



**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:	D T R Ventures Ltd. dba Harrison Crossroads Inn 5936 Lougheed Hwy Agassiz, BC V0M 1A0
Case:	EH08-002
For the Licensee:	Naresh Khare, Rita Khare
For the Branch:	Tania Cogan
Enforcement Hearing Adjudicator:	Sheldon M. Seigel
Date of Hearing:	July 14, 2008
Place of Hearing:	Surrey, BC
Date of Decision:	July 23, 2008

INTRODUCTION

The licensee is a B.C. corporation and owns a hotel and bar in the city of Agassiz, in the District of Kent, British Columbia. The bar operates under Liquor Primary (LP) Licence No. 009862. The terms of the licence allow for adult entertainment and exotic dancers.

The branch alleged that the licensee contravened the *Liquor Control and Licensing Regulation*, B.C. Reg. 244/2002 (*Regulation*) on November 24, 2007, (the business day of November 23, 2007), by allowing liquor to be removed from the premises.

The branch commenced enforcement proceedings by way of Notice of Enforcement Action (NOEA) on December 17, 2007, following a Licensed Premises Check (#A125451).

Mr. Khare and Mrs. Khare are the representatives of the licensee. At the time of the alleged contravention, they were the sole shareholders and management of the licensee. They actively operated the bar and hotel.

The enforcement process was complicated by repeated failures of Mr. Khare and Mrs. Khare to attend scheduled meetings, and they claim that they did not receive documents posted to their usual business location.

Some of the failures to attend were attributed to medical issues encountered by Mr. Khare.

In June 2008, Mr. Khare sold two thirds of the shares of the licensee to a third party. At the date of the hearing, Mrs. Khare owned one third of the shares of the licensee and still actively managed the bar and hotel.

Mrs. Khare, and Mr. Khare on her authority, spoke on behalf of the licensee at the hearing.

The evidence disclosed a much more pressing issue with a significant impact on public safety. From the opening statements, the hearing was a public disclosure of gang related violence and human tragedy.

ALLEGED CONTRAVENTIONS

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

The alleged contravention is being treated as a second contravention by the branch for the purposes of penalty. The minimum range of penalty for a second contravention is three (3) to six (6) days suspension and/or a monetary penalty of \$1,000 - \$3,000 (item 29, Schedule 4 of the *Regulation*).

RELEVANT STATUTORY PROVISIONS

Liquor Control and Licensing Act, [RSBC 1996] chapter 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;

(b) the conviction of the licensee of an offence under the laws of Canada or British Columbia or under the bylaws of a municipality or regional district, if the offence relates to the licensed establishment or the conduct of it;

(c) the persistent failure to keep the licensed establishment in a clean and orderly fashion;

(c.1) a failure by the licensee to take reasonable measures to ensure that the operation of the establishment is not contrary to the public interest and does not disturb persons in the vicinity of the establishment;

(d) the existence of a circumstance that, under section 16, would prevent the issue of a licence;

(e) the suspension or cancellation of a municipally, regionally, provincially or federally granted licence, permit or certificate that the licensee is required to hold in order to operate the licensed establishment.

(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:

(a) [Repealed 1999-36-13.]

(b) impose terms and conditions on the licensee's licence or rescind or amend existing terms and conditions on the licence;

(c) impose a monetary penalty on the licensee in accordance with the prescribed schedule of penalties;

(d) suspend all or any part of the licensee's licence in accordance with the prescribed schedule of licence suspensions;

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

(f) order the licensee to transfer the licence, within the prescribed period, to a person who is at arm's length from the licensee.

(4) On taking action against a licensee under subsection (2), the general manager must:

- (a) provide the licensee with written notice of the action in accordance with the regulations;
- (b) set out in the notice the reasons for taking the action;
- (c) set out in the notice the details of the action including:
 - (i) if a monetary penalty is imposed, the amount of the penalty and the date by which the penalty must be paid, and;
 - (ii) if a suspension is imposed, the period of the suspension and the dates on which the suspension must be served.

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

Consumption of liquor in licensed establishments

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 license.

Notices of contravention

64(1) If an inspector forms the opinion that a licensee has committed a contravention, the inspector must provide written notice to the licensee that the inspector is of the opinion that the licensee has committed a specified contravention.

(2) If, after considering the alleged contravention, the inspector proposes that enforcement actions should be taken against the licensee in response to that alleged contravention, the inspector must, after forming that opinion, provide written notice to the licensee:

(a) specifying which enforcement actions the general manager proposes to take against the licensee should the licensee agree under subsection (3) that the licensee has committed the contravention, and;

(b) notifying the licensee that, unless the licensee provides a notice of waiver in accordance with subsection (3);

(i) the general manager will determine whether the alleged contravention occurred and the enforcement actions, if any, that are to be taken in relation to that alleged contravention, and;

(ii) an enforcement hearing may be scheduled for that purpose.

(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, unless, within 14 days after the date of the notice referred to in subsection (2), or within such longer period as the general manager considers appropriate, the licensee provides to the general manager a notice of waiver, in form and content satisfactory to the general manager, by which the licensee expressly and irrevocably;

- (a) agrees that the licensee has committed the contravention;
- (b) accepts the specified enforcement actions;
- (c) waives the opportunity to have an enforcement hearing on the matter, and;
- (d) agrees that the finding of contravention and the specified enforcement actions will form part of the compliance history of the licensee.

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.

ISSUES

The licensee denies that the alleged contravention occurred. The issue in this respect is whether the licensee contravened section 42(4) of the *Regulation*, whether a penalty is required under the circumstances, and if so, what penalty is appropriate.

The second issue is whether after hearing the evidence, a penalty significantly in excess of that recommended by the branch should be applied.

A sub-issue is whether awarding a penalty significantly in excess of that recommended by the branch would offend the principles of natural justice, and in particular, the right of the licensee to notice of the case against it.

EXHIBITS

Exhibit No. 1: The branch presented a Book of Documents in two volumes.

Testimony was provided by Mr. Khare, Mrs. Khare, a corporal with the RCMP detachment in Chilliwack, and a liquor inspector.

UNCONTROVERTED EVIDENCE

The licensee took over the licence in 2005, approximately two and one half years ago.

The licensee signed a waiver on September 24, 2007 (exhibit #1, book 2, tab 12) acknowledging that a contravention of the same section (42(4)) of the *Regulation*) occurred on September 13, 2007. It served a two day suspension and agreed that it would be an additional term of its licence that it will “maintain sufficient door staff to control the establishment.” Therefore, this is a second contravention of that section within 12 months.

Between December 25, 2006 and September 12, 2007, a period of less than nine months, the police were called to the establishment twenty-nine times. At least nine of those calls were related to violent fights, patrons acting in concert with significant levels of drugs or alcohol, property damage, and physical injury. These violent incidents occurred inside and outside the bar.

In one fight in the bar, patrons used broken pool cues and chairs as weapons, and the fight was broken up when other patrons entered the establishment with an axe and two hunting rifles. The axe was not swung and the guns were not discharged.

On October 21, 2007, a group of persons, many, if not all of them patrons, attacked an individual with baseball bats, in the establishment's parking lot. The licensee's employee dragged the patron/victim into the bar and locked the door. The employee believed that absent his action, the bat-wielding attackers would have killed the patron.

In each of the reported incidents of violence, none of the licensee's employees, patrons, or the victims chose to cooperate with the police or invite any police involvement. None of the victims filed complaints with the police or provided names or descriptions of their attackers. No witnesses came forward.

Currently, a patron and victim of a beating that took place on January 8, 2008, in the establishment's parking lot is missing and presumed dead (by police).

Intoxication was cited as a factor in many of the fights.

Since taking over the licence, the licensee has been served with six contravention notices, three Notices of Enforcement Hearings and has attended six compliance meetings. On one occasion the licensee refused to allow a police inspection of the licensed establishment.

A current enforcement action against the licensee is underway for operating contrary to public purpose (failure to take responsibility for venue). It has been adjourned due to claims of health issues prohibiting Mr. Khare from attending.

Drug dealers and gang members from at least three well-established gangs and criminal organizations known to police frequent the establishment.

Gang members of each of the gangs have been known to attend the establishment wearing body armour and bullet-proof vests.

Mr. Khare knows ninety percent of the members of one of the gangs (a known criminal organization). He will not refuse alcohol service to them.

Each of the RCMP, the City of Chilliwack, and the District of Kent, have voiced concern to the branch over the manner in which the establishment is run and the negative impact that the establishment and its patrons have on the public and the surrounding communities.

The licensee has surveillance video installed in the bar. The branch repeatedly requested production of surveillance video for particular occasions in furtherance of its investigations. No surveillance video has been produced to date. The licensee said that seventeen gang members associated with the supply of exotic dancers attended at the establishment and threatened to shoot out the video cameras and kill Mrs. Khare if surveillance video was turned over to the branch. The RCMP advised Mrs. Khare to leave town for a few days to “allow things to cool down.”

On one occasion, a gang member threatened the liquor inspector. Mr. Khare defended the inspector and assured the inspector that he would protect her.

The inspector believes that revenues produced by the licensed establishment (as indicated by liquor purchases made by the licensee) cannot be supporting the establishment's expenses. The branch repeatedly requested disclosure of financial records in order to further its investigation. No financial records have been produced to date.

On June 28, 2008, the liquor inspector attended the licensed establishment. She found a group of known gang members celebrating a memorial for a deceased member from Chilliwack. The new licensee shareholder (to whom Mr. Khare sold the shares) was present, and the local gang leader was “running the establishment.” The licensee discussed an early closing time with the gang

leader, who offered the inspector \$5,000 cash to “become a partner and let them stay for the night.” The cash was produced by the gang leader and refused by the inspector.

OTHER EVIDENCE

The police corporal testified that he was in his car outside the establishment and watching the front door for some time when he observed the contravention. He said:

A gentleman walked out of the front door with a bottle of Budweiser beer. I was quite shocked because he didn't even do anything. I looked at him from my marked car and he looked at me and walked past with the beer bottle. I told him and he was shocked that he couldn't take the beer outside. First I identified him, and then I seized the beer and then went back in. I walked up to [Mrs. Khare]. It was 12:00 midnight - business day of the 23rd, turning to the 24th. I said someone just walked out with beer, and she said he must have put it under his jacket. I asked who she had manning the door and she pointed in a direction - there was no person there. I said you need someone on the door. She said she had someone but she could not produce anyone. The beer was not under his jacket when the male walked out with the beer. No individual staffing the door was identified that night. I saw nobody staffing the door.

Mrs. Khare testified that there are door people working in the bar. She provided no further details. She also said that on the date of the alleged contravention, she had expelled the patron with the beer bottle and the police officer just happened to be outside the door when the patron exited. The patron had entered with the beer and he was told to leave immediately.

Mr. Khare testified that he has not complied with the new condition (to provide adequate door staff) that he agreed to when Mrs. Khare signed the waiver on behalf of the licensee. He said he has tried, but been unsuccessful.

Mr. Khare testified that he and his staff made some of the calls to the police about violence at the bar. He argued that those calls should not be interpreted against his interests, as he was doing the right thing. He also said there are no drugs in the hotel or bar, no prostitutes in the hotel or bar, no guests allowed in the hotel rooms, and:

"The patrons create a problem, not us. What can we do? I do my best. I put my life on the line."

The liquor inspector testified that she has seen no evidence of increased or any door staff on several visits to the establishment following the date the waiver was signed. She submitted that the licensee has been consistently resistant to putting adequate door staff on duty and has not complied with its obligation to provide door control for the bar.

The inspector testified that she believes the public is not safe in or around the establishment and that serious harm will come to a member of the public if there is no significant change made to the operation of the bar. She said an incident resulting in death of a member of the public is imminent.

She said that she has discussed the licensee's non-compliance with Mr. Khare and Mrs. Khare 15 to 20 times and has seen no changes at all to the operation of the bar, nor has she noted any indication that they are planning to comply with the terms of their licence.

The inspector also testified that she recommended a six day suspension because it is the top end of the minimum range for a second contravention of section 42(4) of the *Regulation*. She said her decision is consistent with branch policy for a recommendation. She added that she does not believe anything short of six days suspension will even get the notice of the licensee, and that she believes no penalty will result in voluntary compliance.

The inspector said that the history of this licensee's past contraventions is misleading:

Non-compliance has been escalating since the licensee took over in December '05. It was officially in Jan '06 though. There have always been some problems, but they began to escalate by violence starting on weekends, then on any day of the week - to the point that at the latter part of last year there was an incident of some major degree weekly. [The incidents] are violence, intoxication - contributing factor - the nature of the events and the type of clientele are such that the police are not able to take the time to gather the evidence. Lesser contraventions of minors and intoxication are being overlooked as there are beatings and weapons and [the police] couldn't take time to deal with the other infractions. Lots more than the history shows. More than five. They have been for safety things, violent quarrelsome conduct, permitting intoxicated patrons to remain, failure to supply documents and operating contrary to public interest.

The inspector testified that she notified the licensees that they could lose their licence if they continued to operate as they are:

I have told [Mr. Khare and Mrs. Khare] that if they continue to operate this way, I would have to take enforcement action and this is going to result in them serving a suspension of the licence or worse. I told them it is going to take a suspension, or end up in them loosing their licence if they don't change the way they operate.

Finally, the inspector testified that she wears soft body armour when she attends the licensed premises.

ANALYSIS AND DECISION

I accept the evidence of the police corporal that he was outside the establishment for some time before the patron walked out with a beer bottle in hand at midnight on November 24, 2007. His testimony was objective, complete with reasonable detail, and supported by his notes. To the contrary, the contention that Mrs. Khare saw the man enter and sent him out is inconsistent with the officer's observations and the reaction of the patron (as described by the officer). Mrs. Khare did not seem to take the contravention seriously and did not demonstrate any particular effort to support her position on the facts surrounding the alleged contravention.

I find the liquor was taken from the licensed establishment as evidenced by the testimony of the police witness.

I find that the licensee allowed the liquor to be taken from the establishment by having inadequate, or no door staff controlling ingress and egress through the doorway. The licensee told the officer that she had door staff, and pointed in the general direction of the door, but there was nobody there. She tried to point out a door person for the police officer, but could not. The history of not having anyone monitor the door, and the observations of the liquor inspector all support my finding that [at midnight of November 24] the licensee did not have supervision of the door such that would prevent liquor from being taken out of the establishment.

I find that the licensee allowed liquor to be taken from the licensed establishment contrary to section 42(4) of the *Act*.

I find that the contravention occurred as alleged.

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.

While the branch wishes to have voluntary compliance, it has the mandate to assure compliance through enforcement action if required to do so.

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 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 *Regulation*. 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 NOEA.

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.

The penalty for a first contravention of this nature is a range of a one (1) to three (3) days suspension and/or a monetary penalty of \$1,000 - \$3,000.

The penalty for a second contravention of this nature is a range of three (3) to six (6) days suspension and/or a monetary penalty of \$1,000 - \$3,000.

This is the second contravention within the past 12 months.

The branch recommended a six day suspension and submitted the following reasons for the recommended penalty:

It is felt that a suspension is warranted, as it does not appear the licensee has taken steps to address this matter, even though they have served a suspension for this type of contravention within two months of this occurrence. It is necessary to emphasize the importance of this matter. The aim of the policy restricting the area for liquor consumption is to protect public safety and community standards. There have been incidents of liquor removed from the establishment on previous occasions, however, activity and actions at the establishment, usually in the form of serious fights and assaults, have prevented [police] members from dealing with this issue as they have had concerns for their safety while dealing with more major issues.

The establishment served a two-day suspension in October 2007 for this same contravention. At that time, they also agreed to a T&C to have sufficient door staff on duty to be able to control the establishment. At the time of this occurrence, the corporal noted that there was no door staff on duty and no one appeared responsible for controlling the actions of this patron.

This establishment has a history with lack of control in the form of violence, assaults and intoxication, during which liquor has been noted outside the establishment. The absence of staff at control points makes it easy for patrons to remove liquor from the licensed area.

I find the branch's recommended penalty for the contravention of section 42(4) falls far short of what is required to obtain voluntary compliance with the applicable *Act, Regulation*, and licence terms and conditions.

I find the evidence makes it perfectly clear that the licensee is not in control of the establishment or its patrons.

I find it a direct result of that lack of control, that liquor may come and go through the doorway unchecked. I also find it a direct result of that lack of control that violence, whether inspired by alcohol, drugs, or gang-related issues, occurs in the licensed establishment or its parking lot.

The public should not be exposed to the very real possibility of harm inside or outside of an establishment because the licensee has the benefit of a liquor licence.

The liquor inspector should not be exposed to the very real possibility of harm, inside or outside of an establishment, as a result of her duty to monitor that establishment for the benefit of the public.

At the hearing, the licensee acknowledged receiving the NOEA dated January 31, 2008. Page 4 of the NOEA sets out the procedures for enforcement as follows:

THE PROCEDURES

An enforcement hearing may be scheduled to determine whether the alleged contravention(s) occurred and the appropriate penalty, if any, that should be imposed. You can contest the alleged contravention(s) and/or the proposed penalty at the enforcement hearing.

Please Note: *If a penalty is warranted, the General Manager may:*

- *Impose a suspension of the liquor licence for a period of time;*
- *Cancel a liquor licence; (emphasis mine)*
- *Impose terms and conditions to a licence or rescind or amend existing terms and conditions;*
- *Impose a monetary penalty; or*
- *Order a licensee to transfer a licence.*

An enforcement hearing can be time consuming and costly for all participants. If you sign a waiver, there will be no need for an enforcement hearing for the alleged contravention(s) or the lesser but included contravention(s). By signing the waiver, you expressly and irrevocably:

- *Agree that the contravention(s) occurred,*
- *Accept the proposed penalty in this letter,*
- *Waive the enforcement hearing, and*
- *Agree that the finding(s) of contravention(s) and the penalty will form part of your compliance history as a licensee.*

Generally, the waiver must be signed within 14 days of the date of this letter. If you decide you want to sign a waiver, please contact me as soon as possible to arrange an appointment.

I have indicated that I find the recommended penalty falls far short of what is required to obtain voluntary compliance. I am concerned, however, that the awarding of a penalty that represents a significant increase to that recommended may bring with it notice issues.

The licensee is entitled to notice in accordance with s. 20 of the *Act* and s. 64 of the *Regulation*. I find that the notice described above satisfies the statutory and regulatory requirements, I am not so confident, however, that the notice satisfies the requirements of natural justice.

The licensee came to this hearing, prepared to defend against a contravention of s. 42(4) of the *Regulation* for allowing liquor to be taken from the establishment. The licensee came to the hearing prepared to defend against a branch-recommended six day suspension. She came without counsel.

Although on the face of the documentary evidence, I believe the licensee had notice of the possibility of significant consequences and a penalty in excess of that recommended by the branch, the directing mind of this licensee did not impress me as an individual who would understand or take that documentary notice seriously.

Accordingly, I find that based on the unique facts of this situation, it would be arguable that the licensee did not have *defacto* notice of the possibility of a significantly increased penalty when he attended this hearing. Natural justice and the branch's administrative process would, therefore, not be served by so awarding.

I find a penalty is warranted. I find that the evidence, particularly that of the liquor inspector, clearly supports an immediate suspension of the licence for six days.

ORDER

Pursuant to section 20(2) of the *Act*, I order a suspension of the Liquor Primary Licence No. 009862 for a period of six (6) business days. "Business day" means a day on which the licensee's establishment would normally be open for business (section 67 of the *Regulations*). I understand that the licensee is currently closed and undergoing renovations. Therefore, the general manager will select the days for the suspension once the licensee has demonstrated, to the general manager's satisfaction, that the establishment is once again open and operating.

Original signed by

Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: July 23, 2008

cc: RCMP Agassiz Detachment

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

Liquor Control and Licensing Branch, Vancouver Regional Office
Attention: Tania Cogan, Branch Advocate