



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: C&D Jammer Holdings Ltd.
dba Woody's Pub
9882 Hwy 97
Lake Country, BC V4V 1V7

Case: EH14-029

For the Licensee: Brandon Loughery and Cory Jmaeff

For the Branch: Cristal Scheer

General Manager's Delegate: Daniel M. Graham

Date of Hearing: Written Submissions

Date of Decision: October 16, 2014

**Liquor Control and
Licensing Branch**

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INTRODUCTION

C&D Jammer Holdings Ltd. (the "Licensee") operates Woody's Pub (the Establishment") under Liquor Primary Licence No. 030564 (the "Licence"). The Establishment is located at 9882 Highway 97, Lake Country, BC.

The Licence specifies hours of liquor service daily, seven days a week, from 10:00 a.m. to midnight, except for Friday and Saturday when hours of service are 11:00 a.m. to 1:00 a.m. The Licence is, as are all liquor licences in the province, subject to the terms and conditions contained in the publication Guide for Liquor Licensees in British Columbia (the "Guide").

Mr. Brandon Loughery and Mr. Cory Jmaeff, employees of the corporate Licensee and self-described "owners" of the business, represented the Licensee for the purposes of this hearing.

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Liquor Control and Licensing Branch's (the "Branch") allegations and proposed penalty are set out in a Notice of Enforcement Action dated May 26, 2014 (the "NOEA"). The Branch alleges that on Sunday, February 23, 2014 the Licensee contravened:

- Section 44(3) of the *Liquor Control and Licensing Regulation* (the "Regulation") by allowing consumption of alcohol in the Establishment beyond the time permitted, and
- Section 42(3) of the Regulation by allowing employees to consume liquor while working in the Establishment

The proposed sanction is a four day suspension of the Licence for contravention of section 44(3), and a one day suspension of the Licence for the contravention of section 42(3).

The proposed penalties fall within the penalty ranges set out in items 26 and 27 respectively, of Schedule 4 of the Regulation. The range of penalties for first contraventions is:

- A four to seven day licence suspension and/or a \$5,000 to \$7,000 monetary penalty for section 44(3), and
- A one to three day suspension and/or a \$1,000 to \$3,000 monetary penalty for section 42(3)

On June 16, 2014 the Licensee advised the Branch by e-mail that the Licensee was admitting the contraventions as alleged and, by agreeing to proceed by way of written submission, the Licensee chose not to present a due diligence defence. The Licensee is disputing only the proposed enforcement actions (penalties).

For the purposes of this hearing, and in accordance with section 3 of the Regulation, the General Manager has delegated to me the powers, duties and functions provided to the General Manager by section 20 of the *Liquor Control and Licensing Act* (the "Act") and sections 65-69 of the Regulation.

RELEVANT STATUTORY PROVISIONS

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

Consumption of liquor in licensed establishments

42(3) A licensee, and the employees of the licensee, must not consume liquor while working in the licensed establishment or while working at the site of a residential event catered by the licensee.

Time

44(3) Unless otherwise authorized by the general manager, a licensee must not allow a person to consume liquor in the licensed establishment beyond 1/2 hour after the time stated on the licence for the hours of liquor service.

Schedule 4
Enforcement Actions

Liquor Service

Item	Contravention	Period of Suspension (Days)			Monetary Penalty
		First Contravention	Second Contravention	Subsequent Contraventions	
26	A breach of section 44(3) of this regulation by allowing a person to consume liquor in the licensed establishment beyond ½ hour after the time stated on the licence for the hours of liquor service, or other time authorized by the general manager	4-7	10-14	18-20	\$5000-\$7000
27	A breach of section 42(3) of this regulation as a result of an employee or the licensee consuming liquor while working on the licensed premises	1-3	3-6	6-9	\$1000-\$3000

ISSUES

1. Did the contraventions occur?
2. If so, has the Licensee established a defence to the contraventions?
3. If the contraventions are proven, what penalties, if any, are appropriate?

EXHIBITS

- Exhibit 1: The Branch's book of documents, tabs 1 to 8 inclusive.
- Exhibit 2: The Licensee's three-page written submission dated August 4, 2014.

FACTS

The Licensee does not dispute the contravention and therefore accepts the facts as laid out in the NOEA (Exhibit 1, tab 1). The following is a summary of the facts from the NOEA.

On February 23, 2014, liquor establishments were permitted by the Branch to open outside the hours shown on their licences in order to allow patrons to watch the Olympic gold medal hockey game, but they were not permitted to serve alcohol outside of their permitted liquor service hours.

At 5:29 a.m. on February 23, 2014, a liquor inspector attended the Establishment and found the doors locked, though patrons were visible inside. The inspector noticed a patron exit the Establishment through a patio door and the inspector entered the building from the patio.

Once inside, the inspector observed several patrons drinking beer. He also observed two male employees of the Licensee, one of who was serving breakfast to some patrons while the other served beer from behind the bar, "cheers" each other by bumping their glasses together and drinking beer from them.

The inspector identified himself to the employee who had been serving breakfast, who admitted to the inspector that they had been serving alcohol and realized it was wrong but felt pressured by patrons. He also admitted that it was wrong for him and the other employee to be consuming alcohol since they were working.

The inspector left the Establishment at 5:43 a.m. and on February 25, 2014 issued a contravention notice (Exhibit 1, tab 2).

SUBMISSIONS – BRANCH

Through the book of documents (Exhibit 1), including the NOEA, the Branch submitted that the elements of the contraventions have been established by the evidence. The Branch's position is that the recommended suspension penalties of four days and one day respectively are appropriate to reinforce the seriousness of the contraventions.

It argued that patrons who consume liquor and leave an establishment after the licensed hours of liquor service may disturb nearby residents and businesses, and service after hours leads to unfair competition with other establishments. The Branch also argued that licensees and staff create a public safety risk if they consume alcohol while working, since they are responsible for managing and controlling the behaviour of patrons.

The Branch submitted that a licence suspension is a "fair and equitable" method of achieving voluntary compliance since it "applies a penalty equally, regardless of business success or setbacks. It sends a clear, concise message throughout the community that non-compliance will not be tolerated."

SUBMISSIONS – LICENSEE

In its three-page written submission dated August 4, 2014, the Licensee wrote that it does not dispute the contraventions. The Licensee stated that it was under considerable pressure from the public to remain open for the hockey game, but it decided to close the Establishment to the public (since without the sale of liquor it would not be profitable to remain open) and instead to have a "small gathering" of friends and family members of the owners.

Once the game was underway the Licensee called in its chef to serve everyone breakfast. As the game progressed the Licensee "got caught up in the excitement" and was pressured by the patrons and so decided to buy a round for the house. The Licensee acknowledged that it was a "mistake of poor judgment", but submitted that it was not irresponsible service since food was provided for everyone, no one was

intoxicated, and no money was exchanged as it was a gift from the Licensee to close family and friends.

The Licensee also submitted that while it was wrong for the two employees (described as "owners") to drink liquor while working, other staff members should not be punished by levying suspensions totalling five days. The Licensee argued that a monetary penalty of \$6,000 (\$5,000 and \$1,000 respectively for the two contraventions) would cost the Licensee more than it would lose by suspending operations for five days, and would avoid negative consequences for the Licensee's staff.

The Licensee submitted that it has previously had only one non-compliance (sale of liquor to a minor in its liquor retail store in 2008) which was an error made by an employee that the Licensee stated it dealt with "immediately and seriously."

REASONS AND DECISION

Contravention

The Licensee admits the contraventions.

I find that that admission, along with the evidence and submissions filed in these proceedings, demonstrate on the balance of probabilities that:

- With respect to section 44(3) of the Regulation, the Licensee allowed patrons to consume alcohol (beer) beyond ½ hour after the time stated on the Licence for the hours of liquor service (1:00 a.m.), and
- With respect to section 42(3) of the Regulation, two employees of the Licensee consumed liquor (beer) while working in the Establishment

Accordingly, I find that on February 23, 2014 the Licensee contravened sections 44(3) and 42(3) of the Regulation.

Due Diligence

The Licensee is entitled to a defence 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 are dealt with.

In requesting the hearing by written submission, the Licensee agreed that the contraventions occurred and that the Licensee was not pursuing a due diligence defence.

The Licensee has not presented any evidence to demonstrate due diligence. I, therefore, find that the Licensee has not established due diligence and I turn to the question of penalty.

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 may do one or more of the following:

- Take no enforcement action
- Impose terms and conditions on the licence or rescind or amend existing terms and conditions
- Impose a monetary penalty on the licensee
- Suspend all or any part of the licence
- Cancel all or any part of the licence
- Order the Licensee to transfer the licence

The Branch has pointed out the breach of community standards associated with serving alcohol outside of permitted hours, and the public safety risks of allowing employees to consume alcohol while working. When alcohol is being consumed—even in a friendly environment—good, unclouded judgment is required by licensees and staff to maintain control.

In this case the facts are that the Licensee's employees consumed alcohol while working and served alcohol to patrons more than four hours after the permitted time.

Based on the nature of these contraventions and the potential risks to public safety, I find that a penalty is warranted.

The factors that I considered in this case in determining the appropriate penalty include: consideration of whether there is a proven compliance history, a past history of warnings by the Branch and/or the police, the seriousness of the contraventions, the threat to the public safety, and the well-being of the community.

There is no record of proven contraventions of the same type for the Licensee at the Establishment within the preceding 12 months of this incident. Therefore, I find each to be a first contravention for the purposes of Schedule 4 and calculating a penalty.

The concerns about unfair competition don't apply in this situation as the Licensee limited its distribution of alcohol to "friends and family" rather than the public at large, and provided it without charge. I understand the Branch's argument with respect to a licence suspension providing an equal penalty "regardless of business success or setbacks" but don't find it helpful. It is desirable for similar sets of facts to result in similar penalties, but either a suspension or a monetary penalty may have vastly different effects on different licensees depending on case-specific circumstances.

I have reviewed the compliance history as listed in the NOEA, which supports the Licensee's argument that its only previous contravention—of a different statutory provision—occurred more than five years previously.

The Licensee's argument about the effect of a suspension on its staff is an irrelevant consideration, since the Licensee could provide compensation to its staff to mitigate the effects of a suspension on them.

In consideration of the foregoing, and of the unique circumstances in which these contraventions occurred, I find a \$5,000 monetary penalty for the contravention of section 44(3) and a \$1,000 monetary penalty for the contravention of section 42(3) to be reasonable and appropriate for achieving the objectives of providing specific and general deterrence.

ORDER

Pursuant to section 20(2) of the Act, I order that the Licensee pay the above-noted monetary penalties totalling \$6,000 to the General Manager of the Branch on or before November 17, 2014.

Signs satisfactory to the General Manager showing that these monetary penalties have been imposed will be placed in a prominent location in the establishment by a Branch inspector or a police officer.

Original signed by

Daniel M. Graham
General Manager's Delegate

Date: October 16, 2014

cc: Liquor Control and Licensing Branch, Victoria Office
Attn: Jay Blackwell, A/Regional Manager

Liquor Control and Licensing Branch, Vancouver Office
Attn: Cristal Scheer, Branch Advocate