



**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 RSBC c. 267

Licensee:	Yu Can 201, 6390 Willingdon Avenue Burnaby, BC V5H 2V5
Case:	EH07-150
For the Licensee:	Rodoljub Braletic
For the Branch:	Sonja Okada
Enforcement Hearing Adjudicator:	Sheldon M. Seigel
Date of Hearing:	December 12, 2007
Place of Hearing:	Vancouver, BC
Date of Decision	January 18, 2008

INTRODUCTION

The licensee operates an establishment with a Food Primary Licence. The hours of operation indicated on FP No. 300460 are 9:00 a.m. to midnight, seven days per week. The establishment is located inside the premises known as Fantasy Gardens in Richmond.

In the early morning of September 29, 2007, a liquor inspector and four RCMP members attended at the establishment to do a licensed premise check. As a result of the inspection, the establishment was served with a contravention notice.

The inspector observed patrons seated in the establishment with open liquor in front of them beyond the time at which liquor must be cleared in accordance with the licence.

ALLEGED CONTRAVENTIONS

The branch's allegations and recommended enforcement action are set out in the Notice of Enforcement Action dated October 31, 2007. The branch alleges that On September 29, 2007, the licensee failed to clear liquor within ½ hour after liquor service hours contrary to s. 44(1)(b) of the *Liquor Control and Licensing Regulation* (Regulation).

RELEVANT STATUTORY PROVISIONS

Liquor Control and Licensing Regulation, BC Reg. 244/2002

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

- (b) food primary licensees must ensure that liquor is taken from patrons within ½ 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. Did the licensee fail to clear liquor within the time specified in the *Regulation*?
2. If so, is a penalty warranted and what is the appropriate penalty?

EXHIBITS

Exhibit No. 1: The branch's book of documents.

EVIDENCE

The liquor inspector testified that he is the responsible inspector for the licensed establishment and he is familiar with the unusual access issue with the restaurant. He indicated that the establishment is one of two businesses operating inside the facilities of the one-time attraction known as Fantasy Gardens. The other business is a small gift shop.

The inspector described the restaurant as an attractive small establishment, and Fantasy Gardens as a large castle-like enclosure surrounded by a wall and gate. He described the access to the licensed establishment as follows:

“It's a castle. It has everything but a moat. There is a wall surrounding the castle, and a large metal gate. The gate is locked. There is a layer of plexi-glass in front of the bars of the gate. Inside the gate there is a bar across it and the bar can be locked with a padlock. The gate is always locked. To gain access you must ring the buzzer. There is a sign that says Yu Can. You buzz and there is a camera by the gate and a monitor inside the restaurant. You buzz and [the licensee] can see you from inside and someone can come and let you in.”

The liquor inspector testified that on a previous occasion he attended at the front gate and buzzed the establishment and someone answered, but advised him that the licensee was not present. He did not do an inspection at that time, but rather called the licensee and set up an appointment to conduct an inspection.

The inspector indicated that the inspection on September 29, 2007, was initiated because the Richmond RCMP advised him that they believed the establishment was operating and serving liquor after hours.

The inspector also indicated that he was advised by one of the RCMP sergeants that the sergeant had approached the establishment previously to do an inspection, but could not gain access without announcing his presence. The sergeant did not do an inspection on that occasion.

On September 29, 2007, a four-member team attended the establishment to do a licensed premise check. The inspector and a representative from the City of Richmond approached the gate. Two more RCMP officers remained out of sight. The inspector used the buzzer. The licensee arrived at the gate within approximately one minute. The licensee escorted the inspector and the city representative through the gate and to the establishment. The inspector noted that there were approximately six patrons sitting at tables with no food or liquor. The licensee advised that a pizza was being prepared in the oven and liquor had long ago been cleared. While the inspector talked with the licensee, the city representative made his way back to the gate and allowed the two police officers entry. The police officers hid inside Fantasy Gardens. The liquor inspector and the city representative then left the premises, exited the gate, and drove to a nearby gas station. Approximately ten minutes later, the police inside Fantasy Gardens called to say that the patrons in the restaurant were drinking liquor. The inspector and the city representative returned to the establishment and were let in by the police officers.

Once inside the licensed establishment, the inspector noted that there were two pints of beer and a carafe of wine on the tables in front of the patrons. It was approximately 1:40 a.m.

The licensee has no history of enforcement action.

The licensee testified that on September 29, 2007, he removed liquor from the tables at the required time. Later, his wife's friends from Europe arrived and she put a pizza in the oven for them. When the pizza was ready, he supplied wine and beer to his guests. He said that he recognized that he made a mistake, and served liquor to his guests as though they were in his home. He acknowledged that there was liquor on the tables when the inspector arrived at 1:40 a.m. He apologized for the mistake.

SUBMISSIONS

The branch submitted that the evidence clearly establishes the contravention.

The branch submitted that having the gate locked is a public safety hazard, as police cannot get in on short notice if required, and unsupervised after-hours drinking increases the risk of drinking and driving offences, over-service, and the resulting risk to communities.

The branch also submitted that the locked gate prohibits the branch and the police from monitoring the licensee's activities, and it stands in the way of enforcement of the *Act and Regulation*.

Finally, the branch submitted that by having the gate locked, the licensee is contravening s. 73 of the *Regulation* which requires that the GM or her delegate be allowed to inspect the establishment at all reasonable times.

The licensee submitted that the branch gave him the liquor license with full knowledge of the circumstances existing at the facility and in particular the necessity of the locked gate during all business hours. He argued that it would be inequitable to require him to change that now for reasons that existed when he started the establishment.

He also submitted that requiring the gate to be unlocked during all hours of operation would mean that he has to close the business, as his landlord would not allow the gate to Fantasy Gardens to remain unlocked.

ANALYSIS AND DECISION

The testimony confirms that the licensee contravened s 41(1)(b) of the *Regulation*. Although it was not clear coming into the hearing that the licensee would concede to the contravention, his evidence confirms the testimony of the inspector in that regard.

I find the contravention of s. 41 (1)(b) has been proven.

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 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*. I am not bound by the maximums and may impose higher penalties when it is in the public interest to do so, and I am not bound to order the penalty proposed in the NOEA.

For this contravention, the branch recommended the penalty consist of the addition of a term and condition to the licence as follows:

The licensee must ensure that the front gate to the entrance of Fantasy garden remain open and unlocked while the licensee, staff and/or any other persons are inside Yu Can Restaurant allowing unobstructed entrance to police or to liquor inspectors to carry out their duties.

The inspector indicated that he chose the recommendation in order to “nip the situation in the bud”. He recognized that this was the first contravention alleged against the licensee, but thought the change was required in the interest of public safety and to allow the police and the branch to monitor the activities inside the establishment.

I find that the change in the licence terms and conditions is warranted in this instance. The recommended change is appropriate to give effect to the reasonable needs of the branch.

I accept the uncontroverted evidence that the branch licensed the establishment with knowledge of the locked gate. I also accept the evidence that the police and the inspector have been brought to the realization that both supervision of the establishment and enforcement of the terms and conditions of the licence cannot effectively be done with the licensee in exclusive control of the entry gate.

There is no evidence before me with respect to the decision to grant the licence and I have no details of any discussions with respect to the locked gate that may have occurred at that time. I am satisfied, however, that the evidence at this hearing discloses enough current concern about the activities that may be occurring after hours in the licensed establishment so as to represent a change in circumstances. The finding of this contravention supports this.

I find that the evidence of the liquor inspector supports the need to amend the existing terms and conditions in order to permit unannounced visits to the establishment for the purposes of conducting licensed premise checks.

The licensee submitted that requiring the gate to be unlocked would be tantamount to terminating his business, as his landlord would not allow the gate to be left unlocked. The licensee did not present evidence of a lease that speaks to the requirement to keep the gate locked, and he called no representatives of his landlord to attest to the requirement that the gate to Fantasy Gardens remain locked. I am unable on the evidence to establish that it is a condition of his lease that the gate remains open, or that he would be unable to satisfy his landlord's security concerns in another manner with the gate left unlocked.

Further, the licensee testified that he is currently on a month-to-month lease as has been the case for some time. I find that this testimony speaks against his submission that a change in terms and conditions is fundamentally inequitable and to his prejudice. A month-to-month lease indicates a willingness of at least one of the parties to end the tenancy on short notice. This situation allows the financial situation to respond to changes in circumstances.

ORDER

Pursuant to section 20(2) of the *Act*, I order the terms and conditions of the licence to be amended to include the following:

The licensee must ensure that the front gate to the entrance of Fantasy garden remain open and unlocked while the licensee, staff and/or any other persons are inside Yu Can Restaurant allowing unobstructed entrance to police or to liquor inspectors to carry out their duties.

The new terms and conditions shall become effective on February 15, 2008.

[ORIGINAL SIGNED]

Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: January 18, 2008

cc: Richmond RCMP
Liquor Control and Licensing Branch, Vancouver Regional office
Attn: Donna Lister, Regional Manager
Liquor Control and Licensing Branch, Vancouver Regional office
Attn: Sonja Okada, Branch Advocate