



**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:	Mint Corner Holdings Ltd. dba Hotel Rendezvous 271 Victoria Street West Kamloops, BC V2C 1A5
Case:	EH08-062
For the Licensee:	Sheldon Tate
For the Branch:	Tania Cogan
Enforcement Hearing Adjudicator:	Sheldon M. Seigel
Date of Hearing:	September 3 & 4, 2008
Place of Hearing:	Kamloops, BC
Date of Decision:	September 29, 2008

## INTRODUCTION

The Rendezvous Hotel is a small two-storey free standing building a short walk from the downtown shopping area of Kamloops. The hotel does not have a traditional lobby as might be expected in a larger establishment, but rather is built around a bar that appears to be the primary business enterprise of the facility. The bar offers exotic dancers as entertainment. The bar may be entered from the street frontage or from the parking lot, which is part of the facility and flanks the building on two sides. There is a hall adjacent to the bar. The hallway allows access to the office and the staff washrooms, as well as some of the hotel rooms. There are eleven rooms available for rent in the hotel, some of which are on the main floor, and some of which are accessed by a narrow staircase to the second floor, which is situated along the hallway.

The bar is operated pursuant to liquor primary licence No. 015944 that authorizes the service of liquor between the hours of 11:00 am to 1:00 am Monday through Saturday and 11:00 am to Midnight Sunday. The licensee is a British Columbia Corporation, owned and operated by Christine Rae. The licence is, as are all liquor licences issued in the province, subject to the terms and conditions contained in the publication *Guide for Liquor Licensees in British Columbia*.

On April 23, 2008, a team of RCMP entered the premises in anticipation of breaking up a drug processing and distribution operation. They had a court-authorized search warrant. The members found a total of approximately fifty (50) grams of cocaine on the person of Ms. Rae and in the office. They also found a set of digital scales, a water pipe consistent with smoking marijuana if not crack cocaine, and a number of record-keeping books, all of which were in the office. As a result of the evidence found, multiple drug charges were laid against Ms. Rae. She ultimately pleaded guilty to possession of a controlled substance and was convicted and sentenced to six and a half months in jail and

a period of probation thereafter. Though the charges included possession for the purpose of trafficking, the convictions were for simple possession.

## **ALLEGED CONTRAVENTIONS**

As a result of the events of April 23, 2008, the local liquor inspector issued a Contravention Notice to the licensee, a Notice of Enforcement Action. The document alleged a contravention of s. 36(2)(b) of the *Liquor Control and Licensing Act* (Act). That section makes it a contravention to permit an unlawful activity to occur in the establishment. The branch notified the licensee that it intended to recommend cancellation of the licence as a result of the alleged contravention.

An enforcement hearing was held at Kamloops on September 3, 2008. Despite her incarceration, Ms. Rae appeared at the hearing, escorted by a corrections officer. She was represented by counsel.

## **RELEVANT STATUTORY PROVISIONS**

### ***Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267 (the Act)***

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

(b) any unlawful activities or conduct, or...

## **EXHIBITS**

**Exhibit No. 1:** Branch's modified book of documents.

**Exhibit No. 2:** Licensees hand drawn layout of the Rendezvous Hotel.

## EVIDENCE

The branch submitted a book of documents and sought it to be marked as evidence. The licensee's counsel objected to several items in that book of documents. Following submissions, several changes were made to the contents of the book of documents. In its final form, it appears as Exhibit No. 1.

Five RCMP officers testified at the hearing. Officers who were involved in the search and arrest on April 23, 2008, described the office as protected by an alarm system and containing: a police radio scanner operating on the RCMP frequency, multiple surveillance monitors showing all areas of the building that it was necessary to transit to reach the office, multiple record-keeping books for drug transactions known as Score sheets, a shotgun, a safe containing ammunition, digital scales of the type used for measuring cocaine, storage shelves containing 50-100 bottles of liquor, a zip-lock bag in a camera case containing 34 grams of cocaine and a baseball cap the wording on which is associated with a local gang. Regarding the 34 grams of cocaine, one officer indicated that amount was consistent with trafficking but could be attributable to a single heavy user. Another officer said 50 grams (the total found on the occasion, including that in her purse - which was not brought into the office) is much more likely for the purpose of trafficking than for personal use. The officers identified each of the documents in Exhibit No. 1 relating to the police investigation.

One officer testified that cocaine is a controlled substance and possession is illegal pursuant to s. 4(1) of the *Controlled Drug and Substances Act*, Schedule 1, p 31, R.S.C. 1996, c. 19.

One officer testified that the Rendezvous Hotel bar is known for drug trafficking, gang activity, violence, assaults, and other criminal activities - both in the parking lot and inside the bar and hotel. He testified that the criminal activities at the Rendezvous are far in excess of the community norm or the standards of other bars in Kamloops.

One officer provided evidence that a known local gang leader worked for Ms. Rae in the bar.

One officer concluded based on his experience and knowledge that Ms. Rae is trafficking cocaine from the business office, that the hotel portion of the business is home to many people with extensive criminal records and is the subject of drug sales and the movement of stolen property, and the surveillance equipment was used to provide notice to the occupant of the office that the police were on the premises or about to enter.

An officer testified, "Warrant information is sealed and without providing too much information of confidential sources, the judicial authorization was based on information that was co-corroborated, that quantities of drugs were being brought into the office. At times they were cooked in the office, and that drugs were then distributed from the office."

There was no evidence that the firearm and ammunition were illegal or involved in the alleged drug activity.

One officer testified that he had compiled statistical evidence from RCMP files between 2006 and 2008. He said that during that time, there were 133 police reports relating to the Rendezvous Hotel and that 93 of those were activated by calls for service, the remainder being self generated police files (Exhibit 31, tab 8). Of those reports, only two resulted in criminal charges. The officer opined that charges were laid in few of these reports because typically the victims at the

Rendezvous hotel do not want to cooperate with a police investigation. He also testified that of the five employees at the hotel at the time of his investigation, two had criminal records and were in the process of being charged with criminal offences. One of those was a drug offence. Over that same period of time, 29 people interviewed during police activity indicated that their residence was in the Rendezvous Hotel. Twenty-eight of those individuals had criminal records. The police identified four of the individuals as *prolific offenders*, and one as "entrenched in a criminal lifestyle." In total, those identified to police as residing at the Rendezvous Hotel during that time frame had 729 criminal convictions for an average of 26 convictions per resident.

The liquor inspector testified that he has been the local inspector responsible for the Rendezvous since May 2001. He said that Ms. Rae was always very cooperative with him, but she always seemed to know when he was in the building even though his checks were not announced. He said that Ms. Rae ran the licensed establishment from her office down the hall, which also serves as the liquor storage area for the hard liquor bottles. He said that in his experience it was not unusual for an office to double as a liquor storage area in a liquor primary establishment. He also said that he was of the opinion that Ms. Rae was often using illicit drugs - "high on coke or a derivative thereof" because of the symptoms she was displaying when they spoke. He listed those symptoms and supported his conclusions with a description of his background and training in drug observation. On one occasion he asked her if she had a drug problem and she said she did not.

The liquor inspector also testified that the surveillance system at the establishment was different than most with which he is familiar because it seems to focus more on who is coming in to the office than what is going on in the bar and it is more extensive than others in Kamloops. He also indicated he sees much more cash in the establishment than in any other in his area, including "stacks of cash maybe five or six inches high" sitting around the office on a

regular basis. He also said “on a hot day in Kamloops if you wanted to find a criminal or a member of a criminal organization you would go to the Rendezvous Hotel.”

The inspector said that on a couple of occasions the RCMP complained to the branch that the police were denied access to the office at the Rendezvous Hotel. He indicated that as a liquor storage area, it is a contravention of the *Act* to deny police access to it as it is part of the licensed establishment. He did not pursue those contraventions because he thought the police evidence was insufficient to establish a contravention with certainty. Although he suspected the establishment was operating contrary to a public purpose - in associating with known gang members and being involved in the illegal drug trade - he was not comfortable pursuing that allegation with the evidence he had prior to the police search and resulting charges against Ms. Rae. Once he reviewed the police evidence relating to the charges, he felt he was obligated to act on enforcement. He said, “There were drugs, scales, score sheets, cash - put that together with large amounts of cash, surveillance, and I would have to act. This was in the storage area of a liquor primary establishment.”

The inspector indicated that he has observed drug deals made in the parking lot, drinking in the parking lot, and violence in the parking lot. He testified that the Guide for Licensees (Exhibit No. 1 Tab 18) describes the duty to monitor the activity in the parking lot as well as inside the licensed establishment.

The inspector identified all of the documents in Exhibit No. 1 that the police did not identify.

Ms. Rae testified on behalf of the licensee. She confirmed that she is fully responsible for the operation and actions of the licensee, and was so operating at the time of the alleged contravention. She conceded that she did possess cocaine, an illegal substance while in the office and liquor storage area of the establishment, and that she was charged and convicted for so doing. She said that video security is not as sophisticated as described by the branch and is used for the purposes of monitoring the safety of the patrons and employees of the establishment. She indicated that the alarm system is to protect the liquor storage and office contents and notes that some of the surveillance cameras point to the bar area in order to watch the bar staff, the beer cooler, and the back door to the kitchen to prevent theft. She said the parking lot is not monitored by camera, and is used by the adjacent muffler shop and others, over whom she has no control.

Ms. Rae testified that she might have been high on drugs or nervous when she met with the liquor inspector in the past and recognizes that she has a drug problem for which she needs help. She said that she wanted to get caught because she did not know how to get help otherwise and felt trapped by "raising [her] kids and such and running the business." She described the progress of her addiction to drugs from powder cocaine "through crack and needles" and then she was observed by her son and knew she needed help. She then looked for a way to get caught in order to get the help that she needed. She denied ever trafficking in cocaine.

Ms. Rae said that she is currently incarcerated at the Allouette Correctional Institution for Women and there attends every drug and alcohol addiction meeting that is available and also attends relationship counselling. She has considered her life after release and about going back to work. She said it is important for her to "stay away from triggers"



She said that she has never authorized or permitted unlawful activities on the licensed premises or even on the unlicensed portion of the business, and organized crime members and activities are neither invited nor welcome. She said she would not know a member of a gang if one was present and that since there is no door-staff at the licensed establishment, it is entirely up to the bar staff to decide who gets served.

In answer to the suggestion that the bar is used as a front for organized crime, she said that the bar did not have a Visa or MasterCard machine so it operated entirely on cash. With the daily take and float there could easily be \$8,000 on hand on any day. That accounts, she said, for the stacks of bills seen by the liquor inspector.

She acknowledged that a known gang member was frequently in the bar, and said that was because she had asked him for help. He was to watch the entertainment and "let me know what he thought of the dancers" and to watch one of the bartenders that she thought was stealing from the till.

Ms. Rae testified that the ledgers found were not score sheets, but rent books for the hotel rooms, and that the drug scales were there so she could make sure she was not getting "ripped off and was getting what she paid for" in respect to her personal drug habit.

Ms. Rae testified that there have been problems with the establishment in the past - a tenant was convicted of manslaughter after arson destroyed the building and claimed the life of another tenant in 2001. Police were denied access to the liquor storage area/office by staff without her instructions, and some of the tenants certainly do drugs and things in their rooms that she doesn't know about, but none of these things are her fault or within her control. She said she did not know that any of her employees have criminal records and does not do a criminal check before hiring.

## ANALYSIS AND DECISION

The inspector impressed me with his discipline. The evidence indicates that he turned his mind to the issue of illegal activity in the licensed establishment in the past, but exercised restraint until he was certain that enforcement action was appropriate. He was discerning in that he thought Ms. Rae was using drugs, he thought she was under the influence of drugs, he thought the establishment had active gang connections, but he did not prematurely issue notice or commence procedure for the suspected contraventions. He watched the establishment, but in the mean time he did not pursue enforcement any differently than he would any other licensee or any other establishment that may have been currently in compliance.

The RCMP members also presented direct and credible evidence that appeared to be without ulterior motive or malice

There is no significant controversy in the evidence provided by the inspector and the RCMP members or the evidence of Ms. Rae as to the facts relating to Ms. Rae's possession of cocaine in her office.

The burden of proof in hearings before the branch is on a balance of probabilities. I must examine the components of the alleged contravention with in mind that burden of proof.

Section 36(2)(b) of the *Act* states

A person holding a licence or the person's employee must not authorize or permit in the licensed establishment ...

(b) any unlawful activities or conduct,

I find that the licensee is *a person holding a licence*, and Ms. Rae is the *person's employee*.

Ms. Rae is alleged to have committed an unlawful activity or conduct, rather than to *authorize or permit* the activity or conduct, as is specified in the legislation. I find it consistent with both the language of the relevant section and the discussion of *permit* in the oft-cited *Ed Bulley Ventures Ltd. v. British Columbia (Liquor Control and Licensing Branch General Manager)* [2001] B.C.L.I No. 5, Appeal No. L9905 to conclude that the commission of an act or conduct is for the purposes of s. 36(2)(b) the equivalent of authorizing or permitting that act or conduct.

The *Act*, s. 1 defines “Licensed Establishment” as an “Establishment” and “Establishment” as inclusive of the area in which liquor is stored. I find that the office in the Rendezvous Hotel is the liquor storage area, and is therefore in the licensed establishment.

Cocaine is a controlled substance and possession is illegal pursuant to s. 4(1) of the *Controlled Drug and Substances Act*, Schedule 1, s. 2 (Exhibit No. 1, Tab 5, p 31).

Section 5 of that *Act* also provides that trafficking in cocaine and possession for the purposes of trafficking in cocaine is illegal:

**5.** (1) No person shall traffic in a substance included in Schedule I, II, III or IV or in any substance represented or held out by that person to be such a substance.

(2) No person shall for the purpose of trafficking, possess a substance included in Schedule I, II, III, or IV

I find that for these purposes, *unlawful* and *illegal* are synonymous. Whereas *illegal* refers directly to those things contrary to law, *unlawful* means without legal authority, and is therefore more encompassing. *Unlawful* includes *illegal*. Therefore because it is illegal for a person to have possession of cocaine in the licensed establishment, it is also unlawful.

The *Civil Forfeiture Act* [SBC 2005], Chapter 29 defines "unlawful activity" as follows:

s. 1 "**unlawful activity**" means an act or omission described in one of the following paragraphs:

- (i) is an offence under an Act of Canada or the other province, as applicable, and
- (i) is an offence under an Act of the jurisdiction, and
- (ii) would be an offence in British Columbia, if the act or omission had occurred in British Columbia,

A conviction is not required under those provisions, and in fact an activity may be determined to be unlawful notwithstanding that there may have been a discontinuance or acquittal.

The possession of cocaine is illegal because the Criminal Code of Canada makes it so. It is illegal even in the absence of a conviction as long as the actual possession occurred, as the test under the *Act* is the balance of probabilities. A conviction is therefore not required to satisfy the civil standard.

In order to find an unlawful activity occurred, I must find that:

- The activity that occurred was an offence and thus illegal, and
- That the activity occurred regardless of whether there was a conviction.

I find that possession of cocaine is an unlawful activity for the purposes of the *Act*.

I find that the elements of 36(2)(b) of the *Act* have been met and therefore that the contravention has been proven.

## **DUE DILIGENCE**

If the licensee could have avoided the contravention through the exercise of reasonable care, or *due diligence*, and can establish that it did in fact exercise such care, this is a complete defence to the allegation.

The onus is on the licensee to demonstrate on a balance of probabilities that it took all reasonable steps to prevent the contravention.

In this case the licensee's controlling mind was Ms. Rae. She contravened the *Act* by conducting or permitting an unlawful activity in the licensed establishment (possession) with full awareness of the nature of her actions. As a licensee she is responsible for knowing the obligations imposed by the licence, and in her testimony she did not deny knowledge of the nature of the contravention. Clearly there has been no due diligence demonstrated in this instance.

## **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 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.

In this case, a past history of warnings is not relevant, but the seriousness of the contravention and the threat to public safety and wellbeing of the community is at the forefront of the issue.

The branch has recommended the most severe of consequences: cancellation of the licence. This would have the effect of terminating the licensee's bar business and may have a terminal impact on the hotel business as well. This is a matter not to be taken lightly, as that penalty would represent a complete upheaval of Ms. Rae's working lifestyle. I have weighed impact of this potential penalty with the branch's perception of a threat to public safety and the wellbeing of the community of Kamloops and set out to balance these competing interests.

The licensee made significant issue of the fact that Ms. Rae was not convicted of any trafficking related offences. It is not necessary for me to determine whether any such criminal offences occurred on the date of the contravention. I am able, but not required to determine whether the evidence discloses that Ms. Rae was selling or processing cocaine from the licensed establishment on the balance of probabilities and without reference to criminal charges or the accompanying onus of proof.

The evidence falls short of persuading me that the licensed premise is a front for a criminal organization, but I find that more than a socially acceptable level of criminal activity is either centered on or finds its way into the licensed premises and its surrounds.

I have considered Ms. Rae's description of her addiction and her cocaine use. I accept the evidence of the two RCMP officers who testified that the amount of cocaine found in Ms. Rae's possession is not likely for personal use. I find it more likely than not that Ms. Rae was selling drugs.

I find that the office was protected by a video surveillance system designed to provide advance warning of police presence and an indication of who was approaching the establishment generally, and the office/storage room specifically. The RCMP search of the office/liquor storage area produced a police monitor trained on the RCMP frequency, drugs, scales, a pipe, cash, a shotgun and ammunition, and what were arguably score sheets. Individual components of the evidence found or described to be in or around the office/storage area of the premise on the date of the contravention may be consistent with other explanations, but I find the totality of the evidence points to a reasonable probability that the office/storage area was being used *inter alia* for a base from which to sell illegal drugs.

This evidence points to the culpability of an individual. Ms. Rae is the *de facto* licensee. Accordingly, the issue of rehabilitation must be considered in determining whether a penalty is necessary to obtain voluntary compliance in the future. Ms. Rae has admitted to having a drug problem, and is serving a sentence for possession. In the event that she is rehabilitated - one of the primary objectives of incarceration - the question becomes whether she would be likely to ensure that the establishment would comply with its obligations in the future.

Unfortunately, Ms. Rae's own testimony tends to speak against that possibility.

She acknowledged her need to "stay away from the Rendezvous" after her release in order to avoid *triggers* that would pull her back in "to the lifestyle." She proposed working from home in order to avoid those triggers found at the Rendezvous. She said she does not plan to be attending the establishment on a regular basis when she is released from prison. I find that this is one indication of her inability to effectively manage the licensed establishment in the future. Though there are liquor primary establishments that are effectively run by third party operators, the Rendezvous has been primarily operated by this licensee since she took over the licence more than a decade ago. There is no evidence before me that tends to support the proposition that Ms. Rae is able to run the establishment from a remote location a safe distance away and not be drawn back into criminal activities.

Further, driving out a gang presence and a community of entrenched criminals from the establishment would likely require a radical, if not confrontational approach by the licensee. An individual who finds it necessary to stay away in order to protect against her own participation in that world would very probably meet with limited success.



While I recognize that rehabilitation is a possibility for Ms. Rae, I find there is a culture of criminal activity centered at the establishment. I believe the licensee is a victim of that culture. She has expressed an interest in rehabilitation. I believe that she is genuine in that regard. I believe that she has a real possibility of rehabilitation and I wish her success. I do not believe, however that the licensee's rehabilitation would change the culture of criminal activity that exists at the licensed establishment.

I accept as fact, the evidence that identifiable gang members and criminals are known to frequent the licensed premises. I accept the evidence that more than one of the licensee's employees has a criminal record and employees are not screened for criminal backgrounds. I accept the evidence that an identified gang member was engaged by the licensee to be present and monitor certain aspects of the operation of the licensed premises. I accept the evidence that the residents of the hotel have an extraordinary history of criminal convictions. I accept the evidence that the Rendezvous is the location of a disproportionate amount of violence and illegal drug activity relative to other establishments in Kamloops. I accept as fact that the property has been the target of arson and a resulting death.

I find that the culture of criminal activity at the Rendezvous is endemic and not likely to be changed by any penalty short of cancellation of the liquor primary licence.

I wish to note that I have turned my mind to the prospect of requiring an assignment/transfer/sale of the licence, but I find that would not likely result in the necessary rehabilitation of the establishment.

The presence of gang members, organized crime, the illicit drug trade, and a long history of violence and criminal activity are likely to provide the same insurmountable challenges to any new licensee. A licensed establishment must ultimately operate within community standards. I find that this one does not, and on the evidence, will not if allowed to continue in operation.

I believe that the Rendezvous Hotel is an ongoing safety threat to the public at large, and find that the licensed establishment is ground zero to that threat.

I find that a penalty is warranted.

I find that no penalty available to me is likely to bring about voluntary compliance with the *Act* in the future.

The only appropriate action available to me is to assure there will be no future contraventions of the *Act*.

I find liquor primary licence No. 015944 issued to Mint Corner Holdings Ltd. c/o Christine Rae should be cancelled immediately.

## **ORDER**

Pursuant to section 20(2) of the *Act*, I order immediate cancellation of the liquor primary licence No. 015944.

*Original signed by*

Sheldon M. Seigel  
Enforcement Hearing Adjudicator

Date: September 29, 2008

cc: RCMP Kamloops

Liquor Control and Licensing Branch, Victoria Regional Office  
Attention: Gary Barker, Regional Manager

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