



**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:	Teri Meeyoung Park dba Black Music Box & Café #701-14881 103A Avenue Surrey, BC V3R 0M5
Case:	EH10-070
For the Licensee:	Teri Meeyoung Park
For the Branch:	Peter Mior
General Manager's Delegate:	George C.E. Fuller
Place of Hearing:	Written Submissions
Date of Decision:	September 14, 2010

INTRODUCTION

The licensee operates an establishment known as the Black Music Box & Cafe, (the licensee) and holds food primary licence number 300749 which allows the sale of liquor between 12:00 p.m. and 2:00 a.m., seven days per week. The licensee is, as are all liquor licenses, issued in the province, subject to the terms and conditions contained in the publication "*A Guide for Liquor Licensees in British Columbia*".

ALLEGED CONTRAVENTIONS AND PROPOSED PENALTIES

The branch's allegations and proposed penalties are set out in the Notice of Enforcement Action (the "NOEA") dated May 31, 2010.

The branch alleges that on May 14, 2010, the licensee contravened Section 12(3)(b) of the *Liquor Control and Licensing Act* (the "Act"), and the terms and conditions of its licence when it sold and/or served liquor in an area not designated under its licence for the sale or service of liquor. The proposed penalty is a monetary one in the amount of \$2,000.

The penalty range for a first contravention of Section 12 of the *Act* is a 1 to 3 day licence suspension and/or a \$1,000 - \$3,000 monetary penalty (Item 46 of Schedule 4 of the *Regulation*).

The branch also alleges that on May 14, 2010, the licensee contravened Section 42(2) of the *Liquor Control and Licensing Regulation* (the "Regulation"), by allowing consumption in the licensed establishment of liquor that was not purchased from, or served by, the licensee. The proposed penalty is a monetary one in the amount of \$5,000.

The penalty range for a first contravention of Section 42(2) of the *Regulation* is a 4 to 7 day licence suspension and/or a \$5,000 - \$7,000 monetary penalty (Item 28 of Schedule 4 of the *Regulation*).

The licensee does not dispute that the two contraventions occurred. However, it does dispute the proposed penalties. The branch and the licensee agreed that the hearing would take place by way of written submissions.

RELEVANT STATUTORY PROVISIONS

Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267

Licenses

12 (2) The general manager may, in respect of any licence that is being or has been issued, impose, in the public interest, terms and conditions

(a) that vary the terms and conditions to which the licence is subject under the regulations, or

(b) that are in addition to those referred to in paragraph (a).

(3) Without limiting subsection (2), the terms and conditions referred to in that subsection may

(b) designate the areas of an establishment, both indoor and outdoor, where liquor may be sold and served,

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

Consumption of Liquor in Licensed Establishments

42(2) A licensee must not allow consumption in the licensed establishment of liquor that was not purchased from or served by the licensee.

ISSUES

1. Did the contraventions occur?
2. If so, is a penalty warranted under the circumstances?
3. If a penalty is warranted, what is the appropriate penalty?

EXHIBITS

The following documents were submitted for consideration:

- **Exhibit 1** – Branch's letter to the licensee, dated July 7, 2010.
- **Exhibit 2** – the branch's package of disclosure documents, with covering letter dated April 30, 2010.
- **Exhibit 3** – the licensee's submissions, dated July 19, 2010.

EVIDENCE

As previously observed, the licensee does not dispute that the contraventions occurred as alleged by the branch. Accordingly, in view of the fact that the material facts alleged are not controverted in the submissions of the licensee, the evidence can be summarized as set out below.

The Branch's evidence:

The establishment consists of a restaurant area adjoining a number of karaoke rooms. The karaoke rooms are not part of the red-lined area where liquor can be legally sold, served or consumed.

At approximately 9:45 p.m. on the evening of May 14, 2010, the Liquor Inspector conducted a routine inspection of the establishment. The Inspector spoke briefly with the licensee and then proceeded to the adjoining unlicensed karaoke area.

In room number 4, the Inspector observed what appeared to be a bottle of wine, an ice bucket, several glasses, and beer cans on the table inside that room.

There was a male and female patron in that room and the inspector asked the licensee why there was liquor service in the karaoke room. The licensee responded that liquor was brought in by the patrons. The Inspector spoke to the male patron, who stated that he had brought the liquor from home.

In the same room, the Inspector noted a decanter which was half full and which was determined to be scotch whiskey. A full bottle of red wine and three cans of Kokanee beer were also detected. The patron then advised that he brought the wine and whiskey from home and that the beer was served by staff of the restaurant.

The Inspector spoke with the licensee and reminded her that the karaoke rooms were not part of the licensed area and she indicated that she was aware of that fact, but again said that the patron had brought in the liquor himself. Although the licensee initially denied that the beer had been served, she eventually stated that the beer had been served by the restaurant staff and she would produce a receipt for it. A receipt was produced, but it pertained to a 15 pack of Kokanee and not a 24 pack. She stated that the relevant receipt was at home and that her husband would go and retrieve it. The relevant receipt never was produced.

The Liquor Inspector also spoke to a female staff member, who initially stated that all the liquor in the room was brought by the patron; however, after the beer cans in the room were brought to her attention, she admitted serving them. The Inspector inquired of the staff member as to where the stock was kept. She initially walked towards a bar-like area in the unlicensed karaoke area and then quickly turned to go towards the restaurant. The Inspector checked the bar-like area in the unlicensed karaoke area and found a 24 can pack of Kokanee beer in the refrigerator. The staff member confirmed that it was from this source that the beer was accessed and served.

Upon viewing the other karaoke rooms, which were unoccupied, it was noted that they were neatly set up with ice buckets and highball glasses placed in pairs on coasters, on each side of the tables. This configuration was conducive to the service of liquor.

On May 17, 2010, the licensee attended the Surrey Regional LCLB office to meet with the Liquor Inspector. The Inspector advised that the original contravention notice was being amended and that the contravention of permitting consumption of liquor not purchased from the licensee was also being alleged, as it was not lawful to allow patrons to bring their own liquor into the establishment.

When asked to produce the receipt for the Kokanee beer, the licensee indicated that it could not be provided, as the purchase was not made by the establishment and not made under her licence. The licensee stated that she rented out the unlicensed area and that this sub-tenant had bought the beer to serve in the karaoke rooms. She apologized and indicated that her actions were due to financial difficulty and requested that the Liquor Inspector pretend that the conversation never occurred.

A discussion then ensued in which the Inspector emphasized that the karaoke rooms were not licensed and that, therefore, no liquor service could take place in those areas. The licensee apologized for her actions and stated that she was aware of the rules and would take full responsibility in the future and requested that the Inspector have "mercy" in recommending an appropriate penalty.

The Licensee's Evidence

The licensee sets out a series of interactions she has had with the branch and opines that there has been gross miscommunications/misunderstandings between the Inspector and the licensee, and it may have effected the Inspector's decision on the severity of the enforcement action she has recommended over the years. The licensee claims that she considered methods of attempting to make the karaoke area and the establishment successful by considering applying for a liquor licence for the karaoke area and attempting to make an application to extend the red-lined area to include the karaoke side in 2007. However, given the need to invest relatively large sums of money

to obtain these goals, there was no guarantee that those efforts would come to fruition. Accordingly, at the end of the day, the licensee opted to give up on the karaoke business.

In view of the fact that the licensee was running out of resources and finding it difficult to maintain a living, she was determined to find a way to survive a poor economic environment. Apparently, it was suggested to the licensee that she might wish to rent out the karaoke space to a sub-tenant. The licensee pursued this suggestion and, notwithstanding the fact that she felt apprehensive about renting it out, as she would lose control of the space, she was assured by the potential sub-tenant that the karaoke area of the business would be operated properly. The licensee claims that she specifically told the sub-tenant that she could not sell liquor in the karaoke area, as the area was not licensed and the potential sub-tenant indicated that she was aware of that fact and gave assurance that she would not be selling or serving any liquor. The licensee claims that she had no knowledge that liquor was being served in the karaoke rooms.

All of these allegations could, of course, have been easily corroborated by the licensee obtaining a statement, sworn or otherwise, from the potential sub-tenant supporting the licensee's version of events. Not only was this avenue not pursued by the licensee, but she admitted that "...the contraventions happened. I would have to take the responsibility for it as it happened inside my business".

In any event, the licensee eventually concludes that, "I do not dispute that the contraventions occurred...undisputed are that the contraventions happened inside of my business on May 14, 2010".

SUBMISSIONS

The Branch

With respect to the alleged contravention of Section 42(2) of the *Regulation*, the branch submits that customers may not bring in their own bottles of liquor to consume in a licensed establishment. This rule is part of a larger regulatory scheme that requires a licensee to purchase liquor from the Liquor Distribution Branch and have those sales recorded on their licence. The purpose of prohibiting the consumption of alcohol not purchased in the establishment is to ensure the quality of liquor and prevent over-consumption, as over-consumption has an impact on public safety and may impair the ability of the licensee to manage and control the establishment.

The branch further says that despite being warned that liquor cannot be served in a non-designated area, the licensee continued to allow liquor service in the karaoke area, by allowing patrons to bring their own liquor and allowing a sub-tenant to serve their own liquor in the area. Enforcement action, therefore, is being recommended to gain compliance. Accordingly, the branch says that a monetary penalty in the amount of \$5,000 is warranted, which penalty falls within the penalty range set out in Section 4 of the *Regulation* for a first contravention.

With regard to the contravention of Section 12(3)(b) of the *Act*, the branch says that the licensee must only sell and serve liquor in the designated areas. Accordingly, a licensee must not permit patrons to consume liquor outside the designated area, or take liquor from the red-lined area into other parts of the establishment. To do otherwise would create an unstable and uncontrollable environment.

By her own admissions, the principal of the licensee” knows the rules”, however, she continues to allow liquor service in the karaoke area, despite the compliance meetings, reminders and commitments which she had made to the branch on December 5, 2005 and April 15, 2009. Enforcement action is sought, as attempts to gain voluntary compliance have apparently failed. Accordingly, the branch seeks a \$2,000 monetary penalty due to the licensee’s failure to comply, despite having discussed this issue at previously held compliance meetings and making commitments to inspection staff.

The monetary penalty is within the range specified by the penalty schedule and is anticipated to encourage the licensee to voluntarily comply in the future.

The Licensee

The licensee states that the reasons for consideration are:

- she has no means to pay a monetary penalty even if it is \$1,000
- there has not been a contravention on the same issues and she has faithfully complied with the rules since 2007
- a real effort was made to apply for a liquor licence for the karaoke area
- the licensee was unaware of liquor being served in the karaoke area
- the licensee had admitted to committing past contraventions on the same issue, although she denied any involvement in the current alleged contraventions
- the licensee remained honest during the course of the inspection and investigation

It is the view of the licensee that the Inspector alleged the current contraventions due to the licensee’s past history and not necessarily on the findings of the investigation. However, the licensee again takes the position that she should be found innocent of the contravention with respect to Section 12(3)(b) as she had no knowledge of the contraventions being carried out by the sub-tenant of the karaoke area.

The main thrust of the licensee's submission is that she should not be held responsible for the contraventions, as they were not carried out by her directly but, rather, were committed by her sub-tenant, who operated the karaoke area. The licensee says that as she had no knowledge that her sub-tenant was breaking the liquor licensing rules, the licensee should not be accountable for those contraventions. In the alternative, the licensee says that in light of her innocence and non-involvement in the contraventions, that consideration should be given to a penalty other than a monetary penalty and, in particular, a temporary suspension of the liquor licence should suffice in this case.

DECISION AND REASONS

The licensee has admitted the contraventions. Accordingly, having considered all of the evidence, I find that on May 14, 2010, the licensee contravened Section 12(3)(b) of the *Act* by permitting patrons to consume liquor outside of the designated area, or take liquor from the red-lined area into other parts of the establishment. The licensee also contravened Section 42(2) of the *Regulation*, by permitting patrons to bring in their own liquor to consume in an establishment.

DUE DILIGENCE

The licensee is entitled to a defence to the finding of the contravention, if it can be shown that she was duly diligent in taking reasonable steps to prevent the contraventions from occurring. The licensee must not only establish procedures that were in place at the time of the alleged contravention to identify and deal with perspective contraventions, it must show that it took reasonable steps to ensure that those procedures were followed.

Finally, even if I accept that the licensee provided some counselling to the sub-tenant about not serving patrons in the karaoke area, those efforts were clearly inadequate and, thus, not effective. The licensee should have, at the very least, reduced her directives to writing and had the sub-tenant sign off accepting the same.

I am unable to identify any evidence which would indicate, in any way, that this licensee took reasonable steps to prevent the contraventions from occurring. To the contrary, it is evident that the licensee, instead of devising methods to prevent the contraventions, established and participated in a course of action to defeat what the law required. This was certainly the case in allowing liquor to be brought into the premises and consumed in the unlicensed karaoke area. Furthermore, allowing liquor to be sold by a sub-tenant, whether the licensee had knowledge of the same or not, is truly the antithesis of due diligence.

Accordingly, in the circumstances, I find that the licensee has not been duly diligent, and thus it may be said to have “permitted” the contravention.

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 to follow the minimums set out in Schedule A 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, 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, of the same type for this licensee within a year preceding this incident. Pursuant to *Liquor Control and Licensing Regulations*, Schedule 4, Section 1(1)(b), the branch has treated these instances and first contraventions. The fact that these are first contraventions, and the licensee has no compliance history, however, is only one consideration in determining whether penalties are warranted. The penalty range for a first contravention of Section 12 of the *Act* is a 1 to 3 day licence suspension and/or a \$1,000 to \$3,000 monetary penalty. The penalty range for a first contravention of Section 42(2) of the *Regulation* is a 4 to 7 day licence suspension and/or a \$5,000 to \$7,000 monetary penalty (Item 28 of Schedule 4 of the *Regulation*).

The licensee says that a temporary suspension of the liquor licence is more appropriate as the establishment cannot afford to pay the monetary fines and a suspension would still allow the establishment to open for business without liquor service.

What is particularly disturbing about this case is the fact that the licensee attempted to shift its primary obligations and duties under the *Act* and the *Regulation* onto a sub-tenant. In my view, it was clearly up to the licensee to be alert and vigilant, on a regular basis, to ensure that no liquor sales or service were occurring in the karaoke area. This would not be an onerous task given the fact that the licensed establishment and the karaoke area are on the same premises. Accordingly, if a sufficient penalty was not levied in this case, it could very well encourage other licensees to operate in a similar fashion and create an untenable situation from a regulatory perspective.

Any penalty imposed must be sufficient to ensure compliance in the future. In the circumstances of this case, therefore, I find that the proposed penalties for the contravention of Section 12(3)(b) of the *Act* of \$2,000 and the proposed penalty for a contravention of Section 42(2) of the *Regulation* in the amount of \$5,000, are necessary, appropriate and reasonable.

ORDER

Pursuant to Section 20(2) of the *Act*, I order the licensee to pay the sum of \$2,000 in relation to the contravention pursuant to Section 12(3)(b) of the *Act* and the further sum of \$5,000 in relation to the contravention pursuant to Section 42(2) of the *Regulation*, for an aggregate sum of a total of \$7,000. The monetary penalty must be paid to the branch no later than the close of business on September 27, 2010.

Original signed by

George C.E. Fuller
2010
Enforcement Hearing Adjudicator

Date: September 14,

cc: Surrey RCMP
Liquor Control and Licensing Branch, Surrey Office
Attn: Michael Clark, Regional Manager
Liquor Control and Licensing Branch, Vancouver Office
Attn: Peter Mior, Branch Advocate