchen with the third party operator. In the kitchen he saw:

- A staff member with a cook's uniform. The cook did not appear to be involved in any current cooking.
- No other employees.
- There was no stove of the nature he would have expected to see in a restaurant.
- There were no kitchen appliances in use.
- There was no food being prepared.
- There were no dirty dishes in the kitchen.
- There was no evidence of orders coming into the kitchen.

Then the chef introduced himself and proceeded to take a small frying pan and put some sort of stir-fried goods into it. He began to cook it on a hotplate.

The inspector advised the third party operator that he would be issuing a contravention notice for operating the establishment contrary to its primary purpose.

At a later date, the inspector requested some documents from the licensee. Those documents are at tab 8 of Exhibit No. 1 and include the menus entitled *desserts* and *global tapas share*. These documents did not include the third menu in Exhibit No. 5.

Licensee's floor manager

The licensee's floor manager testified that he worked at another restaurant before becoming manager. He said, "[The Jellyfish Lounge] has had musical acts, comedians. People come there not just to eat, but for the evening. That is a common practice." He also said, "The food prices compared to other restaurants is much lower. Lower than at the other restaurant, much, much lower." He also testified that the other restaurant had prawns on the menu "as an add-on for \$6.95 for four" and chocolate mousse for \$8.95.

The manager said that there was a fundraiser on August 17, 2007. For that occasion, he testified, there is no receipt as "it got rung in as a bulk purchase." He also testified that the food and liquor were always entered into the Squirrel system, that the establishment has enough cutlery for every single seat, and that dirty dishes are removed as they are used.

The agent for the licensee called several witnesses and produced several letters (Exhibits No. 2, 3 & 6) to attest to the start-up procedure typically followed for restaurants in the Victoria area. They indicated:

- There is a period of trial and error when designing menus and food selection.
- It is not unusual to have food promotions in order to get a clientele established.
- It is difficult to use liquor as a promotional tool due to the rules of the LCLB.
- Some time will elapse before word of mouth will establish a clientele.
- Often food is offered at little or no profit in order to entice customers to attend.
- It takes up to a year or more to establish profitability.

Third party operator

The third party operator testified that the concept of the Jellyfish Lounge is more like a lounge than a restaurant. He said it is a unique style that has not been seen in the Victoria market to date. He said the Victoria market is highly competitive, and the business plan was to carry it for a year or more by discounting food and trying to establish a clientele.

He also testified as follows:

- The establishment was open for three months before it was inspected.
- The establishment was waiting for delivery of a commercial stovetop and oven, which was delivered after August 17, 2007.
- The establishment has policy and employee manuals that contain significant detail.

- On Canada Day there was a band performing at the Jellyfish Lounge. The band had its own doorperson and she was standing at the door collecting money for the band.
- If patrons are in the lounge to drink and not to eat, they will be asked to leave.

The third party operator testified that if a patron ordered [two] beer and no food, the patron would receive his beers. The third party operator did not know what would happen if the patron failed to order food because “it doesn’t happen much.” He also said, “there is a policy [at the establishment] that says two drinks and no more unless they want food” and “the manual does not say two, or any specific amount [of drinks may be ordered without food].”

SUBMISSIONS

The agent for the licensee qualified the evidence of the third party operator by submitting that the third party operator was confused in terms of the service of liquor. The agent added that the third party operator “is not involved in the day-to-day operation. [The manager] has full control over his staff.”

The agent for the licensee also submitted:

- The licensed establishment had only been open for five weeks before the licensed premise check.
- The licensee did not have a reasonable time to establish the business as a restaurant before the licensed premise check.
- The licensee has no control over the public if the public is not ready to embrace the establishment’s food menu.
- There was no evidence that the drinks the police officers and the liquor inspector saw on the tables were alcoholic.

- The inspector acted inappropriately in basing his decision to pursue enforcement action on the liquor/food ratio.
- The allegation is not supportable because there is no particular ratio of liquor to food specified either in the licence or in the *Regulation*.
- The branch has the onus of establishing that the licensee did not use due diligence in the operation of the restaurant.
- The branch has the obligation to educate the licensee with respect to voluntary compliance, and to warn the licensee if there have been complaints about operating outside of the primary purpose of the licence, before conducting an inspection and issuing a contravention notice.
- The burden of proof on the branch to establish a contravention increases with the severity of the penalty. A severe penalty has been recommended in this instance, so the burden of proof is greater than the usual balance of probability. The branch must have a preponderance of evidence that each component of the alleged contravention occurred.
- The liquor/food ratio is unreliable because it does not take into account that the food items were discounted.
- “It seems arbitrary that...there is a penalty without warning or consultation. This is contrary to principles of any administrative fairness.

ANALYSIS AND DECISION

The primary purpose of the establishment must be the service of food, at all hours of its operation.

The *Regulation* sets out elements to be considered when evaluating whether the operation of the establishment meets this test. The elements are 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.

As I understand it, the major thrust of the licensee's argument is that as a new business, the establishment has not yet attracted the interest of the dining public. As a result, food sales are slow, and the price of the food sold is low. This results in a disproportionate and misleading ratio of liquor to food sales.

The liquor to food sales ratio is indeed contrary to what one would expect in a food primary establishment. The evidence of liquor sales is much greater than the evidence of food sales.

The elements set out in s. 11 of the *Regulation*, when applied to the facts of this case, paints a picture of a liquor primary, rather than a food primary establishment.

The kitchen equipment lacked a typical commercial oven or cook top on the date of the alleged contravention. Although the licensee's witnesses attested to the ability to prepare meals on the hotplates that were present on August 17, 2007, I find that the kitchen equipment was not particularly indicative of a food primary establishment.

The furnishings were described by witnesses as typical for a lounge or bar, and both atypical and inconvenient for dining use. Tables were not set with chairs adjacent in the usual dining fashion, and the lighting was described as too dim to see whether food was properly cooked. There were no places set on the tables and none of the forty or fifty patrons who were observed to be present on the inspection date had set up a dining position on a table or otherwise. The photographs at tab 12 of Exhibit No. 1, clearly appear to depict an environment more akin to a bar or lounge, than a dining room or restaurant.

The food menus available at the time of the inspection consisted of two narrow leaves of paper: one listing desserts, dessert drinks, and waters, and one listing cold and hot *tapas* to share. *Tapas* were described in the hearing as small portions of food for sharing among patrons. The evidence is that the narrow leaf of paper purporting to be a food menu for the *Dine Around Town* program was not available at the time of the contravention. It contains a total of three choices of entrée. The wine, beer, sake, and cocktail menus, by contrast are somewhat more comprehensive.

The evidence of the type and hours of entertainment offered at the establishment includes a description of an event with a band and door-person collecting money from patrons. The uncontroverted evidence was that the door-person was not an employee of the licensee, but rather a member of the band's entourage. I find that regardless of the identity of the door-person, the presence of an individual collecting money from patrons as they enter the establishment (with the knowledge of the management) is more indicative of a bar or lounge than a restaurant.

There was no specific evidence as to the nature of the establishment's advertising programs. I find the name of the establishment; however, to be relevant in this regard as the perception of the establishment as a lounge may reasonably be obtained with regard to the name *Jellyfish Lounge*.

The hours of operation are not particularly indicative of a bar/lounge or a restaurant and are of no use in this regard.

The evidence of financial records of the establishment was restricted to food and liquor sales, and food and liquor bulk purchases. These records may or may not be comprehensive, but I find that on their face, they point more to a liquor primary operation than a food primary one.

The Guide is by reference, a term and condition of food primary licence No. 129084. It requires (p. 5, tab 5, Exhibit No. 1):

As a food primary licensee, you are responsible for operating your establishment as a restaurant. That means you must meet the following requirements at all times:

- ***Kitchen equipment:*** *The kitchen must be fully equipped (with commercial stoves and dishwashers, for example), and must be open and staffed whenever liquor is served.*

I find on the evidence that the kitchen was not fully equipped, as the commercial oven and stovetop was not in place until after August 17, 2007. Further, I find that the kitchen was not open and staffed at the time of the inspection. I am not convinced that the sudden acquisition of a small frying pan and its stir-fry by “the chef,” on the occasion of the inspection, was in the normal course of business.

- ***Menu:*** *The menu must include a reasonable variety of appetizers and main courses...*

I find that the menus available on August 17, 2007, did not include a reasonable variety of appetizers and main courses.

- ***Furnishings and lighting:*** *The décor must be suitable for dining and table service. There must be enough tables and chairs, and/or counters and stools to seat everyone. The tables must be big enough to hold the plates, cutlery and glassware associated with a full meal.*

There was evidence that the lighting was so dim as to potentially cause difficulty, if not a hazard for wait staff. There was also evidence that this environment is represented outside of the City of Victoria as an exciting and provocative new dining style. I find that the inclusion of this term in the Guide is not intended to eliminate a licensee's freedom to create a new dining environment, but to underline the importance of the suitability of the environment for the purpose to which it is to be put. The design of the furniture, the placement of the chairs, the low tables, and the dim lighting, do not individually consist of prohibitions to the possibility of dining in the establishment. The totality of these design features, however, make up an environment not particularly suitable for dining.

- ***Name:*** *The name of your restaurant must accurately reflect the service you provide... If you do have a restaurant lounge endorsement, you may use the words lounge...*

The establishment does not have a restaurant lounge endorsement. I find that the name does not accurately reflect the service that the licensee is obliged to provide.

- ***Food-to-liquor ratio:*** *The ratio of receipts from food sales to receipts from liquor sales in the restaurant must support the fact that your primary focus is food. As a general rule, liquor sales should not exceed food sales in the dining area.*

For a two-week period, including August 17, 2007, the receipts indicate a ratio of approximately 85% liquor sales and 15% food sales. The liquor to food sales ratio does not endorse the allowed primary focus, and the general rule is not supported. Further, the licensee does not support his argument that the ratio is misleading because of low food prices, with any evidence of the quantity of food sold.

The licensee submitted that the third party operator's intention is to operate a restaurant, but the public has simply not purchased food as hoped. I find this evidence lacks credibility. The combination of the name of the establishment, the environment offered to patrons, and the absence of any reasonable choice of main courses on the menu conspires to keep diners away. I accept that the third party licensee has considerable experience in the food service industry, and find that his intentions are other than as stated.

I find that the drinking vessels observed on the tables during the inspection, including highball glasses, wine glasses, and beer bottles, did contain liquor. This finding is based on the type of glasses and bottles used, the environment in which the glasses and bottles were observed, and the lack of any significant evidence to the contrary.

I find that the liquor inspector was correct in recommending enforcement action based on the evidence he obtained as a result of the August 17, 2007, inspection. There is no evidence to support the licensee's submission of improper motive or process. Further, I find that the liquor/food ratio on which the licensee's agent focused his defence is a sufficient indication of the possibility of a contravention to warrant commencement of an enforcement process.

The licensee's agent argued that advance notice of complaints against the licensee is required to ensure procedural fairness. I find no merit to this assertion. Section 12 of the *Act* gives the General Manager and her delegates' authority to commence enforcement action. Once a hearing process was initiated, the licensee was provided with all of the elements of procedural fairness attendant to that process. The onus of establishing a lack of procedural fairness is on the party claiming it. There is no authority to support the agent's position.

I found the manager of the Jellyfish Lounge lacking in credibility. One example to support this assessment is the fact that he stressed that food prices at the establishment were much lower than at the restaurant where he had previously worked, but when he testified as to specific prices at the other restaurant, they were notably lower than those at the Jellyfish.

The third part operator testified that there are both policy and employee manuals. No manuals were provided at the hearing, or at any time prior to the hearing. Further, there was no evidence of the content of any manuals. None of the witnesses for the licensee, including employees, indicated the existence or use of policy or employee manuals. The third party operator also testified that patrons who order drinks, but no food, are asked to leave the establishment, yet there was no evidence that any of the patrons who were drinking on August 17, 2007, had ordered or consumed any food. This witness did not attest to any particular patron ever being asked to leave, and there was no evidence that any patron had ever been asked to leave. The licensee's agent submitted that the third party

operator was confused and not in control of the day-to-day operation of the establishment. The agent added that the third party operator did have full control over his staff. I find the evidence of the third party operator to be worthy of no weight and I disregard it.

The licensee's agent submitted that the branch has the onus of disproving due diligence on the part of the licensee. This is contrary to all established law on the subject with which I am familiar. Due diligence is a defence to an allegation of a contravention of the *Act* or *Regulation*. The onus of establishing the defence lies with the party asserting it. The agent provided no support for this position.

The licensee has provided insufficient evidence to establish the defence of due diligence. The licensee argued that it was not given enough time to establish a restaurant with sufficient food sales to qualify as operating within its primary purpose. There was no credible evidence of policy manuals in place that instructed employees on the issues of liquor/food service, or any indication of instruction or training by management of the establishment on how to handle drink orders without food orders. There was no evidence of ongoing checks in place to ensure that employees were putting into effect the will of the management. There was no credible evidence that the third party operator had taken adequate steps to ensure that the primary purpose of food service was being effected. On the contrary, I find that the management of the establishment operated the Jellyfish Lounge on August 17, 2007, and on other dates as a liquor primary establishment without regard for its allowed primary purpose.

The licensee's agent argued that the finding of a contravention can only be accomplished by a preponderance of evidence, or some standard greater than the balance of probabilities. He submitted that this was the case because the penalty is "severe." In support of this proposition, he cited an academic excerpt from a web journal originating in the United Kingdom. The article is entitled: M.E. Rogers, *Standard of proof in care order applications under the Children Act, 1996*. I find this article of no persuasive value or relevance. The burden of proof for administrative tribunal members in Canada is the balance of probabilities.

The question of whether or not the establishment operated contrary to its primary purpose is based on any number of factors including those indicated above. The factors are not limited to the liquor to food ratio, or even the list provided in the Guide. The question must be answered with reference to the circumstances as a whole. I find that the management of the establishment had control of its method of operation and did operate at times, including the evening of August 17, 2007, as if it had a liquor primary licence.

I find that the Jellyfish Lounge did operate on August 17, 2007, contrary to its primary purpose in contravention of the *Act* and *Regulation*.

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 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 by the minimums set out in Schedule 4 of the *Regulations*. However, I am not bound by the maximums 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 Notice of Enforcement Action.

The branch's primary goal in bringing enforcement action and imposing penalties is achieving 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 the public safety and the well being of the community.

As the general manager, for the purpose of enforcement hearings, I may consult the licensee's history and records with the branch, as well as the establishment's history in determining the appropriateness of a penalty.

In this case, the third party operator has been involved in the running of licensed establishments for a number of years and at this establishment had received educational visits from branch staff during the recent licensing process. He has received routine liquor inspections from branch staff, as well as the local police, yet he still has failed to operate the Jellyfish Lounge in accordance with its licence.

The differences between a food primary licence and a liquor primary licence in terms of the licensing requirements are significant. Much public and community interest is gauged in order to assess community impact in the licensing of a liquor primary establishment. Little public or community impact is assessed when licensing a food primary establishment. The licensee obtained a food primary licence and operated the establishment as though it had a liquor primary licence and thereby effectively avoided the requisite public input.

For the contraventions relating to August 17, 2007, the branch recommended a monetary penalty of seven thousand five hundred dollars (\$7,500).

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”). Accordingly, pursuant to *Liquor Control and Licensing Regulation*, Schedule 4, section 1(1)(b), this is a first contravention.

The range of penalty for a first contravention of section 20(1)(d) of the *Act* in accordance with item 1 of Schedule 4 of the *Regulation* is ten (10) to fifteen (15) days suspension and/or a monetary penalty of \$7,500-\$10,000.

I find that a penalty is warranted. Further, I find that the penalty recommended by the branch of \$7,500 is inadequate to reflect the severity of the contravention.

The *Regulation* provides a range of penalty for this particular offence for a first contravention. The existence of a range of monetary penalty, rather than a specific sum, is an indication that within the scope of a first contravention of this nature, some reference is to be had to the nature and extent of the contravention.

The management of this establishment is experienced and knowledgeable of licensing requirements. The licensee applied for a liquor primary licence for this venue. That application was denied. The licensee then applied for and was granted a food primary licence for the same venue. I have found that the establishment was operated as if it held a liquor primary licence, without regard for the well-known rules of operation for a food primary licensed establishment. I cannot imagine a more flagrant example of operating contrary to primary purpose. The management of the Jellyfish lounge simply operated as if they had received the liquor primary licence they originally sought, notwithstanding that their application was declined.

Accordingly, I find that the maximum financial penalty for a first contravention of this nature is appropriate. The penalty is \$10,000.

ORDER

Pursuant to Section 20(2) of the *Act*, I order the licensee to pay a monetary penalty in the amount of ten thousand dollars (\$10,000) relating to Food Primary Licence No. 129084. The monetary penalty must be paid no later than the close of business on May 2, 2008.

Original signed by

Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: April 4, 2008

cc: Victoria Police Department

Liquor Control and Licensing Branch, Victoria Regional office
Attn: Gary Barker, Regional Manager

Liquor Control and Licensing Branch, Vancouver Regional office
Attn: Olubode Fagbamiye, Branch Advocate

APPENDIX A

Licenses

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

Issue of license prohibited

16 (1) A license must not be issued, renewed or transferred if, in the general manager's opinion, the applicant

- (a) is not a fit and proper person,
- (b) is not the owner of the business carried on at the establishment or the portion of the establishment to be licensed,
- (c) is not the owner or lessee of the establishment or the portion of the establishment to be licensed, or
- (d) is disqualified under this Act or the regulations or has not complied with the requirements of this Act or the regulations.

(2) In deciding if a person is fit and proper for the purposes of subsection (1) (a), consideration must be given to convictions in the preceding 3 years under the laws of Canada or any province or the bylaws of a municipality or regional district in British Columbia.

(3) A license must not be issued, renewed or transferred if, in the general manager's opinion, it would be contrary to the public interest.

(4) Without limiting subsection (3), the general manager must consider whether

- (a) the applicant is the holder of, has an interest in or is applying for another license under this Act, or
- (b) the applicant is qualified under this Act or the regulations or has complied with the requirements of this Act or the regulations.

(5) A license, other than a special occasion license under section 7, must not be issued, renewed or transferred except to

- (a) a person who is a resident, normally resides in British Columbia and is not a minor,
- (b) a partnership, of which each member is a resident, normally resides in British Columbia and is not a minor, or
- (c) a corporation whose agent or manager selected by the corporation to carry on its business in the licensed establishment is a resident, normally resides in British Columbia and is not a minor.

(6) A special occasion license must not be issued except to a person who is not a minor and who

- (a) is a resident of and normally resides in British Columbia, or
- (b) although not a resident of British Columbia is approved for a special occasion license by the general manager.

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 license;

LIQUOR CONTROL AND LICENSING REGULATION

[includes amendments up to B.C. Reg. 213/2007, June 21, 2007]

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.