



**DECISION OF THE
GENERAL MANAGER
LIQUOR CONTROL AND LICENCING BRANCH
IN THE MATTER OF
A hearing pursuant to Section 20 of
The Liquor Control and Licensing Act RSBC c. 267**

Licensee:	0708901 BC Ltd. dba The Beaufort Hotel 4963 Angus Street Port Alberni, BC V9Y 2A4
Case:	EH10-022
For the Licensee:	Shagufta Mohammed and Barb Egan
For the Branch:	Olubode Fagbamiye
Enforcement Hearing Adjudicator:	Sheldon M. Seigel
Date of Hearing:	December 15, 2010
Place of Hearing:	Port Alberni, B.C.
Date of Decision:	January 10, 2011

INTRODUCTION

The corporate licensee 08708901 B.C. Ltd. (Licensee) holds liquor primary licence number 139354 for an establishment known as Jaguar's in the Beaufort Hotel in Port Alberni. The Licensee also holds two other licences in the hotel. Licence 139354 stipulates that the hours of liquor sales are from 7:00 p.m. to 2:00 a.m. Monday through Saturday and 7:00 p.m. to midnight on Sunday. The licensed capacity is 221 patrons.

The licence is subject to terms and conditions contained in the *Guide for Liquor Licensees in British Columbia (Guide)*, as well as the following, which are on the face of the licence:

- Liquor may only be sold, served and consumed within the areas outlined in red on the official plan, unless otherwise endorsed or approved by the LCLB.
- Subject to terms and conditions specified in the restriction or approval letter(s). A copy of restriction or approval letter(s) to be kept with current liquor licence.

PRELIMINARY MATTERS

Ms. Mohammed identified herself as the Licensee. She confirmed that she is the sole shareholder of the corporate licensee and she was the managing director of the corporate licensee at all relevant times.

Ms. Mohammed appeared at the hearing with a representative as well as a translator. The translator was not a professional translator but rather Ms. Mohammed's friend. The translator confirmed that he spoke English and Ms. Mohammed's primary language well. I advised him that he was obligated to translate as accurately as possible to the best of his ability and that he was prohibited from qualifying or explaining anything he translated. I administered an oath that he would do so to the best of his ability. At the onset of the hearing, I confirmed with Ms. Mohammed that she did understand quite a bit of English and obtained her agreement that she would notify me when she did not understand something a witness, the branch advocate or I said. At critical times during the hearing I paused to ensure that Ms. Mohammed understood both the process and

the content of the hearing. In fact the translator was called upon to translate very little of what was said to Ms. Mohammed and none of what Ms. Mohammed had to say. Ms. Mohammed expressed herself very plainly in English and was easy to understand. I am satisfied that Ms. Mohammed understood the full content of the hearing, the nature of the process, the allegation made against her, and the penalty sought by the Branch.

Ms. Mohammed identified Barb Egan as her representative. She said Ms. Egan would make submissions on behalf of the Licensee and she also identified Ms. Egan as one familiar with the operation of the establishment. Accordingly I advised that I would seek to keep separate when Ms. Egan was speaking on behalf of the Licensee and when she was providing testimony as a witness. I administered an oath to Ms. Egan for her role as a witness.

The Branch and the Licensee agreed that the liquor licence which was in effect at the time of the alleged contravention had been renewed and so was current at the time of the enforcement hearing.

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

By Notice of Enforcement Action (“NOEA”), dated May 17, 2010, the Liquor Control and Licensing Branch (“Branch”) alleged that on October 29, 2009, the Licensee contravened section 36(2)(b) of the *Liquor Control & Licensing Act* (“Act”) by authorizing or permitting in the licensed establishment unlawful activities or conduct. The proposed penalty is cancellation of the liquor licence.

RELEVANT STATUTORY PROVISIONS

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

...

(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.

Prohibition against certain conduct

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

(a) drunkenness or violent, quarrelsome, riotous or disorderly conduct,
or

(b) any unlawful activities or conduct.

ISSUES

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

EXHIBITS

Exhibit 1 - Branch's disclosure documents (Branch)

Exhibit 2 – Certificates of analysis with covering letter dated December 10, 2010 (Branch)

Exhibit 3 - Photographs of evidence found at hotel supplied by police witness

Exhibit 4 – Photographs of evidence found at hotel supplied by police witness

Exhibit 5 - Renewed LP licence with expiry date August 31, 2011 (Branch)

EVIDENCE AND SUBMISSIONS

The Branch called four RCMP constables and a liquor inspector. Ms. Mohammed testified on behalf of the Licensee. Barb Egan provided evidence as well as submissions on behalf of the Licensee.

Constable 1

Constable 1 testified that he is experienced and knowledgeable as to the location of the establishment. He said the hotel is in a low-income area of Port Alberni, known to be frequented by people with drug and alcohol addiction issues. He testified that the establishment is known as “Jaguar’s.” He said that he was deployed to Jaguar’s on most of his duty shifts, as it was a location commonly associated with drug and alcohol abuse and fighting.

On October 29, 2010, at approximately 8:00 p.m., Constable 1 attended at the establishment for the purpose of arresting A and B for drug trafficking. Through three years of regular police attendance at Jaguars, he knew A and B as owners and managers of the establishment. Constable 1 indicated that Ms. Mohammed was named as the Licensee, but her sons A and B were the defacto owners and operators of the bar. He said, “Everyone knew [A] and [B] were the owners. They talked about making changes to the bar and moving it to another location and always indicated that they were in charge.” He planned to arrest A and B because he had considerable information that they were selling cocaine out of the establishment. This information was in part obtained from informants who had been providing weekly reports since August 2009. The constable said:

[A] and [B] were receiving cocaine in bulk and using room 260 of the Beaufort Hotel to cut and package the cocaine on a regular basis to sell from the bar. It was a daily routine. Open bar, then leave someone in charge while they go upstairs to cut and package cocaine for distribution from the bar. We received information about timing - a man with mental problems was left in charge of the bar when [A] and [B] went upstairs to cut and package cocaine.

The constable testified that on August 16, 2009, B appeared at 6:45 to open the bar. A man, who he concluded had mental challenges, went into the bar to manage it. Seven or eight people were waiting for B in their vehicles. Those people left their vehicles and met the man in the bar, who led them to room 260. There they bought cocaine and then returned to their respective cars and left. As a result of his observations, Constable 1 believed his informants had provided accurate information and he planned to arrest A and B on October 29, 2009.

On October 29, 2009, Constable 1 attended the establishment with Constables 2, 3, and 4. He observed eight or ten people behind the service bar, none of whom were drinking. The people behind the bar appeared to not be associated with each other, as though they were waiting for a common event. They were searched and dismissed. Although the search did not disclose any drugs, at least two of the people had drug-use paraphernalia on their persons. B was arrested outside the establishment. A turned and ran when he saw the police constables, but was apprehended by another officer. Constable 2 searched B and found two or three flaps of cocaine containing approximately .3 grams of cocaine each. The flaps were each packaged in folded Keno paper. B also possessed a cell phone and an amount of cash. The cocaine was identified as such with a field test called a "Nic Wipe" and samples were sent out for analysis. The tests came back conclusive for cocaine.

The constable indicated that with A and B arrested there was no staff to operate the establishment, so he called the liquor inspector who advised the bar should be shut

down. Officers secured the doors and remained on site until Constable 1 returned after midnight with a search warrant.

Constable 1 said that he and Constable 2 executed the search warrant for the establishment and room 260. The constable testified that he and Constable 2 found in the storage areas of the establishment “35 small packages of cocaine. The same as the three flaps found on [B] and folded the same way with the same amount of cocaine and the same lotto paper wrapper.” They also found a larger bag of cocaine. In room 260 the constables found Keno tickets cut up in small squares, cocaine residue on a table, letters addressed to B and a Christmas card made out to B. He identified a full list of the relevant items found at exhibit 1, tab 15, and the certificate of analysis of the cocaine at exhibit 1, tab 16. Constable 1 also said that B’s car keys were found on the same keychain as the key to the padlock of the storage area in which the drugs and drug paraphernalia were found. He also identified his notes at exhibit 1, tab 11, and the occurrence report that he prepared at exhibit 1, tab 13. The constable testified that B was charged with possession of a controlled substance for the purpose of trafficking.

Constable 2

Constable 2 confirmed all of the testimony provided by Constable 1 in which he was involved. He testified that he arrested A. Over the course of several years patrolling in the area, he knew A and B as co-owners of Jaguar’s. The constable said that B had \$325 in cash when searched. He said that he found a bag of cocaine in a clock on a shelf in the storage area of the establishment containing 35 flaps of cocaine (confirmed by sample sent for analysis). Constable 2 identified the photos that he took on October 29, 2009 at exhibit 3, and his notes at exhibit 1, tab 11.

Constable 3

Constable 3 identified his notes at exhibit 1, tab 11. He confirmed that both Jaguar’s and the area in which it is located have notorious reputations for drug and alcohol related problems and fighting. He also confirmed that A and B own and operate the

establishment on behalf of their mother, the Licensee. He identified the man described by Constable 1 as having a mental disability as C.

Constable 4

Constable 4 testified that he too attended on October 29, 2009. He said that he helped secure the establishment after A and B were arrested. He took control of the police exhibits (drugs and paraphernalia) and sent them for analysis. He identified the certificates of analysis at exhibit 1, tab 16 and exhibit 2, that he described as confirmation of his finding of marijuana that he discovered in the storage room of the establishment. He identified the photographs that he took that night as exhibit 4. He described his knowledge of C as having some sort of disability but "as a hard worker. He carries ice and empties and I think he cleans the washrooms." Constable 4 said that he has had previous dealings with A and B and is certain that they own and operate the bar. He said that on one occasion during an unrelated investigation, B was the individual who opened the doors of the establishment for him and acted as the owner and manager.

The Liquor Inspector

The liquor inspector testified that he has been responsible for the establishment since joining the Branch approximately two and a half years ago. He provided a copy of the re-issued licence (exhibit 5). He identified the licence (exhibit 1, tab 3), the excerpts of the Guide (exhibit 1, tab 6), the NOEA (exhibit 1, tab 1) and relevant contravention notice (exhibit 1, tab 2), the final inspection interview sheet (exhibit 1, tab 5a) and the remaining documents in exhibit 1 relating to the establishment's history and the enforcement process.

The inspector confirmed that the RCMP contacted him on October 29, 2009 indicating that there was no staff to operate the establishment. He said that he contacted his regional manager and obtained authority to suspend the licence for 24 hours. The inspector administered subsequent 24-hour suspensions on a daily basis until

November 4, 2009, as A and B were not available to manage the establishment in the *interim*.

About the proposed penalty, the inspector said:

We recommend cancellation because we cannot ensure voluntary compliance in this case. Two individuals were managing the place and at least one of them was the *defacto* licensee and directing mind at the time. The conduct was on the part of the two managers, and possession for the purposes of trafficking shows there was a willfulness to conduct this activity, so voluntary compliance would not be obtained. This is deliberate action with intent. The activities were illegal and illicit. The appropriate means of preventing this from occurring is license cancellation.

Ms. Mohammed

Ms. Mohammed confirmed that she is the Licensee, that A and B are her sons, and that at the time of the alleged contravention B was the official manager of the establishment. She said that A and B were really in charge of the establishment for some time, even when there was supposedly another manager in charge. Although she is the Licensee, Ms. Mohammed rarely went to the establishment because it was not a good place for a woman to be and she did not feel safe. She said, "It is uncomfortable for anyone to be [in the establishment] for any time if you are not used to the situation." She said that she expected her sons to take care of her interests and she did not check on them.

She said that B has been working with her since she and her husband moved to Port Alberni. Originally B and her husband were running the hotel and the establishment. Her husband is not involved in their lives or in the establishment any more. For four years she and her sons have been alone with the licences. She said that although she and her husband had a bar in Vancouver in the past, she only looked after the rooms in the hotel upstairs and didn't know anything about running the bar. She said A doesn't really work there. If needed, however he helps out, at minimum wage. B is the hired

one. He works full time at minimum wage. He staffed and supervised the bar. He had no previous issues with police, but A did have drug trouble with police in the past. He was convicted of trafficking drugs. She said she hired C to manage the bar at one time, but he had problems and was not doing a good job. C was fired after the alleged contravention occurred. She described C as "slow. He doesn't read or express himself well. It takes him a while to come up with an answer. He is uneducated and things don't set into his head very quickly. He doesn't think properly."

Ms. Mohammed said that when her sons were managing Jaguar's, either one of them or C would be in charge of the bar, depending on who was available. If someone went out, then they would put someone in charge of the place. It was not supposed to be left with nobody in charge. Ms. Mohammed testified that she was never in the storage rooms or in room 260 and she did not know if the establishment had any policies or procedures in writing. She said no training was necessary because the bar only hired people with experience.

Barb Egan

Ms. Egan testified that she was supposed to become the manager of the establishment before October 29, 2009 but a personal event prohibited that from happening. Ms. Egan said that she was unhappy with the previous management, even though she worked for A and B for about ten years. She said she believes this establishment could be a contributing member of the community if she has a chance to run it. She said she can teach people to spot intoxicated people and she will be taking a security guard course which will allow her to be able to be a doorman. Ms. Egan said there had not been a staff meeting in Jaguar's for a long time, and she was going to have to fire A and B. She could do that because she managed another licence upstairs in the hotel and through that job had a relationship with Ms. Mohammed.

Ms. Egan said that she and Ms. Mohammed bought another building and were going to apply to move the upstairs lounge licence from the Beaufort Hotel to that new location, and re-open Jaguar's in its current location with her as manager.

ANALYSIS AND DECISION

The evidence indicates that one of the Licensee's sons has been charged with a criminal offence. It is not necessary for me to wait until a resolution of that matter in order to determine whether an unlawful activity has occurred in the establishment. While the burden of proof in a criminal matter is beyond a reasonable doubt, in this forum the balance of probabilities is sufficient for any finding. I must only determine that it is more likely than not that a particular event occurred.

I am satisfied from the evidence of criminal charges laid resulting from the events of October 29, 2009 that possession of marijuana and cocaine are illegal activities. Based on the evidence of the witnesses who found those substances on the person of B, I find that an unlawful activity or conduct did occur in the establishment at the alleged time.

As to identifying the management of the establishment, the only reasonable conclusion is that Ms. Mohammed, the Licensee, had empowered one or both of her sons to manage the establishment and one or both of them were the acting managers and representatives of the Licensee on October 29, 2009. For the purposes of the *Act*, I find that both A and B were employees of the Licensee and managers of the establishment at all relevant times. Section 36(2)(b) of the *Act* prohibits a Licensee or the Licensee's employees from authorizing or permitting unlawful activity or conduct in the establishment. The Licensee's employees, A and B, not only permitted unlawful activity to take place in the establishment, they actively engaged in it themselves.

I find that the Licensee's employees authorized or permitted unlawful activities contrary to s. 36(2)(b) of the *Act* on October 29, 2009.

DUE DILIGENCE

The Licensee is entitled to a defense to the allegation 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 to

identify and deal with problems, she must ensure that those procedures are consistently acted upon and problems dealt with.

The Licensee has failed to lead evidence or produce documentation that satisfies me that reasonable procedures, policies, or staff-training were in place at the time of the contraventions, or that reasonable efforts were made to ensure compliance with the legislation and the terms and conditions of the licence. The Licensee appears to have made no effort to supervise or manage the activities at the establishment or to require even the minimum requirements of the law be met in its operation. In particular, I find that the Licensee allowed a series of persons not qualified to manage or operate a liquor primary establishment to run Jaguar's freely and without direction or accountability. I find that the Licensee has not been duly diligent. The contravention occurred as alleged.

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 by the minimums set out in Schedule 4 of the *Regulations*. 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.

Schedule 4 of the *Regulation* provides a range of penalties in addition to the specific authority of the General manager to cancel a licence under section 20(2)(e) of the *Act*. Schedule 4, Item 8, stipulates that the range of penalties for a first contravention of s. 36(2)(b) of the *Act* is a ten (10) to fifteen (15) day licence suspension and/or a monetary penalty of \$7,500-\$10,000.

The Branch recommends that the licence be cancelled and says in support of that recommendation that the activity at the establishment constitutes a severe threat to public safety. The Licensee, at minimum, failed to identify the manager's conduct and respond appropriately. That failure calls into question the Licensee's ability to safely and effectively operate a licensed premise in the future. The establishment was operating as a front for the movement of illicit drugs. Despite the previous presence of uniformed police, the managers continued to participate in such activities. This demonstrates that the Licensee and her management are not interested in complying with the law. The Licensee has failed to operate the establishment within the expectations of police, the Branch, and the public.

Due to circumstances, perhaps beyond her control, the Licensee finds herself responsible for an establishment that she does not know how to run. Over a period of years, she has put in place several managers who likewise are not qualified to operate the establishment. The evidence before me indicates there is no potential manager equipped to run the establishment and no plan in place to find one. I agree with the Branch submissions that the activity at the establishment constitutes a severe threat to public safety. The Licensee certainly failed to identify the manager's conduct and respond appropriately. That failure calls into question the Licensee's ability to safely and effectively operate the licensed premise. In the interest of protecting the public I am left with no reasonable option but to cancel the licence.

I find the recommended penalty reasonable and appropriate.

ORDER

Pursuant to section 20(2)(e) of the *Act*, I order the cancellation of liquor primary licence number 139354 effective as of the date of this decision. To ensure this order is effective, I direct that the liquor licence be taken into possession by a liquor inspector or a police officer and returned to the branch.

Original signed by

Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: January 10, 2011

cc: RCMP, Port Alberni Detachment

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

Liquor Control and Licensing Branch, Victoria Office
Attn: Olubode Fagbamiye, Branch Advocate