



**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:	Rinner Holdings Ltd. dba Bay Motor Hotel 1804 Highway 20 Hagensborg, BC
Case:	EH10-106
For the Licensee:	Robert Rinner
For the Branch:	Peter Mior
Enforcement Hearing Adjudicator	George C.E. Fuller
Place of Hearing:	By way of written submissions
Date of Decision:	January 17, 2011

INTRODUCTION

The Corporate Licensee, Rinner Holdings Ltd., (“the Licensee”) owns and operates an establishment known as the Bay Motor Hotel in Hagensborg, B.C. The Licensee holds liquor primary licence 003457 and food primary licence 0768676. The principal of the Licensee is Robert Rinner.

According to the terms of the liquor primary licence, the Licensee may sell liquor from noon to 2:00 a.m., Monday to Saturday inclusive, and 11:00 a.m. to midnight on Sunday. The Licensee is, as are all liquor licences issued in the Province, subject to the terms and conditions contained in the publication, “*A Guide for Liquor Licensees in British Columbia*”. The liquor primary licence held by the Licensee also contains a specific endorsement stating that the “sale of packaged coolers containing not greater than 7% alcohol, beer, cider or wine for off-premises consumption is only permitted before 11:00 p.m. during the hours of sale as shown on the License”. In the instant case, this endorsement would prohibit off-premises liquor sales before noon, Monday to Saturday inclusive, and 11:00 a.m. on Sunday.

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Liquor Control and Licensing Branch’s (the “Branch”) allegations and proposed penalties are set out in the Notice of Enforcement Action (the “NOEA”) dated September 27, 2010.

The Branch alleges that on July 3, 2010, the Licensee contravened Section 47 (2)(a) of the *Liquor Control and Licensing Regulation* (“the *Regulation*”) by selling off-premises liquor outside the hours allowed by the licence. The proposed penalty is \$1,000.00 (item 46, Schedule 4 of the *Regulation*). The Branch also alleges that on July 3, 2010, the Licensee contravened section 47 (2)(d) of the *Regulation* by selling off-premises liquor from an area of the establishment not allowed under the licence. The proposed penalty is \$1,000.00 (item 46, Schedule 4 of the *Regulation*).

The Licensee does not dispute that the two contraventions occurred. However, it disputes 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 Regulation B.C. Reg. 244/2002

Off premises sales

- 47(2)** If a licence is endorsed for off premises sales,
- (a) subject to paragraph (b), off premises sales are allowed only during hours of liquor service allowed on the licensee's licence,
 - (b) no off premises sales may be made after 11 p.m.,
 - (c) no liquor, other than coolers, beer, cider and wine, may be sold for off premises consumption, and
 - (d) off premises sales must be made from the primary service bar area of the licensed establishment.

ISSUES

1. Did the contraventions occur?
2. If so, are penalties warranted under the circumstances?
3. If penalties are warranted, what are the appropriate penalties?

EXHIBITS

The following documents were submitted for consideration:

- Exhibit 1 – October 8, 2010, letter inviting Licensee to prehearing conference scheduled for October 19, 2010.
- Exhibit 2 – October 21, 2010, e-mail from Registrar to Licensee as follow-up to prehearing conference.
- Exhibit 3 - October 22, 2010, letter summarizing prehearing conference.

- Exhibit 4 - Branch's disclosure package and cover letter dated October 26, 2010 (13 tabs)
- Exhibit 5 - Licensee's submission sent by e-mail on November 26, 2010, together with the e-mail string that accompanied it.
- Exhibit 6 - E-mail from the liquor inspector indicating that RCMP confirm, as of December 7, that the establishment is still closed.

EVIDENCE

As previously noted, the Licensee does not dispute that the contraventions occurred and, therefore, it is deemed to accept the facts as put forward by the Branch with respect to the issue of whether contraventions occurred. The Licensee has, however, made submissions in respect to the appropriateness and fairness of the penalties which the Branch has recommended.

In light of the above, the evidence can be summarized as follows:

On November 20, 2006, shortly after the establishment had been purchased by the Licensee, a liquor inspector conducted a telephone interview with the Licensee and reviewed the terms and conditions of the liquor primary and food primary licences held by the Licensee. This was followed up with a physical inspection of the establishment on September 6, 2007, and at that time the liquor inspector observed an employee sell liquor for off-premises consumption by a patron from the food primary licensed area, at a time when the liquor primary licensed area was closed. The liquor inspector issued a contravention notice and then discussed the situation with the Licensee, who advised that he had always sold off-premises sales from the food primary area. As a result, the liquor inspector reviewed with the Licensee the terms and conditions of his licence for off-premises sales.

On Friday, July 2, 2010, the liquor inspector was notified by the Bella Coola RCMP that they had observed patrons purchasing liquor for off-premises consumption from the

hotel lobby when the liquor primary area was closed for business. Acting on that complaint, the liquor inspector and the RCMP arranged a covert inspection in order to determine if off-sales were being conducted in compliance with the terms and conditions of the liquor primary licence. On that same day, two RCMP constables attended at the establishment in a covert capacity at 11:20 p.m. At that time, the constables attempted to purchase liquor from the lobby area, but were advised by the Licensee to return at 11:00 a.m. the following day, as he could not sell liquor at the present time.

On Saturday, July 3, 2010, at 10:35 a.m., one of the RCMP constables returned to the hotel lobby and was met by the Licensee. The constable requested to purchase a case of beer and a bottle of vodka. The Licensee advised that he could not sell hard liquor, but could sell a bottle of wine with the case of beer, which one of the constables indicated would be fine. The Licensee then left the hotel lobby area and shortly returned to the lobby and concluded the transaction of the purchase and sale of the beer and wine. This transaction took place in the lobby at 10:45 a.m. at which time the liquor primary was closed.

Later that same afternoon, the liquor inspector conducted an inspection of the establishment and met with the Licensee. The Licensee advised that the food primary was not currently opened and had only been opened for a month or so since January of 2010. He also advised that the liquor primary is sometimes open from 6:00 p.m. until 9:00 p.m., and stated that off-premises patrons were required to purchase their liquor from the bar only. He went on to say that when the liquor primary area was closed, patrons entered through the lobby and then travelled to the bar to make their purchases.

The liquor inspector again reviewed the terms and conditions of the off-premises endorsement attached to the liquor primary licence and advised the Licensee that a covert inspection had been completed by undercover RCMP officers purchasing liquor in the lobby prior to 11:00 a.m. The Licensee responded by stating that he thought his licence was for 11:00 a.m. He further stated that he took the money from the off-premises sales to the cash register in the liquor primary area of the hotel, and therefore

he deemed it to be sold from the liquor primary area. The liquor inspector then reminded the Licensee of a conversation which they had in 2007 and wherein he had reinforced the fact that the off-sales must be to the patron in the liquor primary area, when that area of the establishment was open for business.

On Monday, July 5, 2010, the liquor inspector contacted the Licensee and advised him that he was issuing a contravention notice for selling off-premises sales outside the hours of his licence and selling off-sales from the lobby of his hotel. The inspector then sent contravention notice B001634, for contravening the *Liquor Control and Licensing Regulations* sections 47(2)(a) and (d).

Submissions of the Branch:

With respect to the contravention of sections 47(2)(a) and (d) of the *Regulation*, the Branch says that the hours of operation of a licensed establishment are determined by community standards and that selling liquor outside the hours of the licence, and from an unlicensed area of the establishment, leads to unfair competition with other licensed establishments. In this case, when the liquor inspector presented evidence of the covert operation to the Licensee, he claimed that he thought that his licence was for 11:00 a.m. Regardless of this claim, the Branch says the liquor was purchased by the RCMP constable at approximately 10:45 a.m., when he should not have been making such sales prior to noon. Furthermore, the Branch submits that the Licensee clearly outlined his process for selling off-premises sales to the liquor inspector, however, the covert operation determined that he did not comply with that process.

The Branch submits that a suspension of the licence would not be effective as the establishment is open only sporadically. Accordingly, the Branch takes the position that a monetary fine is more appropriate and that a monetary penalty of \$1,000.00 for each contravention would be more effective in the circumstances.

Submissions of the Licensee:

The Licensee freely admits that both of the contraventions occurred, as alleged, but says that the proposed penalties would visit a particular hardship upon the establishment as a result of natural disasters which have occurred in the Bella Coola valley over the last thirteen months. Those disasters have included two major forest fires at the height of the tourist season, which events were immediately followed by three floods in September and October 2010. In addition to these difficulties, the Licensee says that it has now been notified by the Provincial Emergency Program ("PEP") that no further flood insurance is available, as the valley has been declared a flood zone.

Finally, I note from a reading of Exhibit 6 in these proceedings, that the RCMP have confirmed to the Branch that the establishment has not re-opened as it has been "red flagged" as not being structurally safe.

Accordingly, in light of all of the above, and in view of the fact that the establishment has not had any problems in the past and that the business makes every effort to provide a peaceful, joyful and safe environment, the recommended penalties should be revoked.

ANALYSIS AND DECISION

The Licensee has admitted to the contraventions. Having considered all of the evidence, I find that on July 3, 2010, the Licensee contravened sections 47 (2)(a) and 47 (2)(d) of the *Regulation* by selling off-premise liquor outside the hours allowed by the licence and by selling off-premises liquor from an area of the establishment not allowed under the licence.

Due Diligence

The Licensee is entitled to a defence to 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 the existence of procedures to identify and deal with problems, but must ensure that those procedures are consistently acted upon and that problems are dealt with.

Here, there is virtually no evidence upon which I can find that the Licensee was duly diligent. In fact, the evidence is to the contrary. In this regard, I note that the need to be diligent regarding the requirements of sections 47 (2)(a) and 47 (2)(d) of the *Regulation*, were specifically brought home to the Licensee in 2007, as a result of being granted the off-premises sales endorsement to its licence. The granting of such economic benefit should not be abused.

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 licences, 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*. 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 to achieve voluntary compliance with the *Act*, the *Regulation*, and terms and conditions of the licence. 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 public safety and the well being of the community.

There is no proven contravention of the same type for this Licensee within the year preceding these incidents. Schedule 4, item 46 of the *Regulation*, sets out penalties for first contraventions of these kinds (a licence suspension of one to four days and/or a monetary penalty of \$1,000.00 - \$3,000.00 each). The Branch has recommended a monetary penalty of \$1,000.00 for each contravention, for a total of \$2,000.00, which is the minimum monetary penalty for these types of contraventions.

Although I find that a combined monetary penalty of \$2,000.00 is appropriate, necessary and reasonable in order to bring the Licensee into compliance in this case, I am not insensitive to the unfortunate plight which has been experienced by this Licensee, as a result of the affliction of natural disasters which are, of course, beyond his control. Accordingly, although I have no jurisdiction to order a penalty less than that required by the *Act* or *Regulation*, I have some flexibility with regard to the payment of the monetary penalty.

ORDER

Pursuant to section 20 (2) of the *Act*, I order the Licensee to pay a monetary penalty of \$2,000.00 relating to liquor primary licence 003457, in respect of Notice of Enforcement Action EH10-106. Ordinarily, a monetary penalty would be required by section 20 (2.6) to be paid within 30 days of an order that enforcement action be imposed. In an appropriate case, however, the general manager may specify a longer period within which a monetary penalty must be paid.

Accordingly, in light of the inordinate difficulties encountered by this Licensee, as referred to above, I order the Licensee to pay the sum of two thousand dollars (\$2,000.00) on or before Monday, May 16, 2011.

Original signed by

George C.E. Fuller
Enforcement Hearing Adjudicator

Date: May 20, 2011

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

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