



**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:	Rossland Recreation Holdings Ltd. dba Thunderbird Inn 7050 Rupert Street Port Hardy, BC V0N 2P0
Case:	EH09-053
For the Licensee:	David Grewal
For the Branch:	Peter Mior
Enforcement Hearing Adjudicator:	Edward Owsianski
Date of Hearing:	Written Submissions
DATE OF DECISION:	October 6, 2009

**Ministry of Housing
& Social
Development**

Liquor Control and
Licensing Branch

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INTRODUCTION

The licensee, Rossland Recreation Holdings Ltd, owns the Thunderbird Inn in Port Hardy, BC. The licensee holds Licensee Retail Store Licence No. 192360 for the operation of a Licensee Retail Store (LRS) at the inn with liquor sales from 9:00 a.m. to 11:00 p.m. seven days a week. The LRS is operated by a third party operator approved by the branch, 644908 B.C. Ltd. 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." An LRS, commonly known as a cold beer and wine store, is licensed for the sale of liquor for off-premises consumption. Liquor is not permitted to be consumed within the licensed area.

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The branch's allegations and proposed penalty are set out in the Notice of Enforcement Action (the "NOEA") dated July 15, 2009.

The branch alleges that on April 23, 2009, the licensee contravened section 14 (1)(g) of the *Liquor Control & Licensing Regulation (the Regulation)* by permitting the consumption of liquor in a licensed retail store. The proposed penalty is a \$2000 monetary penalty (item 46 of Schedule 4 of the *Regulation*). Item 46 of Schedule 4 of *the Regulation* provides a range of penalties for a first contravention of a license suspension for 1 - 3 days and/or a monetary penalty of \$1000 - \$3000.

The licensee does not dispute that the contravention took place, just the penalty proposed. It was agreed that this hearing would take place by way of written submissions.

RELEVANT STATUTORY PROVISION

Liquor Control and Licensing Regulation

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

Licensee retail stores

14 (1) Subject to subsection (2), a licence may be issued, renewed or transferred in respect of a licensee retail store, and the following terms and conditions apply to a licensee retail store licence:

...

(g) consumption of liquor within a licensee retail store is not allowed except as authorized by the general manager.

ISSUES

1. Did the contravention occur?
2. If so, what penalty, if any, is warranted?

EXHIBITS

1. Branch's package of disclosure to the licensee dated July 31, 2009.
2. Branch's package of disclosure to the licensee dated August 20, 2009.
3. Licensee's submission dated September 1, 2009.
4. Written statement of the licensee's employee dated September 3, 2009.

EVIDENCE & SUBMISSIONS

The branch's evidence and submissions are summarized as follows:

On April 23, 2009 at approximately 10:20 a.m. two liquor inspectors, conducting routine inspections in the Port Hardy area, entered the licensee retail store of the Thunderbird Inn. They observed an employee, later identified as being the manager of the LRS in conversation with a male customer. The customer was consuming from an open can of beer. The lead inspector identified himself as a liquor inspector and advised the customer to leave the premises, as he was not allowed to consume liquor in an LRS. The inspector advised the manager that allowing patrons to consume liquor (beer) was a contravention of the Regulations. The manager advised the inspector that the customer had entered the store, purchased the single can of beer and had left the premises. He shortly returned to the store and began consuming from the can of beer. The manager advised the inspector that he knew the customer was not permitted to consume the beer in the store and that he should have requested him to leave. He did not do so as he knew that the customer had convictions. He was engaging the customer in conversation when the inspectors arrived.

The lead inspector issued a Contravention Notice for a first contravention of this type and prepared a Notice of Enforcement Action (NOEA). He recommended a \$2000 monetary penalty which is a mid-level monetary penalty for a first contravention. In making this recommendation the inspector believed that this was not an isolated incident by the way in which the store manager engaged the customer in conversation while the customer consumed the beer. The manager did not attempt to remove the patron nor request police assistance to assist in his removal.

The NOEA, at Appendix B, indicates that there is no compliance history for this establishment.

The licensee's evidence and submissions are summarized as follows:

The customer came into the LRS, purchased a beer and opened it. The manager tried to stop him, told him not to drink in the store and to leave the premises. As the customer was leaving the store he turned to apologize to the manager at the time the inspectors walked in. The customer is well known to the police and is known to be a very short-tempered individual. The

manager thought it best to deal with him politely, sometimes he listens, and sometimes he does not. It is not the practise of the establishment to allow people to drink in the LRS. They suspect that this customer may have been encouraged by others to create the problem.

This is an isolated incident involving one particular person. A \$2000 monetary penalty is unfair as the employee did not cause the contravention. In the circumstances a warning would be a fair thing to do.

REASONS AND DECISION

The licensee has admitted the contravention. Having considered all of the evidence, I find that on April 23, 2009, the licensee contravened section 14 (1)(g) of the *Liquor Control & Licensing Regulation* by permitting the consumption of liquor in a licensed retail store.

DUE DILIGENCE

The licensee is entitled to a defence to the allegations of the contraventions, if it can be shown that it was duly diligent in taking reasonable steps to prevent the contraventions from occurring. The licensee must not only establish procedures to identify and deal with problems, it must ensure that those procedures are consistently acted upon and problems dealt with.

Here, there is little evidence upon which I can find that the licensee was duly diligent. At the time of the contravention, one employee was working in the LRS. He was, in a strict legal sense, the directing mind of the licensee. There is no evidence of what training the employee received. There is no evidence of what policies and procedures were in place to guide staff in performing their duties. The employee did not take sufficient action to prevent the contravention from occurring or continuing.

In conclusion, I find that the licensee has not been duly diligent.

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 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 *Regulation*. 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 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.

There is no record of prior proven contraventions, offences or enforcement actions of the same type for this licensee for this license within the year preceding this incident. I therefore find this to be a first contravention.

In the circumstances of this case I am satisfied that the licensee has not successfully or sufficiently stressed upon the third party operator or its employees the need to fully and conscientiously carry out their duties, and a penalty is necessary to ensure future compliance.

Any penalty imposed must be sufficient to ensure compliance in the future. Schedule 4 of the Regulations provides a range of penalties for a first contravention of this type. For monetary penalties the range is \$1000 to \$3000. The branch has proposed a mid-range monetary penalty of \$2000. The reason appears to be that there is a suspicion that this was not an isolated incident. There are, in my view, no reasonable grounds for that suspicion. A range of penalties provides room to increase a minimum penalty where circumstances warrant. While I am satisfied that the circumstances of the contravention warrant a penalty I do not find that a penalty beyond the minimum \$1000 monetary penalty is justified.

ORDER

Pursuant to Section 20 (2) of the *Act*, I order the payment of a one thousand dollar (\$1000) monetary penalty by the licensee to the general manager on or before Tuesday, October 27, 2009.

Original signed by

Edward W. Owsianski
Enforcement Hearing Adjudicator

Date: October 6, 2009

cc: Port Hardy R.C.M.P.

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

Liquor Control and Licensing Branch, Vancouver Office
Attention: Peter Mior, Branch Advocate