



**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:	Zodiac Karaoke Inc. dba Zodiac Karaoke Cabaret 155 – 8291 Alexandra Road Richmond, BC
Case:	EH14-081
For the Licensee:	Liu Pei Mei
For the Branch:	Cristal Scheer
General Manager's Delegate:	R. John Rogers
Date of Hearing:	Written Submissions
Date of Decision:	November 27, 2014

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**Liquor Control and  
Licensing Branch**

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## INTRODUCTION

Zodiac Karaoke Inc. (the "Licensee") operates the Zodiac Karaoke Cabaret (the "Establishment") under Liquor Primary Licence Number 162535 (the "Licence"). The Establishment is located at 155-8291 Alexandra Road, Richmond, BC.

The Licence specifies hours of liquor service daily, seven days a week, from 7:00 p.m. to 2:00 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").

Liu Pei Mei, principal of the corporate Licensee, 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 July 8, 2014 (the "NOEA"). The Branch alleges that on Tuesday, June 24, 2014 the Licensee contravened section 44(1)(a) of the *Liquor Control and Licensing Regulation* (the "Regulation") by failing to clear the Establishment of patrons within ½ hour after the time stated on the Licence for the hours of liquor service.

The proposed sanction is a three day suspension of the Licence. This proposed penalty falls within the penalty range set out in item 24, schedule 4 of the Regulation. The range of penalties for a first contravention of this type is a 1 to 3 day licence suspension and/or a \$1,000 to \$3,000 monetary penalty.

By way of an email dated July 21, 2014, the Licensee advised the Branch that the Licensee wished to proceed by way of a written submission and, to that effect, was admitting the contravention as alleged and was choosing not to make out a due diligence defence. The Licensee is, however, disputing the Branch's proposed penalty of a three day suspension of the Licence.

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 Act and sections 65-69 of the Regulation.

## RELEVANT STATUTORY PROVISIONS

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

44 (1) Unless otherwise authorized by the general manager,

(a) liquor primary licensees and primary club licensees must ensure that patrons are cleared from the licensed establishment within ½ hour after the time stated on the licence for the hours of liquor service, and

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

## Schedule 4 Enforcement Actions

### Minors

Item	Contravention	Period of Suspension (Days)			Monetary Penalty
		First Contravention	Second Contravention	Subsequent Contraventions	
24	A breach of section 44 (1) (a) of this regulation by a licensee with a liquor primary licence or liquor primary club licence failing to clear the licensed establishment of patrons within 1/2 hour after the time stated on the licence for the hours of liquor service, or other time authorized by the general manager	1-3	3-6	6-9	\$1,000-\$3,000

## ISSUES

1. Did the contravention occur?
2. If so, has the Licensee established a defence to the contravention?
3. If the contravention is proven, what penalty, if any, is appropriate?

## EXHIBITS

Exhibit 1: The Branch's book of documents, tabs 1 to 10 inclusive.

Exhibit 2: The Licensee's two-page written submission of August 8, 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.

Pursuant to the Licence, the Establishment's liquor hours are from 7:00 p.m. to 2:00 a.m., seven days a week. Therefore, under the Licence patrons must be cleared from the Establishment by 2:30 a.m.

In the early morning of Tuesday, June 24, 2014 at 4:06 a.m., Richmond RCMP officers arrived at the Establishment due to a complaint that patrons were still inside the Establishment consuming liquor. Upon entering the Establishment, the officers noted:

- The main area of the Establishment and all karaoke rooms were empty, clean and had the lights out, except for room #8.
- In room #8 there were 6 people, 4 of whom were patrons and 2 of whom were staff members, one of these staff members was a supervisor.
- Although no liquor was seen to be consumed, there were various types of full, partially full, and empty liquor containers on the table in room #8.
- The staff member who was a supervisor appeared to be intoxicated.

The staff members claimed to the officers that they were not themselves drinking, nor were they serving liquor to patrons, but that they were simply allowing the patrons to stay in the Establishment to become sufficiently sober to drive home.

On June 25, 2014, Richmond RCMP filed incident report 2014-19151 (Exhibit 1, tab 4) with the Branch, and on June 26, 2014 a liquor inspector visited the Establishment and issued contravention notice B005952 (Exhibit 1, tab 2), receipt of which was acknowledged by the Licensee's representative.

The NOEA noted that following an earlier incident on February 23, 2014, the Licensee admitted to having contravened section 43(2)(b) of the Act by permitting an intoxicated person to remain at the Establishment and had agreed, by way of a Waiver Notice dated March 20, 2014 (Exhibit 1, tab 9), to a four day suspension of the Licence running from the close of business on April 4, 2014 to April 9, 2014.

The NOEA also noted that prior to June 24, 2014, two compliance meetings were held between Branch inspectors and the Licensee's representatives (Exhibit 1, tab 10). The first compliance meeting, held on December 13, 2013, resulted from the issuance of a contravention notice for the Licensee allegedly executing a sales strategy likely to encourage intoxication contrary to section 41(2) of the Regulation. The contravention notice was issued as a result of a sales strategy of the Licensee that would encourage over-service by offering an "all you can drink" program for \$50.

The second compliance meeting, held on March 6, 2014, resulted from the issuance of a contravention notice for the Licensee allegedly contravening section 43(2)(a) of the Act by permitting a person to become intoxicated, and as well, for allegedly contravening the terms and conditions of the Licence by offering servings of liquor that exceeded the maximum drink size. This contravention notice was issued as a result of the Licensee serving beer to patrons in "3 Litre Towers".

## SUBMISSIONS – BRANCH

Through the book of documents (Exhibit 1), including the NOEA, the Branch submitted that the elements of the contravention had been established by the evidence. It is the Branch's position that each of the contraventions that the Licensee had accumulated prior to June 24, 2014 would contribute to a public safety issue and that, therefore, the recommended suspension penalty of three days is appropriate to encourage the Licensee to, in the future, comply fully with the terms and conditions of the Licence.

## SUBMISSIONS – LICENSEE

In its written submission dated August 8, 2014 (Exhibit 2), the Licensee did not dispute the contravention, nor did it offer a due diligence defence. However, in what I take to be the furtherance of its claim of mitigating circumstances, the Licensee submitted that:

- As the failure to clear the patrons by the required time was “done by one employee”, that other employees who “follow the rules and regulations should not be penalized or implicated as they have not violated any rules and regulations”.
- The Licensee expressed concern that should the recommended suspension be ordered, the Establishment's employees' living expenses would be affected and that they “might not be able to pay their fixed expenses on time i.e. rent, heat, electricity, and telephone”
- Although it recognizes its responsibility to clear all patrons from the Establishment within the requisite time, the Licensee claims in its submission that it is responsible for ensuring that its patrons leave the Establishment safely.
- On June 24, 2014, the Licensee's employee kept the patrons in the Establishment, the Licensee submits, because “he wanted to be certain that the patrons were 100% sober by providing them with one dozen bottled water and extra time to rest before they left”.

The Licensee closed its written submission by stating that the employee has now been taught to ensure that all the patrons leave the Establishment within the time requirements and “drink water outside”. In addition, the Licensee stated that the owner of the Licensee will give every member of its staff more training and will hold meetings on a regular basis to reaffirm that every such member understands the importance of following the Regulation.

Although in its submission the Licensee did not specifically request it, I am taking its submission as requesting that penalty proposed by the Branch should be waived or reduced.

## **REASONS AND DECISION**

### **Contravention**

The Licensee admits the contravention.

That admission, along with the evidence and submissions filed in these proceedings, demonstrates on the balance of probabilities that, with reference to section 44(1)(a) of the Regulation, on June 24, 2014 the Licensee did not ensure that patrons were cleared from the Establishment by 2:30 a.m., being ½ hour after the time stated on the Licence for the hours of liquor service.

Accordingly, I find that on June 24, 2014 the Licensee contravened section 44(1)(a) 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 contravention 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 has agreed that the contravention occurred and that the Licensee is not pursuing a due diligence defence.

I, therefore, find that the Licensee has not established a defence of due diligence.

## **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 factors that I have 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 contravention, the threat to the public safety, and the well-being of the community.

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

However, in the eight month period prior to the incident on June 24, 2014, the Licensee appears to have demonstrated a blatant disregard for compliance with the Act, the Regulation and the terms of its Licence. Therefore, although the contravention before me is the first of this type, the previous eight month compliance history of the Licensee is littered with other types of contraventions.



With respect to the submissions of the Licensee as to mitigation, these submissions appear to suggest that there was only one employee present in the Establishment on the night, or rather morning, of the contravention. However, that is not the evidence before me from the Richmond RCMP officers. Indeed, their evidence suggests that there were two employees of the Licensee present and that one of these employees was an intoxicated supervisor.

In addition, I find that the Licensee's claim that the employee of the Licensee on the morning in question was looking to the best interest of its intoxicated patrons to be disingenuous. The evidence before me is that the RCMP officers attended the Establishment over 1½ hours after the patrons were to have left the Establishment in response to a complaint that liquor was being consumed inside the Establishment. Moreover, the evidence before me suggests that, rather than water on the table in room #8, there was an ample supply of liquor. It would appear that if this employee was indeed concerned about the remaining patrons as suggested by the Licensee, a taxi ride home might have been much more beneficial than plying them with water.

The concern expressed by the Licensee for its employees facing a three day suspension being unable to pay their expenses appears to be self-serving. If the Licensee is truly that concerned about the well-being of its employees, surely it is in a position to make these employees whole.

Finally, the submission by the Licensee that it will undertake a training program for its employees is welcome news and well overdue. The Branch seeks to establish the compliance of the Licensee and its employees to the Act, Regulation and terms and conditions of the Licence. The imposition of penalties on the Licensee is meant to both address the Licensee's past non-compliance, but, as importantly, seeks to achieve the full future compliance of the Licensee and its employees with these requirements.

Given that the previous two compliance meetings, and the four day suspension imposed upon the Licensee between April 4, 2014 and April 9, 2014, did little to encourage such compliance by the Licensee and its employees (as is evidenced by the convention before me occurring a mere two months later) suggests that the Licensee and its employees have a great deal of work to do to ensure compliance with the Act, Regulation and the terms and conditions of the Licence.

As above noted, notwithstanding the Branch's recommendation, I am permitted by section 20(2) of the Act to impose both a suspension of the Licence and a monetary penalty for a first contravention. In the matter at hand, I am sorely tempted to exercise this power to impose both a suspension and a monetary penalty to encourage future compliance by the Licensee and its employees. However, in that the Branch has recommended only a licence suspension, and in that the Licensee has consented to dealing with this matter by written submissions and has admitted the contravention, saving both time and expense, I will accept the Branch's recommendation.

I, therefore, find the proposed three day Licence suspension to be reasonable and appropriate to achieve the Branch's objectives with respect to general and specific deterrence and future compliance with the Act, Regulation and the terms and conditions of the Licence.

## **ORDER**

Pursuant to section 20(2) of the Act, I order a suspension of the Licence for a period of three days to commence at the close of business on Sunday, January 4, 2015 and to continue each succeeding business day until the suspension is completed.

To ensure this order is effective, I direct that the Licence be held by the Branch or the local police from the close of business on Sunday, January 4, 2015 until the Licensee has demonstrated to the Branch's satisfaction that the suspension has been served.

Signs satisfactory to the General Manager notifying the public that the Licence is suspended will be placed in a prominent location in the Establishment by a Branch inspector or police officer, and must remain in place during the period of suspension.

*Original signed by*

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R. John Rogers  
General Manager's Delegate

Date: November 27, 2014

cc: Liquor Control and Licensing Branch, Surrey Office  
Attention: Rupi Gill, A/Regional Manager

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