



**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:	Ring Holdings Ltd. dba Cadillac Ranch 1380 Second Street Prince George, BC V2L 3B5
Case:	EH07-158
For the Licensee:	Sam Manhas
For the Branch:	Olubode Fagbamiye
Enforcement Hearing Adjudicator:	Sheldon M. Seigel
Date of Hearing:	Written Submissions
Place of Hearing:	Victoria, BC
Date of Decision:	July 23, 2008

INTRODUCTION

This hearing was conducted by way of written submissions by agreement of the licensee and the general manager.

The licensee operates an establishment with Liquor Primary Licence No. 006484 in the City of Prince George, British Columbia. The documents and correspondence provided seem to indicate that at the time of the alleged contraventions, the current licensee was a third-party operator of the Cadillac Ranch. There is no dispute that the proper identities of the licensee, the licence, the establishment, for the purpose of this adjudication are as indicated above.

In the early morning of November 3, 2007 (business day of November 2, 2007), the RCMP was called to the establishment. There, members encountered the aftermath of a violent brawl involving a number of individuals who may or may not be associated with gang activity.

As a result of an exchange of information between the RCMP and the branch regarding the incident, the branch alleged that three contraventions had occurred.

The licensee replied to the allegations. Each of the branch and the licensee provided comprehensive evidence and submissions with respect to the alleged contraventions and the appropriateness of a penalty.

ALLEGED CONTRAVENTIONS

The branch alleges that the licensee contravened section 42(4) of the *Liquor Control and Licensing Regulation (Regulation)* by allowing liquor sold in the licensed establishment to be taken from the establishment.

The branch alleges that the licensee contravened section 42(3) of the *Regulation* by allowing employees to consume liquor in the licensed premises.

The branch alleges that the licensee contravened section 36(2)(a) of the *Liquor Control and Licensing Act (Act)* by allowing drunkenness, violent, quarrelsome, riotous or disorderly conduct in the licensed premises.

RELEVANT STATUTORY PROVISIONS

Liquor Control and Licensing Regulation, B.C. Reg. 244/2002

Consumption of liquor in licensed establishments

42(3) A licensee, and the employees of the licensee, must not consume liquor while working in the licensed establishment.

42(4) All liquor sold or served in a licensed establishment must be consumed there, and the licensee must not allow liquor, other than the following, to be taken from the licensed establishment:

(a) a bottle of wine that is unfinished by a patron and sealed by the licensee before being taken by that patron from the licensed establishment;

(b) liquor that is sold for consumption off premises in accordance with the Act, this regulation and the terms and conditions of the licence.

Notices of contravention

64(3) The general manager may hold an enforcement hearing to determine whether the licensee committed the alleged contravention and, if so, to determine what enforcement actions are to be taken against the licensee as a result...

Suspensions

66(1) If, in relation to a contravention, the enforcement actions specified under section 64(2)(a) or referred to in section 65(1) include a suspension, the period of the suspension must, [at minimum] fall within the range established for the contravention under Schedule 4.

Liquor Control and Licensing Act, [RSBC 1996] Chapter 267

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,

ISSUES (S)

1. Did the licensee contravene any of the provisions of the *Act* or *Regulation* as alleged?
2. If so, is a penalty warranted, and what is the appropriate penalty?

EXHIBITS

The materials provided for this determination include the following:

- A bound book of documents provided by the branch.
- A letter from the branch to Ring Holdings Ltd. dated May 14, 2008, listing the documents the branch intends to send to the adjudicator. I note that each of the documents listed in that letter is in fact before me. I note also that item #5 on that list refers to another establishment. This is clearly an administrative error, as the relevant licensed establishment is the Cadillac Ranch. The named staff is indeed the staff of the Cadillac Ranch. This is

- confirmed by reference to the statements and their corresponding reference to the alleged incidents.
- Four letters from the branch to Ring Holdings, dated April 24, 2008, May 7, 2008, June 2, 2008, and July 2, 2008.
 - A letter from the branch advocate to the adjudicator, dated June 19, 2008.
 - A letter from the branch to the adjudicator dated July 4, 2008.
 - Copies of two emails dated June 12, 2008, and July 4, 2008 between the branch and the licensee.
 - An undated handwritten authorization dated received June 2, 2008.
 - A letter from the licensee to the branch dated May 26, 2008, containing the licensee's submissions to each of the contraventions.

SUBMISSIONS

Section 42(4) of the *Regulation*

The branch submits that the licensee failed to maintain door control, which allowed patrons to exit the premises with open liquor in hand. This aggravated the police's ability to control the crowd that had spilled out into the street as a result of a large fight inside the premises.

The licensee submits that there was a doorman in place to prevent liquor from being taken from the establishment in accordance with appropriate policies and procedures, but that the doorman left his post to assist in breaking-up a significant violent incident that had suddenly erupted in the establishment.

Section 42(3) of the *Regulation*

The branch submits that the licensee and his manager were unaware that staff could not consume liquor inside the licensed premises while on duty, and the staff did so consume.

The licensee submits:

The licensee does not allow its employees to consume alcohol while at work. Employees are aware that any consumption of alcohol while on duty will result in disciplinary action or termination. The management does acknowledge, however, that they allowed the bouncers to have one staff drink after their shift. This was a poor decision by the management and the staff have since refused all employees a drink after their shift.

Section 36(2)(a) of the *Act*

The branch submits that the licensee must take positive steps to prevent violent conduct in its establishment. The Cadillac Ranch has been the site of a number of fights. Two rival gangs inside the establishment on November 3, 2007, precipitated the violence. Later that morning the door staff allowed gang members, and one of the assailants back into the establishment.

The licensee submits that there was insufficient staff in the establishment to handle the combative gang members, but that they did not expect the situation to occur and could not have planned for it. They acknowledge that the staff did not prevent the assailants from re-entering the premises after they had exited, due to fear of retribution from the threatening gang members and the intimidating conduct of the assailants.

ANALYSIS AND DECISION

Section 42(4) of the *Regulation*

The provision dictates that the licensee “must not allow” liquor to be removed from the establishment. A contravention of that section requires a finding that the licensee allowed the liquor to be removed.

The licensee’s submissions are framed in the context of due diligence. In order for due diligence to be relevant, a *prima facie* finding of a contravention must be made. It is to that contravention that due diligence is a defence.

I find the relevant facts to be that a doorman was monitoring the door and at his post when a violent fight broke out elsewhere in the establishment. The doorman left his post to attempt to break-up the fight. While he was absent from his post, one or more patrons exited the establishment with liquor in hand.

Although the result of the doorman’s actions may have contributed to difficulties outside of the establishment, as submitted by the branch, that contribution has not been established on the balance of probabilities.

The evidence does establish on the balance of probabilities that at least one doorman pulled at least one fighting patron off another. Further, there is evidence that a doorman intervened when a patron was about to smash a bar stool over the head of an already unconscious patron. These actions likely prevented more serious injuries.

There is insufficient evidence to determine what contribution, if any, the doorman who abandoned his post made to breaking-up the fight.

I find the evidence establishes that the doorman acted reasonably when he left his post.

My use of the word *reasonably* is not intended to address matters of diligence, but rather to explain my conclusion that the contravention did not occur as alleged. I find that the licensee cannot be said to have allowed liquor to be removed.

Section 42(3) of the *Regulation*

The provision dictates that employees of a licensee must not consume liquor while working in the licensed establishment. A contravention of that section requires an employee, consumption, and that the event happens while working in the establishment.

The facts are uncontroverted. Employees were allowed by management to have a drink after finishing their shift. The licensee has acknowledged a mistaken understanding of the prohibition and has since implemented a full prohibition of the practice.

I find that the components of the contravention are all present. The end of a shift does not equate to *no longer working*. This is consistent with the language of the legislation and the clear intent of the legislature. Without an intervening event, such as leaving the establishment, changing clothes and occupying only the spaces usually occupied by patrons, or another clear visualization of a change in status from employee to patron, an employee who finishes a shift is still *working* for the purposes of this section. In order to maintain authority and control over the establishment and its patrons, an employee who could be seen to be on duty may not consume liquor in the establishment.

I find the contravention did occur. The subsequent correction of the misunderstanding does not impact on this finding or provide a defence.

A defence of due diligence cannot be predicated on competent management of incorrect ideals. I find the controlling mind of the licensee invited the events that constitute the contravention. An erroneous understanding of the prohibition does not excuse the behaviour. I find insufficient evidence of due diligence to constitute a defence to the finding of a contravention.

Section 36(2)(a)

A finding of this contravention requires that the licensee or an employee authorize or permit drunkenness or violent, quarrelsome, riotous or disorderly conduct (*the conduct*) in the licensed establishment.

I note that there is little evidence before me as to the source of the apparently prevalent intoxication, and no submission with respect to the definition or claim of *drunkenness*.

The branch submitted that the licensee “must take positive action to prevent these activities and stop them if they occur.” The branch proposes that there is a history of fights in the establishment, two rival gangs were in the establishment, and the door staff allowed one of the assailants “free and unobstructed entry back into the cabaret” after the fight broke out.

The evidence is insufficient to establish on the balance of probabilities that the history of violence in the establishment is an indication of the licensee authorizing or permitting *the conduct*.

The evidence is insufficient to establish on the balance of probabilities that the presence of two rival gangs in the establishment at the relevant time is an indication of the licensee authorizing or permitting *the conduct*.

The evidence does disclose that the licensee's employees allowed one or more of the assailants to return to the licensed premise after they had left. There is some (but insufficient) evidence that the assailants thereafter contributed to the violence.

The branch says that the employees were obligated to take positive action to prevent the *conduct*. I interpret that to mean that the employees had an obligation to keep the assailants out once those assailants had left or been removed from the premises.

I agree, but only to a limited extent. I find that the actions that can be demanded and therefore expected of the employees must be reasonable actions. An employee cannot be obligated to put himself in danger or to be unafraid. I accept the evidence in the form of written statements that the doormen were fearful and intimidated by the assailants who demanded re-entry. I accept the licensee's submission that allowing the assailants to return was reasonable under the extreme circumstances. The assailants were believed to be gang members. They had demonstrated extreme violence only moments before. They demanded entry, and verbally and physically displayed their commitment to gaining entry. I am satisfied that under the circumstances, the assailants would have gained entry with or without the cooperation of the doormen. The only difference that positive action would have produced at that time would have been a higher potential for injury to the doormen, and a more enraged group of gang members.

I find that the evidence is insufficient to establish on a balance of probabilities that the licensee or its employees authorized or permitted *the conduct*.

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 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 minimums set out in Schedule 4 of the *Regulations*. I am not bound to follow the maximums set out in that Schedule.

I have found only a contravention of section 42(3).

The branch recommends a two (2) day suspension.

This is a first contravention. The range of penalty for a first contravention of section 42(3) of the *Regulation* in accordance with Schedule 4 is one (1) to three (3) days suspension, and/or a \$1,000-\$3,000 monetary penalty.

The terms of the licence are enforceable. It is the sole responsibility of the licensee to ensure compliance with these terms while operating the establishment. I find this licensee's misunderstanding of the prohibition to be an inadequate answer to the allegation and an inadequate reason to forgive a penalty.

I find a penalty is warranted, and a two (2) day suspension appropriate.

ORDER

Pursuant to section 20(2) of the *Act*, I order a suspension of the Liquor Primary Licence No. 006484 for a period of two (2) days to commence at the close of business on Thursday, August 14, 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 *Regulations*). I direct that the liquor licence be held by the branch or the Prince George RCMP from the close of business on Thursday, August 14, 2008, until the licensee has demonstrated to the branch's satisfaction that Cadillac Ranch has been closed for two (2) business days.

Original signed by

Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: July 23, 2008

cc: Prince George RCMP

Liquor Control and Licensing Branch, Surrey Regional Office
Attention: Michael Clark, Regional Manager

Liquor Control and Licensing Branch, Surrey Regional Office
Attention: Olubode Fagbamiye, Branch Advocate