



NOTICE OF ENFORCEMENT ACTION
Liquor Control and Licensing Act, SBC 2015, c.19

File: EH18-030
Job: 000709181-054

May 2, 2018

Nexcen Enterprises Corp.
c/o Jamie Wu
3366 DOUGLAS ST
Victoria, BC V8Z 3L3

Re: Licence Number: 002668
Licence Type: Liquor Primary
Licence Expiry Date: December 31, 2018
Establishment: RED LION INN
CN #: B021872

The purpose of this notice is to inform you that pursuant to section 51 of the *Liquor Control and Licensing Act* (the Act), the general manager is pursuing enforcement action against the licensee.

This Notice of Enforcement Action (NOEA) will:

1. Set out the branch's allegation(s) of non-compliance with the Act, and or the *Liquor Control and Licensing Regulation* (the Regulation) and or the terms and conditions of the licence,
2. Provide a narrative of events,
3. Describe the evidentiary basis for the elements of each alleged contravention,
4. Provide reasons why the branch is pursuing enforcement,
5. Provide reasons why the branch believes the enforcement action (i.e. penalty) recommended is warranted, and
6. Outline the licensee's options and the branch procedures that will be followed depending on whether or not the licensee disputes what is being alleged.

Included with this NOEA is the licensee's enforcement history and an explanation of how that history will be applied in any hearing decision of the general manager.

Ministry of Attorney
General

Liquor Control and
Licensing Branch

Mailing address:
PO Box 9292 Stn Prov Gov
Victoria BC V8W 9J8

Toll Free: 1 866 209-2111
Telephone: 250 952-5787

Location:
Fourth Floor, 3350 Douglas Street
Victoria BC

www.gov.bc.ca/liquorregulationandlicensing

1. THE ALLEGED CONTRAVENTION(S):

No.	Title of Contravention(s)	Section of the Act/Regulation or T&C Reference	Date and time of Contravention(s)	Recommended Enforcement Action
1.	Licensee - Allow a person with knife or weapon to enter or remain in an establishment, s. 61(2)(b)(v) Act	s. 61(2)(b)(v) Act	2018-MAR-17 10:10 PM	4 day suspension

2. NARRATIVE

The Red Lion Inn is located at 3366 Douglas Street, Saanich BC. The Inn holds four valid liquor licenses:

1. Licensed Retail Store # 191842
2. Food Primary # 020514 (Jade Fountain Restaurant)
3. Liquor Primary # 003730 (V-Lounge)
4. Liquor Primary # 002668 (the Fox)

The Red Lion Inn is situated on the corner of Douglas Street and Ardersier Road. The area surrounding the Red Lion Inn is predominately commercial with a mix of retail and office space. Situated on the lower level of the Red Lion Inn and accessed via a parking lot on Ardersier Road is Liquor Primary # 002668 doing business as the Fox Showroom Pub and commonly referred to as the "Fox". This liquor primary licence will be referred to as the Fox for the remained of this NOEA.

The Fox has a Person01 capacity of 225 and a Patio01 capacity of 39. The interior occupant load also includes patio seating. The licensed liquor hours of the Fox are 11:30am to 1:30am Monday to Saturday and 11:00am to 1:00am on Sunday. The Fox's primary business is adult entertainment (strippers). When a person enters into the Fox, the service bar is immediately to the left (western side) and runs most of the length of the interior wall. The area is mainly one level with a circular stage in the centre of the room. The stage is sunken by about 2 steps from the main floor area.

Adjoining the stage area is seating and a counter area for patrons; this area is also referred to as the "front row". The front row surrounds most of the stage except for the area furthest from the bar (eastern side) where a shower is located and entertainers enter onto the stage. Immediately behind the front row and also sunken is booth style seating with small round tables. On the main floor there is booth seating on the northern and southern sides; and pool tables and bathrooms on the eastern side. Also along the northern side of the establishment is a licensed DJ room set back midway along the northern wall.

LCLB records show Nexcen Enterprises Corp. as the licensee for the Fox. MENG, Zhiping Terry ^{s.22}, MENG, Zhiwei (Wally) ^{s.22}, WENG, Tong Owen ^{s.22}, and WU,

Haiying (Jamie) ^{s.22} are listed as the shareholders within Nexcen Enterprises Corp. WU, Haiying (Jamie) is listed as the establishment contact.

LCLB records also list Mr. Werrun, Loran as the licensee representative. Mr. Werrun is authorized to represent the licensee in the following matters:

- Sign permanent change applications
- Sign temporary change applications
- Obtain licence information from the Branch
- Attend education sessions
- Attend compliance meeting
- Represent the licensee at enforcement hearings

Details of the Contravention:

On March 17, 2018 at approximately at 2210 hours, the Combined Forces Special Enforcement Unit - BC Uniformed Gang Enforcement Team (CFSEU-BC UGET) (a multi-agency police task force) attended the Red Lion (Fox Showroom Pub) located 3366 Douglas Street, Saanich, BC. Their mission that evening was to address concerns and gain intelligence on known gang activities in the various nightclubs in Greater Victoria.

While in the Red Lion (Fox Showroom Pub) CFSEU-BC UGET members stopped and identified ^{s.22} a patron who was observed wearing a "support" shirt in favour of the Nanaimo Hells Angels MC. Accompanying ^{s.22} was a second patron identified was ^{s.22} who was wearing a "Broken Soles" MC vest known as "colours" on the vest was a "Sgt at Arms" tab. A ^{s.22} who was wearing "Broken Soles" colours with a "President" tab was also identified. The "Broken Soles" MC is known to police and their activities criminal in nature are of interest to CFSEU-BC UGET.

During the inspection, CFSEU-BC UGET noted the door staff was not very cooperative with the police. Observations included the door staff continually interacting with Broken Souls MC members throughout the evening. CFSEU-BC UGET observed door staff was interacting with ^{s.22}, outside the main entrance, joking back and forth about his interaction with the police inside the establishment.

CFSEU-BC UGET members noted the Broken Souls MC members were commonly occupying a booth adjacent to the DJ booth. While interacting with the bikers it was noted their vests all contained large knife sheaths (holders) riveted into their vests. Of the 4 Broken Souls MC members who had been identified in the establishment on March 17, 2018, ^{s.22} was found to be in possession of a large "Gerber style" knife. The knife was in plain view; hanging 4-5 inches down from his vest (colours).

CFSEU-BC UGET members removed ^{s.22} He was removed under the authority of the LCLA and ordered to remove his knife before he could re-enter the establishment. A follow up investigation determined ^{s.22} failed to provide a lawful excuse as to why he had a knife in his possession, while inside the licenced establishment. The senior CFSEU-BC UGET member present addressed both ^{s.22} and the door staff in regards to the LCLA offence. He made it clear it is an offence for a person to be in possession of a knife or weapon without lawful excuse in a licence establishment. As ^{s.22} was cooperative with police he was allowed to re-enter and remain in the establishment without further incident.

In the early morning hours of March 18, 2018 at a separate venue, CFSEU-BC UGET members met with Liquor Inspector(s) ^{s.15,s.19} The two inspectors were advised of the incident verbally by Detective Constable Greg Henault. A request was made for the Provincial Liquor Inspectors to follow up on the contravention due to the public safety concerns. Subsequently, the Provincial Liquor Inspectors requested access to the police file for follow up.

On March 21, 2018 Inspector ^{s.15,s.19} received a written statement of Detective Constable Greg Henault and investigator from the Vancouver Island Combined Forces Special Enforcement Unit detailing the interaction of ^{s.22} a known member of the Broken Souls MC with police in the Red Lion Inn (Fox Showroom Pub).

On March 22, 2018 Inspector ^{s.15,s.19} sent via registered mail a "Notice to Produce" and Contravention Notice # B021872 to Mr. Loran Werrun, Licensee Representative for Liquor Primary Licence # 002668. The deadline for the production of records indicated on the "Notice to Produce" was 4:30 PM on March 30, 2018. The Contravention Notice indicated one contraventions:

- a. Licensee - Allow a person with knife or weapon to enter or remain in an establishment, s. 61(2)(b)(v) of the Act.

Inspector ^{s.15,s.19} requested the following information as part of the Notice to Produce:

	DESCRIPTION OF RECORD, LIQUOR SAMPLE OR OTHER THING	SCOPE
1.	Staff Schedules	The name and duties of the person(s) who were responsible for door control and supervision of patrons in the establishment/event on March 17, 2018
2.	Written policies and procedures or training manuals.	A copy of any written policies and procedures regarding weapons in the establishment.
3.	Staff training records or signed acknowledgments by staff of their understanding of policies and procedures.	Confirmation if door staff had been trained on existing policies and procedures regarding denying entry to patrons with weapons into the establishment.
4.	CCTV security video footage.	Video footage of the interior and exterior of the establishment from 6:00 pm until 11:00 pm March 17, 2018

On March 22, 2018 Inspector ^{s.15,s.19} was contacted Mr. Werrun to confirm the requested information and material had been sent. That day the return was hand delivered to the LCLB office at 3350 Douglas St.

The return contained a file folder of the information requested was provided as well as a black and white in colour, USB Memory Stick with the "Lexar" logo on one side. Contained on the memory stick were the following records:

- File Folder titled "March 17, 2018"
- 6 folders containing files of the various cameras

Inspector ^{s.15,s.19} reviewed the supplied CCTV footage and noted the following:

- A review of the documents provided identified the "Fox Policy & Regulations in accordance to the Liquor Primary Terms and Conditions signed off by the employees as an acknowledgement of their understanding as an employee of 687701B.C. Ltd. It should be noted the policy does not implement a pat down procedure citing s. 8 of the Charter.
- A review of the video footage for March 17/18, 2018 identifies members of the Broken Souls entering and exiting the establishment frequently during the evening. A predominate CFSEU-BC UGET presence is noted. There is also various interactions with the Broken Souls MC members both inside and out of the establishment noted on the video footage.

3. THE ELEMENTS OF THE ALLEGED CONTRAVENTION(S)

3.1 Licensee - Allow a person with knife or weapon to enter or remain in an establishment, s. 61(2)(b)(v) Act

- The person had a knife, firearm or weapon in his or her possession while in the licensed establishment or event site
- The person did not have a lawful excuse to possess the knife, firearm or weapon.

In this matter, ^{s.22} who is a patched member of the Broken Souls Motor Cycle Club was removed by members of CFSEU-BC UGET from inside the licensed service area of the establishment. ^{s.22} was found to be in possession of a large visible Gerber style knife which hung down 4-5 inches down from a holder attached to his biker style vest. CFSEU-BC UGET removed him safely without incident. During questioning ^{s.22} could not provide a lawful excuse to have a knife in his possession while inside the licenced establishment.

4. REASONS FOR PURSUING ENFORCEMENT

4.1 Licensee - Allow a person with knife or weapon to enter or remain in an establishment, s. 61(2)(b)(v) Act.

The consumption of liquor affects behaviour and judgment. It reduces natural inhibitions. There is a greater likelihood of a volatile and dangerous situation occurring when a patron has been consuming liquor and is in possession of a weapon.

A licensee must manage and control the behaviour of patrons to ensure the safety of staff, patrons and the community. Allowing a person with a knife or weapon to enter or remain in a licensed establishment is a serious public safety concern.

In this case, door staff who control the access into the Red Lion LP # 002668 (Fox Showroom Pub), failed to remove a large knife in plain view from ^{s.22} upon his initial and subsequent re-entries into the establishment on the evening of March 17, 2018. Further observations by CFSEU-BC UGET identify ^{s.22} having multiple interactions with the door staff. In failing to remove the knife from a patron the staff of the Red Lion Inn LP # 002668 created a serious public safety concern for the staff, patrons and Police.

5. REASONS FOR THE RECOMMENDED ENFORCEMENT ACTION (i.e. penalty)

5.1 Licensee - Allow a person with knife or weapon to enter or remain in an establishment, s. 61(2)(b)(v) Act: four (4) day suspension proposed

For the alleged contravention of Licensee - Allow a person with knife or weapon to enter or remain in an establishment, s. 61(2)(b)(v) Act (Contravention Notice Number B021872), a suspension penalty of four (4) days is proposed. This recommended suspension penalty falls within the penalty range set out in schedule 2, item 10 of the Regulation for a first contravention of this type.

The suspension will be served starting on a Saturday and will continue on successive business days until completed.

In this case a four day suspension of the liquor licence is deemed appropriate. This is the first offence of its kind; however, the licensee has an extensive history of non-compliance. Furthermore, this contravention is of a more serious nature as the potential for jeopardizing the safety staff, patrons and police was quite high due the demographic of patrons within the establishment. It is anticipated that the licensee will use this suspension as an opportunity to instill the seriousness of this contravention with its staff; and hopefully, strengthen its policies regarding liquor laws.

6. THE PROCEDURES

You (the licensee) may agree with or dispute the above allegation(s) and proposed penalty.

If there is a dispute, the general manager will decide if the contravention(s) occurred and what enforcement action, if any, is warranted. A hearing may be scheduled for that purpose.

If the general manager decides that enforcement action is warranted, the general manager will determine the enforcement action to be imposed on the licensee and may:

- Impose a suspension of the liquor licence for a period of time
- Impose a monetary penalty
- Cancel the liquor licence
- Rescind, amend or impose new terms and conditions on the licence
- Order a transfer of the licence

If there is a dispute, the general manager will decide if the contravention(s) occurred and what enforcement action, if any, is warranted. A hearing may be scheduled for that purpose.

Imposing any penalty is discretionary. Where the general manager finds that a suspension or monetary penalty is warranted the general manager must follow the minimums set out in Schedule 2 of the Regulations. The general manager is not bound by the maximums and may impose a higher suspension or monetary penalty when it is

in the public interest to do so. The general manager is not bound to order the penalty recommended in this NOEA.

Schedule 2 of the Regulation sets out the range of enforcement actions for when a contravention occurs in an establishment within a 12 month period of a contravention of the same type. It is the date that the contravention occurred that is used for the purpose of determining if a contravention is a first, second or subsequent contravention for penalty purposes.

If you (the licensee) agree that the contravention(s) took place and accept the enforcement action proposed, there is no need for a hearing. In that case, you must sign a document called a waiver. By signing a waiver, you irrevocably

- Agree that the contravention(s) occurred,
- Accept the proposed penalty,
- Agree that the contravention(s) and penalty will form part of the compliance history of the licensee, and
- Waive the opportunity for an enforcement hearing.

If you decide to sign a waiver, or if you have any questions regarding this matter, please contact me at 250 952-5747 as soon as possible. If you do not sign a waiver, the branch registrar will provide you with the next steps in the hearing process.

For further information about the hearing and waiver process please visit our website at <https://www2.gov.bc.ca/gov/content/employment-business/business/liquor-regulation-licensing/bc-liquor-control-compliance-and-enforcement>

Yours truly,

s.15, s.19

Liquor Inspector

Enclosures

Copy of Liquor Control and Licensing Branch Enforcement Process – Information for Liquor Licensees (located at <https://www2.gov.bc.ca/gov/content/employment-business/business/liquor-regulation-licensing/bc-liquor-control-compliance-and-enforcement/bc-liquor-control-enforcement-process>)

ENFORCEMENT ACTION

If the general manager determines that the licensee has committed the above alleged contravention(s), the general manager may consider the following when determining what enforcement action, if any, is warranted pursuant to section 51 (2) of the Act:

Past Enforcement Action Taken

Date of Incident	Licence Number	Identifying documents	Finding of Contravention	Enforcement Action
July 25, 2001	LP#002668	CN#A001762	*Minor - Sell, give or otherwise supply liquor to minor, s. 33(1)(a) Act	\$7000 monetary penalty
August 22, 2001	LP#002668	CN#A001764	*Permit prohibited entertainment, s. 50 Act	\$5000 monetary penalty
November 23, 2005	LP#003730	CN#B006417; EH05-162	*Contravene term & condition, s. 12 Act	\$1000 monetary penalty
April 4, 2008	LP#002668	CN#B007022; EH08-048	*Permit person to become intoxicated, s. 43(2)(a) Act	4 day suspension
June 5, 2010	LP#003730	CN#B009065; EH10-082	*Permit prohibited acts by stripper/exotic dancer, s. 50 Act	5 day suspension
March 17, 2014	LP#002668	CN#B017406; EH14-033	*Contravene term & condition - Exceed maximum drink size, s. 12 Act	\$2000 monetary penalty
April 26, 2014	LRS#191842	CN#B017412; EH14-053	*Minor - Sell, give or otherwise supply liquor to minor, s. 33(1)(a) Act	\$7500 monetary penalty
December 1, 2017	LP#002668	CN#B020075; EH17-111	Licensee - Contravene Term or Condition	2 day suspension

Compliance Meetings

Licence	Date	Topic
002668	February 6, 2013	*Permit intoxicated person to remain, s. 43(2)(b) Act
002668	June 17, 2011	*Sales strategy likely to encourage intoxication, s. 41(2)(b) Reg.
002668	March 2, 2015	*Permit intoxicated person to remain, s. 43(2)(b) Act
003730	November 15, 2005	*Permit intoxicated person to remain, s. 43(2)(b) Act
191842	August 27, 2014	*Minor - Permit minor to enter or be on premises, s. 35 Act

Other Factors



NOTICE OF ENFORCEMENT ACTION
Liquor Control and Licensing Act, SBC 2015, c.19

File: EH18-001
Job: 014267665-013

January 10, 2018

Sizzling Tandoor Restaurant Ltd.
c/o Gurinderpal S. Bawa
529 Judah Street
Victoria, BC V8Z 2J8

Re: Licence Number: 304246
Licence Type: Food Primary
Licence Expiry Date: November 30, 2018
Establishment: Sizzling Tandoor Restaurant
CN #: B020038

The purpose of this notice is to inform you that pursuant to section 51 of the *Liquor Control and Licensing Act* (the Act), the general manager is pursuing enforcement action against the licensee.

This Notice of Enforcement Action (NOEA) will:

1. Set out the branch's allegation(s) of non-compliance with the Act, and or the *Liquor Control and Licensing Regulation* (the Regulation) and or the terms and conditions of the licence,
2. Provide a narrative of events,
3. Describe the evidentiary basis for the elements of each alleged contravention,
4. Provide reasons why the branch is pursuing enforcement,
5. Provide reasons why the branch believes the enforcement action (i.e. penalty) recommended is warranted, and
6. Outline the licensee's options and the branch procedures that will be followed depending on whether or not the licensee disputes what is being alleged.

Included with this NOEA is the licensee's enforcement history and an explanation of how that history will be applied in any hearing decision of the general manager.

Ministry of Attorney
General

Liquor Control and
Licensing Branch

Mailing address:
PO Box 9292 Stn Prov Gov
Victoria BC V8W 9J8

Toll Free: 1 866 209-2111
Telephone: 250 952-5787

Location:
Fourth Floor, 3350 Douglas Street
Victoria BC

www.gov.bc.ca/liquorregulationandlicensing

1. THE ALLEGED CONTRAVENTION(S):

When a first contravention has occurred and either minimum penalty for that contravention is appropriate, you (the licensee) may be given the option to select one of those two penalties when you choose to sign a waiver (see Section 6 - The Procedures). The choice of penalties is noted below under Recommended Enforcement Action.

No.	Title of Contravention(s)	Section of the Act/Regulation or T&C Reference	Date and time of Contravention(s)	Recommended Enforcement Action
1.	Licensee - Contravene Term or Condition - Purchase liquor other than from LDB or designated store	Licensee Terms and Conditions	2018-JAN-04 11:30 AM	1 day suspension or \$1000 monetary penalty

2. NARRATIVE

The sizzling Tandoor Restaurant is an establishment licensed to sell all types of liquor pursuant to Food Primary Licence #304426. The licence is issued to Sizzling Tandoor Restaurant Ltd, which is comprised of shareholders Gurinderpal and Nardinderjit Bawa.

The following terms and conditions are listed on the food primary licence #304246:
Hours of Sale: 11:00 a.m. to 10:00 p.m. Sunday to Thursday and 11:00 a.m. to 11:00 p.m. Friday and Saturdays.

- For the sale and consumption of all types of liquor in establishments with a primary focus on the service of food.
- The terms and conditions to which this licence is subject include the terms and conditions contained in the licensee Terms and Conditions Handbook, which is available on the Liquor Control and Licensing Branch website. The Terms and Conditions Handbook is amended from time to time.
- Liquor may only be sold, served and consumed within the service areas outlined on the official plan, unless otherwise endorsed or approved by the LCLB.

Capacity: Persons01- 48

Details of the Contravention

On Thursday, January 4, 2018 Liquor Inspectors Gridland and Scott conducted a routine inspection of the Sizzling Tandoor Restaurant. A male front end server was present at the time of inspection. This excluded the kitchen staff. During the inspection the liquor register was reviewed in accordance with the Food Primary Terms and Conditions Handbook. Among the receipts was a receipt from Hillside Liquor Plus LRS #195319. The receipt #102854 indicated a sale to an unidentified person utilizing an American Express Card to conduct the purchase. The receipt identified one item was purchased totaling \$57.59 on December 28, 2017.

Upon being questioned the male server was unable to assist the inspectors during the inspection. He had little knowledge of the bar operation of stock. A check of the bar stock confirmed a 500 ml bottle of Taboo Genuine Absinthe was present and remained unopened. Liquor Inspectors Cridland and Scott removed the unauthorized bottle of liquor and seized it as evidence of a contravention. The staff member called the restaurant manager ^{s.22} on the phone. Inspector Cridland spoke with ^{s.22} and explained the situation to her. Inspector Cridland offered to meet with her later in the day to explain the circumstances surrounding the contravention at which time she would be presented the accompanying documents. Liquor Inspectors Cridland and Scott departed with the evidence and returned to the office where it was processed.

3:30 p.m. January 4, 2018 Inspector Cridland completed an LCLB Exhibit Receipt, Contravention Notice #B020038 and then returned to the Sizzling Tandoor Restaurant. There he met with ^{s.22} the establishment's manager, where they discussed the details of the contravention. In turn ^{s.22} signed the Exhibit Receipt, Contravention Notice as an acknowledgment and receipt of the alleged contravention and seizure. Inspector Cridland provided ^{s.22} with the appropriate copies and departed.

3. THE ELEMENTS OF THE ALLEGED CONTRAVENTION(S)

3.1 Licensee - Contravene Term or Condition - Purchase liquor other than from LDB or designated store

Factors: On January 4, 2018 while conducting a routine inspection of the Sizzling Tandoor Restaurant, FP Lic #304246 the liquor register was reviewed in accordance with the Food Primary Terms and Conditions Handbook. While reviewing the receipts Liquor Inspectors Cridland and Scott located a sales receipt from a privately owned liquor store. The receipt depicted a purchase had been made at the Hillside Liquor Plus LRS #195319. The receipt #195319 indicated a sale of 1 x 500 ml bottle of Taboo Genuine Absinthe totaling \$57.59. A check of the Sizzling Tandoor Restaurant liquor stock confirmed the purchased bottle was in the bar stock unopened. The bottle of liquor had not purchased under the FP's licence nor was it purchased from an authorized source. Subsequently, the bottle was pulled from bar stock and seized by the inspectors as evidence of a contravention of the terms and conditions of the licence.

4. REASONS FOR PURSUING ENFORCEMENT

4.1 Licensee - Contravene Term or Condition - Purchase liquor other than from LDB or designated store

In this case, during a routine inspection of the liquor register for the Sizzling Tandoor Restaurant FP Lic#304246, it was learned a staff member for the licensee had purchased a bottle of liquor from the Hillside Liquor Plus LRS #195319. This purchase was not made under the licence nor was it from an authorized source. Liquor Inspectors Cridland and Scott located the bottle in bar stock and noted it was for resale in the licensed Food Primary.

Unlawful liquor is also a public safety priority for the branch. Unlawful liquor is defined as any liquor that has not been purchased, kept, prepared, served or sold in compliance with the Act, regulation or terms and conditions of a licence. Unlawful liquor includes liquor (as in this case) purchased from a private liquor store by a staff member of the licensee and kept for resale.

The purchase of liquor from other than from LDB or designated stores has many negative social and financial consequences that result in a financial burden on taxpayers and lost government revenue. Unlawful liquor contributes to job loss, and unfair competition. It also under-mines the integrity of the province's liquor control program and therefore threatens the safeguards that protect communities from the negative aspects of liquor consumption.

5. REASONS FOR THE RECOMMENDED ENFORCEMENT ACTION (i.e. penalty)

5.1 Licensee - Contravene Term or Condition - Purchase liquor other than from LDB or designated store: 1 day suspension or \$1000 monetary penalty

For the alleged contravention of Licensee - Contravene Term or Condition - Purchase liquor other than from LDB or designated store (Contravention Notice Number B020038), a suspension penalty of one (1) day is proposed. This recommended suspension penalty falls within the penalty range set out in schedule 2, item 54 of the Regulation for a contravention of this type.

The suspension will be served starting on a Thursday and will continue on successive business days until completed.

OR

For the alleged contravention of Licensee - Contravene Term or Condition - Purchase liquor other than from LDB or designated store (Contravention Notice Number B020038), a monetary penalty of \$1,000.00 (One Thousand Dollars) is proposed. This recommended monetary penalty falls within the penalty range set out in schedule 2, item 54 of the Regulation for a first contravention.

In this case, during a routine Inspection of the Sizzling Tandoor Restaurant's liquor register, inspectors had learned that an employee had on December 28, 2017 purchased a bottle of liquor from the Hillside Liquor Plus LRS #195319 (Private Liquor Store). The bottle was then placed into bar stock for resale in the licenced Food Primary. *The Liquor Control And Licensing Act* along with the Food Primary Terms and Conditions Handbook clearly states liquor must be purchased from a Liquor Distribution Branch (LDB) liquor store or other outlet designated (in writing) by the general manager of the LDB. Licensees or third party operators cannot buy, sell or give unlawful liquor to anyone that has been obtained from an unauthorized source.

6. THE PROCEDURES

As noted in Section 1, you (the licensee) have the option of choosing either penalty (fine or suspension) if you choose to sign a document called a waiver. By signing a waiver, you irrevocably

- Agree that the contravention(s) occurred,
- Accept the penalty you have selected,
- Agree that the contravention(s) and penalty will form part of the compliance history of the licensee, and
- Waive the opportunity for an enforcement hearing.

You (the licensee) may agree with or dispute the above allegation(s) and recommended penalty options.

If there is a dispute, the general manager will decide if the contravention(s) occurred and what enforcement action, if any, is warranted. A hearing may be scheduled for that purpose.

If the general manager decides that enforcement action is warranted, the general manager will determine the enforcement action to be imposed on the licensee and may:

- Impose a suspension of the liquor licence for a period of time
- Impose a monetary penalty
- Cancel the liquor licence
- Rescind, amend or impose new terms and conditions on the licence
- Order a transfer of the licence

Imposing any penalty is discretionary. Where the general manager finds that a suspension or monetary penalty is warranted the general manager must follow the minimums set out in Schedule 2 of the Regulations. The general manager is not bound by the maximums and may impose a higher suspension or monetary penalty when it is in the public interest to do so. The general manager is not bound to order the penalty recommended in this NOEA.

Schedule 2 of the Regulation sets out the range of enforcement actions for when a contravention occurs in an establishment within a 12 month period of a contravention of the same type. It is the date that the contravention occurred that is used for the purpose of determining if a contravention is a first, second or subsequent contravention for penalty purposes.

If you decide to sign a waiver, or if you have any questions regarding this matter, please contact me at 250 952-5747 as soon as possible. If you do not sign a waiver, the branch registrar will provide you with the next steps in the hearing process.

For further information about the hearing and waiver process please visit our website at <http://www2.gov.bc.ca/gov/content/employment-business/business/liquor-regulation-licensing/compliance-enforcement>

Yours truly,

Ron Cridland
Liquor Inspector

Enclosures

Copy of *Liquor Control and Licensing Branch Enforcement Process – Information for Liquor Licensees* (located at <http://www2.gov.bc.ca/gov/content/employment-business/business/liquor-regulation-licensing/compliance-enforcement/enforcement-process>)

ENFORCEMENT ACTION

If the general manager determines that the licensee has committed the above alleged contravention(s), the general manager may consider the following when determining what enforcement action, if any, is warranted pursuant to section 51(2) of the Act:

Past Enforcement Action Taken

No compliance history found

Compliance Meetings

No compliance meetings found

Other Factors



NOTICE OF ENFORCEMENT ACTION
Liquor Control and Licensing Act, SBC 2015, c.19

File: EH17-113
Job: 000694053-048

December 21, 2017

Executive House Ltd.
c/o Phillips, Andrea
777 Douglas St
Victoria, BC V8W 2B5

Re: Licence Number: 064730
Licence Type: Liquor Primary
Licence Expiry Date: February 28, 2018
Establishment: Executive House
CN #: B020033

The purpose of this notice is to inform you that pursuant to section 51 of the *Liquor Control and Licensing Act* (the Act), the general manager is pursuing enforcement action against the licensee.

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5. Provide reasons why the branch believes the enforcement action (i.e. penalty) recommended is warranted, and
6. Outline the licensee's options and the branch procedures that will be followed depending on whether or not the licensee disputes what is being alleged.

Included with this NOEA is the licensee's enforcement history and an explanation of how that history will be applied in any hearing decision of the general manager.

Ministry of Attorney
General

Liquor Control and
Licensing Branch

Mailing address:
PO Box 9292 Stn Prov Gov
Victoria BC V8W 9J8

Toll Free: 1 866 209-2111
Telephone: 250 952-5787

Location:
Fourth Floor, 3350 Douglas Street
Victoria BC

www.gov.bc.ca/liquorregulationandlicensing

1. THE ALLEGED CONTRAVENTION(S):

No.	Title of Contravention(s)	Section of the Act/Regulation or T&C Reference	Date and time of Contravention(s)	Recommended Enforcement Action
1.	Licensee - Allow licence to be used by an unauthorized person	s. 18(1) Act	2017-DEC-07 4:50 PM	\$10000 monetary penalty
2.	Licensee - Unlawful purchase of liquor	s. 8(2)(e) Act	2017-DEC-07 4:50 PM	\$7500 monetary penalty

1.2 ALTERNATIVE CONTRAVENTIONS

If the General Manager does not make a finding of contravention for the above alleged contraventions, the alternative contravention below may be considered:

Alternative Contravention(s)	Section of the Act/Regulation or T&C Reference	Date and time of Contravention(s)	Recommended Enforcement Action
Licensee - Sell or serve unauthorized liquor	s. 8(3) Act	2017-DEC-07 4:50 PM	\$7500 monetary penalty

2. NARRATIVE

The Executive Hotel is a Liquor Primary establishment licensed to sell all types of liquor pursuant to Liquor Primary Licence #064730. The licence is issued to Executive House Ltd which is comprised of the following legal entities Estate of Mr. Edwin Jackson, Ms. Margret Jackson and Ms. Andrea Phillips and the Jackson family trust.

The following Terms and Conditions are listed on the Liquor Primary Licence #064730:
Hours of Sale: 09:00 a.m. to 01:00 p.m. Monday to Sunday.

Capacity: Patio1 32 / Patron02 46 / Person01 163

- The terms and conditions to which this licence is subject include the terms and conditions contained in the licensee Terms and Conditions Handbook, which is available on the Liquor Control and Licensing Branch website. The Terms and Conditions Handbook is amended from time to time.
- Liquor may only be sold, served and consumed within the service areas outlined 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.
- Patio extension permitted as outlined in red on the official plan.
- Family Foodservice term and condition permits minors accompanied by a parent or guardian in all service areas until 10 PM when meal service is available.
- Only servers are permitted to carry liquor through an unlicensed area.

- Patio must be vacated no later than 11:00 PM nightly.

Details of the Contraventions

July 22, 2017

While conducting research on liquor and food primary licences through open source social media it came to the attention of Liquor Inspector Cridland that the licensee of the Executive House Liquor Primary LP #064730 had the intent of opening a new independent bar as a "second" Third Party Operator in the same licenced area as Bartholomew's Pub under the existing liquor primary licence 064730. The new bar is located in the Patrons02 area of the existing licence with a Capacity 46. The new bar was to be called "Foxtrot Tango Whiskey Bar" (FTW Bar). This was confirmed when Inspector Cridland reviewed the LCLB data base (POSSE) and confirmed on July 20, 2017 that a "second" third party addition application for the Liquor Primary licence #064730 identified under Job #000694053-046 had been received by the branch.

Further review of the POSSE data base confirmed the licensee had not submitted an application for a structural change to remove the licensed area Patrons02 from the approved floor plan where the new business FTW Bar was currently situated awaiting opening to the public. Social Media confirmed the new establishment had advertised they would be open for business in the beginning of August 2017.

On July 27, 2017 Inspector Cridland attended the Double Tree Hilton Hotel located at 777 Douglas St, Victoria BC. This hotel is owned and operated by the Executive House Ltd ("the licensee"). The hotel has various liquor licences attached to the establishment and in particular Inspector Cridland was there to discuss the Liquor Primary licence #064730 which was currently operated by an approved third party operator conducting business as "Bartholomew's English Style Pub" which is owned and operated by Sweet Pea Fine Foods Inc. Sweet Pea Foods also operated Doubles Lounge in Patrons02.

While at the Double Tree Hotel, Inspector Cridland met with the hotel's Chief Financial Officer Mr. Rajiv Dwarika and explained to him that they could not open a second independent bar under the one licence. He was confused as we (LCLB) had accepted their application and provided a receipt for payment dated July 20, 2017. Inspector Cridland informed him it was not possible to place a second independent company under the one licence and Inspector Cridland would speak with licensing to ensure the hotel's funds were returned and Mr. Dwarika would be contacted and provided options on how to open the new establishment.

In the interim, Inspector Cridland made sure Mr. Dwarika understood that the licensee would not be able to open the FTW bar as intended and scheduled. Inspector Cridland further ensured Mr. Dwarika understood a new Liquor Primary licence application would have to be submitted both through the local government and LCLB before FTW could be opened and that a new Liquor Primary licence application process would take some time; approximately one year. Inspector Cridland provided Mr. Dwarika with his LCLB business card and explained he was available to answer any questions the management of the hotel or the licensee may have.

Upon return to the LCLB office on July 27, 2017 Inspector Cridland spoke with LCLB Licensing and explained the circumstances of the application made by the licensee. Inspector Cridland explained it was the intent of the licensee to open the "FTW Bar" as a

second third party under the single licence. Inspector Cridland then informed the LCLB Licensing that the licensee and management staff of the Hilton Double Tree understood they could not proceed with their initial course of action.

July 28, 2017

LCLB Licensing Analyst Kyla Morris attempted but was unable to contact the licensee to discuss the application. Subsequently, the current third party operator ^{s.22} owner of Sweet Pea Fine Foods had called her wondering what the status of the FTW licence application as ^{s.22} was extremely concerned about his 'side' of the licence.

For ^{s.22} as the authorized third party operator had previously facilitated the closure of the Doubles Lounge and the new unauthorized third party operator moved in and renovated the Patrons02 portion of the licensed area of which ^{s.22} had little knowledge of what was transpiring between the licensee (hotel) and the operators of FTW bar.

^{s.22} was reassured that he could still continue to operate and LCLB would look to quickly resolve the issues. A review of the operating file confirmed Sweet Pea Fine Foods had been the authorized third party operator in the establishment since June 2014. The proposed new "second" third party operator for the "FTW Bar" called the LCLB Helpdesk for a status update on the file and he was told at that time an application had been received however could not be actioned.

July 31, 2017

Licensing Analyst Kyla Morris spoke to Andrea Phillips the licensee for Liquor Primary # 064730. During the conversation they discussed the options available to the licensee. The option available was to continue to operate under the one licence, with the FTW Bar staff as employees of the Executive House Ltd. (the Licensee). Ms. Phillips was advised if any structural changes other than cosmetic were done in Patrons02 where FTW Bar would be located a structural change application would be required. Ms. Phillips confirmed no further changes were done.

Licensing Analyst Kyla Morris brought it to Ms. Andrea Phillips attention that if they wished to have the FTW bar area as a separate licence operated by a different third party operator at any time, they would require a structural change application to remove the Patron02 licensed area from Bartholomew's English Style Pub licence as well as a new LP application that would require local government and possibly public input. Ms. Phillips was also informed LCLB would be terminating the third party operator application and would be providing a refund to the Executive House Ltd. as the application was submitted in error.

August 01, 2017

Inspector Cridland meet with Mr. Dwarika and informed him that in consultation with the Deputy General Manager and the Regional Manager Compliance and Enforcement the intended decided course of action by the licensee was not acceptable. The staff of the FTW Bar could not operate as employees of the Executive House under a licence that had been leased out to a third party operator. Mr. Dwarika was informed the only way the new establishment could open required the FTW staff and operation be integrated into and fall under the direction and control of the authorized third party operator Sweet Pea Fine Foods. ^{s.22} the owner would have to have full control of the

operation under Sweet Pea Foods until such time as a new Liquor Primary application for FTW was approved through both Local Government and LCLB.

Inspector Cridland met with ^{s.22} and explained the options to him as he was extremely concerned as to the future of his establishment. Inspector Cridland explained the events to date and the course of action present. He then encouraged ^{s.22} to speak with the licensee to find resolution should he not want to enter into a business arrangement with the new company FTW Bar.

On August 19, 2017, Inspector Cridland learned from ^{s.22} that he had opted to take control and responsibility of operating the FTW BAR and the establishment was successfully opened.

Public Safety Inspection

Satisfied with the chosen course of action Inspector Cridland conducted three random inspections between August 26, 2017 and November 01, 2017 of Liquor Primary #064730; both entities were looked at. On November 01, 2017 Inspector Cridland was approached while conducting the inspection in the hotel. A staff member expressed concerns of possible over service of liquor at the FTW Bar. Inspector Cridland entered the establishment and spoke with the FTW staff. As it was closing there were no signs of intoxication present.

On December 05, 2017 Liquor Inspectors Wayne Brown, Holly Belanger and Robert Scott conducted a public safety inspection of the licence. During the inspection the inspectors observed FTW Bar staff member ^{s.22} consume a sample appx .5 oz. of whisky while working behind the bar. ^{s.22} advised Inspector Brown that she was working and admitted to the liquor consumption. Manager Shawn Soole stated to Inspector Brown that there is zero tolerance for staff liquor consumption while on shift however he had permitted it to occur in plain sight, in front of a patron she was serving as well as himself and a provincial liquor inspector. Additionally it was noted that the Infinity Drinks were not labeled properly in accordance to the Licensee Terms and Condition Handbooks. Mr. Soole was informed their liquor register would be inspected at a later date by Inspector Belanger.

December 06, 2017

Based on information provided from the inspection of December 5th, Inspector Cridland spoke with the LCLB licensing analyst to confirm if a new liquor primary application had been submitted by the Executive House Hotel Ltd and if it included a new Third Party Operator application in favour of the FTW Bar. A search of the branch POSSE data base met with negative results.

Inspector Cridland then attended the BC Liquor Distribution Branch located at 2219 Government St, where it was confirmed liquor purchases in favour of Liquor Primary 064730 are separated by both entities (Seat Pea Fine Foods and FTW Bar) attached to the Liquor Primary Licence #064730 at the time of purchase thus indicating there were two separate companies purchasing liquor under one licence. Inspector Cridland attended the City of Victoria Bylaw and licensing services where it was confirmed the FTW Bar had made application for a business licence in July 2017 which had not been completed as the application did not receive support from the Liquor Control and Licensing Branch.

December 07, 2017

Liquor Inspectors Cridland and Belanger conducted a follow up inspection of the FTW Bar. Mr. Soole (an owner) was present at the time of inspection. During the inspection the liquor register was reviewed. Among the receipts was a receipt from Vessel Liquor Store LRS #195411. The receipt #189120 indicated a sale to Shawn Soole Customer ID number ^{s.21} had purchased 6 items totaling \$257.92 on 8/28/2017 with an added 15% discount. A check of the liquor stock showed three bottles of the purchase had been consumed as confirmed by Mr. Soole. However three of the bottles purchased at Vessel Liquor Store LRS #195411 remained in bar stock for resale and were subsequently seized as unlawful liquor.

- a. 750 mL Perry's Tot Gin (open);
- b. 700 mL Contratto Bitter Liquor (open);
- c. 750 mL Contratto American Rosso (open)

Inspector Cridland completed an LCLB Exhibit Receipt and had Mr. Soole sign the document as an acknowledgment of the seizure. During the inspection Inspector Cridland asked Mr. Soole if he had catered the Victoria Fashion Week event held at the Double Tree Hilton on November 30, 2017. Mr. Soole confirmed he did cater the event. Inspector Cridland asked Mr. Soole if he was aware that there was no authorized catering endorsement associated to the licence. Inspector Cridland then informed him a review of social media open source confirmed Mr. Soole had been advertising his business as a caterer and soliciting business via social media. Mr. Soole was also identified on social media as an owner/manager of the FTW Bar.

Inspector Cridland informed Mr. Soole that he was not authorized to cater events as the licence did not have a catering endorsement. Mr. Soole was further informed liquor may only be sold, served and consumed within the service areas outlined on the official floor plan unless otherwise endorsed or approved by LCLB. Inspector Cridland informed Mr. Soole that he was not endorsed or approved to serve liquor to the Victoria Fashion Week event and would be receiving a contravention notice and enforcement action would be recommended.

Inspector Cridland then asked Mr. Soole if he was running an independent company from Sweet Pea Fine Foods to which Mr. Soole confirmed he was a ^{s.22} owner of the FTW Bar and was running an independent payroll.

On December 08, 2017 Inspector Cridland completed a Notice to Produce pursuant to s. 42 of the Act. The Notice to Produce required production of:

- All FTW Bar employee records,
- Liquor purchase receipts for Fashion Week an event catered by FTW Bar on November 30, 2017,
- Landlord and tenant leases between the Hotel and FTW Bar,
- Business leases between Sweet Pea Fine Foods and FTW Bar, and
- All and or any copies of the City of Victoria Business Licences issued for Liquor Primary Licence #064730

On December 18, 2017 the returns were provided and upon review it was learned that on July 21, 2017 the licensee (Executive House Ltd) entered into a Cocktail Bar and Lounge lease with the tenants Mr. Shane Clarke and Mrs. Jill Tullock for a rentable area

Identified on the LCLB official floor plan as Patron02 on Liquor Primary Licence #064730. The area of Patron02 which at the time was associated to a second third party operator identified as Sweet Pea Fine Foods Inc. The lease contract identified the business name of the new tenant was to be Foxtrot Tango Whisky (FTW) Bar. Paragraph 19.6 of the lease agreement states the landlord shall grant the tenant third party operator status under the Leased Premise Liquor Licence for the term and extensions. To which the application had been denied by LCLB.

The Lounge Management Agreement was also reviewed between Sweet Pea Fine Foods Inc. and Mr. Shane Clarke and Mrs. Jill Tulloch the "Lounge Manager". The Lounge Management Agreement identifies the owner Sweet Pea Fine Foods and the "Lounge Manager" entered into an agreement to lease the other cocktail lounge formerly known as Doubles Lounge dated July 21, 2017. This lease identifies the "Lounge Manager" as an independent contractor conducting business in the area of Patron02. This independent contractor conducting business as the FTW Bar was not authorized by the LCLB to conduct business or sell liquor under Liquor Primary Licence #064730.

3. THE ELEMENTS OF THE ALLEGED CONTRAVENTION(S)

3.1 Licensee - Allow licence to be used by an unauthorized person

- A licensee must not allow another person to use the licensee's licence unless the licensee has first applied for and been granted an amendment to the licence to allow the use of the licence by the other person.

In this matter an "Add or Change a Licensee's Third Party Operator Licence Application" was received on July 20, 2017 by the Branch. This document was authored by Rajiv Dwarika who is the Chief Financial Officer for the Double Tree Hilton Hotel. The document was submitted under Liquor Primary Licence # 064730. The licence area affected was Patron02. The application identified a proposed partnership between:

- partner 1 ^{s.22} owner Ms. Jill Tulloch;
- partner 2 ^{s.22} owner Shane Clarke; and
- partner 3 ^{s.22} owner Shawn Soole

The proposal was to add a second third party operator identified as the FTW Bar to the existing Liquor Primary Licence. The application could not proceed because there was already an approved third party operator on the licence conducting business as "Bartholomew's English Style Pub" owned and operated by Sweet Pea Fine Foods Inc. Subsequently, after review and communication between the branch and licensee, the application was terminated on July 30, 2017. The fee for the application was refunded. A lease between Sweet Pea Fine Foods and the "Lounge Manager" (FTW Bar) identifies them as an independent contractor conducting business in the area of Patron02. This independent contractor conducting business as the FTW Bar was not authorized by the LCLB to purchase or sell liquor under Liquor Primary Licence #064730.

3.2 Licensee - Unlawful purchase of liquor

- The Liquor was not purchased from the Liquor Distribution Branch

On December 07, 2017 during a follow up inspection of the FTW Bar the liquor register was reviewed. Inspectors Cridland and Belanger located a sales receipt from a privately owned liquor store identified as Vessel Liquor Store LRS #195411. The receipt #189120 indicated a sale to Mr. Shawn Soole with a Customer ID number ^{s.21} on it. On August 28, 2017 Soole had purchased 6 items totaling \$257.92 with an added 15% discount for each item indicated on the sales receipt. A check of the FTW liquor stock confirmed three bottles of the purchase had been consumed by patrons between August and December 2017. This was confirmed by Mr. Soole. However, the remaining three bottles of liquor which had been purchased at Vessel Liquor Store LRS #195411 were pulled from bar stock and were seized by the inspectors as evidence for a contravention of unlawful liquor.

4. **REASONS FOR PURSUING ENFORCEMENT**

4.1 Licensee - Allow licence to be used by an unauthorized person

In this case the licensee had allowed the liquor licence to be used by an unauthorized person conducting business as the FTW Bar. To ensure safe and responsible service of liquor and as a matter of due diligence, a licensee should hire, train and provide written policies and procedures for their staff members. A licensee and their employees are responsible for managing and controlling the behaviour of patrons and must ensure that other patrons, staff, and members of the community are not harmed as a result of liquor misuse or criminal activity in the establishment.

In this matter the Executive House Limited (the licensee) owns and operates a hotel and related facilities known as Double Tree by Hilton Hotel and Suites and the buildings and real property in and on which the hotel is located, civically described as 777 Douglas St, Victoria, BC.

The Licensee has leased out their food and beverage facilities located within the hotel, to a third party operator identified on the face of the licence as Sweet Pea Fine Foods Inc. This third party operator which has been approved by the Liquor Control and Licensing Branch conducts business as Bartholomew's English Style Pub operating in Persons01 and the other a cocktail lounge operating in Patron02 effective December 01, 2013.

On July 21, 2017 the licensee (Executive House Ltd) entered into a Cocktail Bar and Lounge lease with the tenants Mr. Shane Clarke and Mrs. Jill Tullock for a rentable area identified on the LCLB official floor plan as Patron02 on Liquor Primary Licence # 064730. The area of Patron02 which at the time was associated to a second third party operator identified as Sweet Pea Foods Inc. The lease contract identified the business name of the new tenant was to be Foxtrot Tango Whisky Bar. Paragraph 19.6 of the lease agreement states the landlord shall grant the tenant third party operator status under the Leased Premise Liquor Licence for the term and extensions.

In this case the FTW Bar was not approved by the LCLB nor did they operate within the terms and conditions of the issued liquor licence as provided above.

LCLB had denied the application. LCLB licensing personal had engaged the three

parties to find a workable solution to expedite and opening date for the FTX Bar which had been renovated and was ready to open.

As a result a Lounge Management Agreement dated August 20, 2017 was compiled between Sweet Peas Fine Foods Inc. and Shane Clarke and Jill Tullock collectively referred to as the "Lounge Manager". The lease between the owner (Sweet Peas Fine Foods) and the lounge manager (FTW Bar) and the manager (Executive House Ltd) referred to the Patron02 area of the official LCLB floor plan in relation to LP licence # 064730. The Lounge Management Agreement between Sweet Pea Fine Foods Inc. and Mr. Shane Clarke and Mrs. Jill Tullock "Lounge Manager". The Lounge Management Agreement identifies the owner Sweet Pea Fine Foods and the "Lounge Manager" (FTW Bar) had entered into an agreement to lease the other cocktail lounge formerly known as Doubles Lounge dated July 21, 2017. This lease identifies the "Lounge Manager" as an independent contractor conducting business in the area of Patron02. This independent contractor conducting business as the FTW Bar was not authorized by the LCLB to conduct business or sell liquor under Liquor Primary Licence #064730. Documents received under a Notice to Produce confirmed that FTW Bar was operating as an independent contractor. The FTW Bar was operating with an independent payroll and separate operation expense from that of Sweet Pea Fine Foods.

It was clear the Licensee did not have the ability to maintain effective control over the operation of the establishment. Control of the cocktail lounge in area Patron02 under Liquor Primary #064730 was relinquished to an unauthorized independent contractor who was not and cannot be held accountable to ensure the business remains compliant with the *Liquor Control and Licensing Act*, Regulations and Terms and Conditions.

4.2 Licensee - Unlawful purchase of liquor:

In this case, during an inspection of the liquor register of the FTW Bar it was learned Mr. Shawn Soole had purchased liquor from Vessel Liquor Store LRS #195411 LRS for resale in the licensed Liquor Primary Establishment #064730.

Unlawful liquor is also a public safety priority for the branch. Unlawful liquor is defined as any liquor that has not been purchased, kept, prepared, served or sold in compliance with the Act, regulation or terms and conditions of a licence. Unlawful liquor includes liquor (as in this case) unlawfully purchased from a private liquor store by a third party operator; and/or liquor which have been smuggled from other provinces or other countries.

Unlawful liquor has many negative social and financial consequences that result in a financial burden on taxpayers and lost government revenue. Unlawful liquor contributes to job loss, and unfair competition. It also under-mines the integrity of the province's liquor control system and therefore threatens the safeguards that protect communities from the negative aspects of liquor consumption.

5. REASONS FOR THE RECOMMENDED ENFORCEMENT ACTION (i.e. penalty)

5.1 Licensee - Allow licence to be used by an unauthorized person: \$10000 monetary penalty proposed

For the alleged contravention of Licensee - Allow licence to be used by an unauthorized person (Contravention Notice Number B020033), a monetary penalty of \$10,000.00 (Ten Thousand Dollars) is proposed. This recommended monetary penalty falls within the penalty range set out in schedule 2, item 54 of the Regulation for a first contravention.

The licensee, Ms. Andrea Phillips allowed the owners of the FTW Bar an unauthorized Third Party, to remain in the establishment from August 2017 forward where they conducted business under the Liquor Primary Licence # 064730. The Executive House Ltd is in direct contravention of s. 18(1) of the Act, which states a licensee must not allow another person to use his or her licence without having first obtained the written approval of the general manager.

The licensee is responsible for all matters respecting a liquor licence. Therefore, situations involving the operation of a liquor licence by a Third Party Operator require the general manager to assess the suitability of these individuals, just as was done at the time of the original application of the licensee. A Third Party Operator who is operating without approval could result in an establishment being operated by a person who is not fit and proper to hold a liquor licence. Further there is no accountability of the Third Party to remain compliant with the *Liquor Control and Licensing Act*, Regulations and Terms and Conditions.

There is sufficient evidence to prove the licensee has not exercised their control and continued to allow an unauthorized Third Party Operator "FTW Bar" to continue business operations while unauthorized in contravention of the Act. Additionally, the licensee failed to act in the public interest by ensuring the operation of "FTW Bar" was compliant and operating in accordance with the Act, Regulation and Terms and Conditions Handbook for the liquor primary licence. The actions of the licensee circumvented the LCLB licensing procedures and are contrary to the public interest and fairness to all licensees.

This penalty should sufficiently impress to the licensee the seriousness of maintaining compliance with legislation and LCLB policies, discourage similar incidents from occurring in the future, and send a clear message to the local community that the LCLB will address such incidents of non-compliance appropriately.

5.2 Licensee - Unlawful purchase of liquor: \$7500 monetary penalty proposed

For the alleged contravention of Licensee - Unlawful purchase of liquor (Contravention Notice Number B020033), a monetary penalty of \$7,500.00 (Seven Thousand Five Hundred Dollars) is proposed. This recommended monetary penalty falls within the penalty range set out in schedule 2, item 18 of the Regulation for a first contravention.

In this case, during an inspection of the Liquor Register of the FTW Bar it was learned Mr. Shawn Soole had purchased liquor from Vessel Liquor Store LRS #195411 LRS (Private Liquor Store) for resale in the licenced Liquor Primary Establishment #064730. *The Liquor Control And Licensing Act* along with the Liquor Primary Terms and Conditions Handbook clearly states liquor must be purchased from a Liquor Distribution Branch (LDB) liquor store or other outlet designated (in writing) by the general manager of the LDB. Furthermore the licensee or a third party operator cannot buy, sell or give unlawful liquor to anyone that has been obtained from an unauthorized source.

6. THE PROCEDURES

You (the licensee) may agree with or dispute the above allegation(s) and proposed penalty.

If there is a dispute, the general manager will decide if the contravention(s) occurred and what enforcement action, if any, is warranted. A hearing may be scheduled for that purpose.

If the general manager decides that enforcement action is warranted, the general manager will determine the enforcement action to be imposed on the licensee and may:

- Impose a suspension of the liquor licence for a period of time
- Impose a monetary penalty
- Cancel the liquor licence
- Rescind, amend or impose new terms and conditions on the licence
- Order a transfer of the licence

If there is a dispute, the general manager will decide if the contravention(s) occurred and what enforcement action, if any, is warranted. A hearing may be scheduled for that purpose.

If the general manager decides that enforcement action is warranted, the general manager will determine the enforcement action to be imposed on the licensee and may:

- Impose a suspension of the liquor licence for a period of time
- Impose a monetary penalty
- Cancel the liquor licence
- Rescind, amend or impose new terms and conditions on the licence
- Order a transfer of the licence

Imposing any penalty is discretionary. Where the general manager finds that a suspension or monetary penalty is warranted the general manager must follow the minimums set out in Schedule 2 of the Regulations. The general manager is not bound by the maximums and may impose a higher suspension or monetary penalty when it is in the public interest to do so. The general manager is not bound to order the penalty recommended in this NOEA.

Schedule 2 of the Regulation sets out the range of enforcement actions for when a contravention occurs in an establishment within a 12 month period of a contravention of the same type. It is the date that the contravention occurred that is used for the purpose of determining if a contravention is a first, second or subsequent contravention for penalty purposes.

If you (the licensee) agree that the contravention(s) took place and accept the enforcement action proposed, there is no need for a hearing. In that case, you must sign a document called a waiver. By signing a waiver, you irrevocably

- Agree that the contravention(s) occurred,
- Accept the proposed penalty,

- Agree that the contravention(s) and penalty will form part of the compliance history of the licensee, and
- Waive the opportunity for an enforcement hearing.

If you decide to sign a waiver, or if you have any questions regarding this matter, please contact me at 250 952-5747 as soon as possible. If you do not sign a waiver, the branch registrar will provide you with the next steps in the hearing process.

For further information about the hearing and waiver process please visit our website at <http://www2.gov.bc.ca/gov/content/employment-business/business/liquor-regulation-licensing/compliance-enforcement>

Yours truly,

Ron Cridland
Liquor Inspector

Enclosures

Copy of Liquor Control and Licensing Branch Enforcement Process – Information for Liquor Licensees (located at <http://www2.gov.bc.ca/gov/content/employment-business/business/liquor-regulation-licensing/compliance-enforcement/enforcement-process>)

ENFORCEMENT ACTION

If the general manager determines that the licensee has committed the above alleged contravention(s), the general manager may consider the following when determining what enforcement action, if any, is warranted pursuant to section 51(2) of the Act:

Past Enforcement Action Taken

Date of Incident	Licence Number	Identifying documents	Finding of Contravention	Enforcement Action
October 31, 2009	LP#064730	CN#B009003; EH09-126	*Allow liquor to be removed from establishment, s. 42(4) Reg.	\$1000 monetary penalty

Compliance Meetings

Licence	Date	Topic
064730	February 21, 2003	

Other Factors



NOTICE OF ENFORCEMENT ACTION
Liquor Control and Licensing Act, SBC 2015, c.19

File: EH17-106
Job: 020917390-020

November 22, 2017

The Vault Cafe Inc.
c/o Scott, Amanda Dawn
499 Wallace Street
NANAIMO, BC V9R 5B7

Re: Licence Number: 305411
Licence Type: Food Primary
Licence Expiry Date: April 30, 2018
Establishment: The Vault Cafe
CN #: B015305

The purpose of this notice is to inform you that pursuant to section 51 of the *Liquor Control and Licensing Act* (the Act), the general manager is pursuing enforcement action against the licensee.

This Notice of Enforcement Action (NOEA) will:

1. Set out the branch's allegation(s) of non-compliance with the Act, and or the *Liquor Control and Licensing Regulation* (the Regulation) and or the terms and conditions of the licence,
2. Provide a narrative of events,
3. Describe the evidentiary basis for the elements of each alleged contravention,
4. Provide reasons why the branch is pursuing enforcement,
5. Provide reasons why the branch believes the enforcement action (i.e. penalty) recommended is warranted, and
6. Outline the licensee's options and the branch procedures that will be followed depending on whether or not the licensee disputes what is being alleged.

Included with this NOEA is the licensee's enforcement history and an explanation of how that history will be applied in any hearing decision of the general manager.

Ministry of Attorney
General

Liquor Control and
Licensing Branch

Mailing address:
PO Box 9292 Stn Prov Gov
Victoria BC V8W 9J8

Toll Free: 1 866 209-2111
Telephone: 250 952-5787

Location:
Fourth Floor, 3350 Douglas Street
Victoria BC

www.gov.bc.ca/liquorregulationandlicensing

1. THE ALLEGED CONTRAVENTION(S):

When a first contravention has occurred and either minimum penalty for that contravention is appropriate, you (the licensee) may be given the option to select one of those two penalties when you choose to sign a waiver (see Section 6 - The Procedures). The choice of penalties is noted below under Recommended Enforcement Action.

No.	Title of Contravention(s)	Section of the Act/Regulation or T&C Reference	Date and time of Contravention(s)	Recommended Enforcement Action
1.	Licensee - Liquor not purchased from or served by licensee, s. 141(2) Reg	s. 141(2) Reg	2017-OCT-07 2:30 AM	4 day suspension or \$5000 monetary penalty

The Vault Café Inc. operates a Food Primary (FP) liquor licence #305411 at a Nanaimo establishment known as The Vault Cafe. The sole shareholder of The Vault Café Inc. is Amanda Scott.

The Vault Cafe is permitted to sell and serve liquor between 9:00 am until midnight, 7 days a week. The establishment provides a person capacity of 49 and includes an outdoor seasonal patio. The establishment is located in the downtown core of the City of Nanaimo in a predominantly commercial area. The Food Primary liquor licence for the establishment has a patron non-participation endorsement that allows the licensee to present entertainment such as musicians or comedians provided local by laws are conformed to and that the entertainment is suitable for viewing by minors.

2. NARRATIVE

Saturday October 7, 2017 2:30 am

Nanaimo RCMP officers were conducting patrols in downtown Nanaimo as part of the Bar Watch program. RCMP constables Bill Bain and Derek Balderston observed a number of people standing in front of the Vault Café which was atypical for that area as the café is normally closed at that time of the morning. The officers observed a male walk out the main door of The Vault and light a cigarette. At the time of the observances the lights were off in The Vault.

Constable Balderston approached The Vault and entered through the unlocked main entrance door. Using his flashlight, Constable Balderston observed numerous people standing in front of the bar service area and some of the people were holding open cans of beer. Constable Balderston observed that a table near the group of standing people had open cans of beer and an open can of Lonetree cider.

Licensee, Amanda Scott, who was in the establishment, advised Constable Balderston that the persons inside The Vault were band members who had earlier played at The Vault and some of their friends. Amanda Scott further advised that the band had actually

just returned to The Vault to tear down and remove their equipment. Amanda Scott stated that the people had brought their own beer into the Vault and that she didn't sell the type of liquor they were drinking.

Constable Balderston instructed Amanda Scott to remove the liquor from the persons and shut The Vault down.

Tuesday October 10, 2017

Liquor Inspector deLaronde received a telephone message from Amanda Scott stating that she wanted to talk about what happened on Friday night (October 6, 2017).

Amanda said that the band was waiting for cabs and they had brought in beer. The Police came in and issued a LPC to her.

Liquor Inspector deLaronde spoke to Amanda Scott on the telephone. Amanda stated that around 0200 hours on Saturday she was in her establishment with the band that had played earlier in the evening. The band had returned to The Vault from another venue where they had been until that venue closed. The band returned in order to pack up their equipment from The Vault. Amanda said that the band brought their own beers in and that she did not give anyone liquor. The Vault was dark because it was closed.

Amanda Scott advised Liquor Inspector deLaronde that she was going away and not returning until November 16, 2017 and requested if there was any enforcement action that it be delayed until her return.

Saturday October 14, 2017

Constable Balderston sent General Occurrence Report 4201201733802 and Police Licensed Premises Checksheet 070809 to Liquor Inspector deLaronde detailing the events of October 7, 2017. Constable Balderston reported that the actions of the people in the Vault were akin to a house party as the lights were off and people were standing around drinking.

Friday November 3, 2017

Liquor Inspector deLaronde conducted a review of legislation and of the Food Primary Terms and Conditions Guidebook.

Liquor Control and Licensing Regulation section 91(1) states "Unless otherwise authorized by the general manager, a licensee must not allow a patron to consume liquor in the service area after ½ hours after the end of the hours of liquor service."

Liquor Control and Licensing Regulation section 141(2) states "A licensee or permittee must ensure that the liquor consumed by patrons in a service area is liquor that has been sold or served in the service area by the licensee or permittee, subject to exceptions.

The Food Primary Terms and Conditions Guidebook dated August 2017 states under the heading Employee Conduct-Liquor Consumption, "After work, you and your employees may consume liquor in your service area, as long as: you are serving and consuming the liquor during the hours of sale indicated on your licence."

The Food Primary Terms and Conditions Guidebook dated August 2017 states under the heading Unlawful or Private Liquor, "Unlawful liquor is defined as Liquor not purchased under your licence." Further under the same heading, "You are accountable for any unlawful liquor found anywhere on your premises."

The Food Primary Terms and Conditions Guidebook dated August 2017 states under the heading Selling Liquor-Hours of Sale, "All liquor must be removed from patrons within half an hour of liquor service ending. Consumption of liquor is not permitted after this point."

The Food Primary Terms and Conditions Guidebook dated August 2017 states under the heading, Dispensing liquor and mixing drinks, "You are not permitted to allow self service of liquor by patrons."

The Food Primary Terms and Conditions Guidebook dated August 2017 states under the heading, Bring Your Own Wine, "Other than wine, customers cannot bring liquor into your establishment."

Tuesday, November 21, 2017

Liquor Inspector deLaronde met with licensee, Amanda Scott at The Vault and delivered Contravention Notice B 015305 detailing 2 contraventions of the Liquor Control and Licensing Regulation.

3. THE ELEMENTS OF THE ALLEGED CONTRAVENTION(S)

3.1 Licensee - Liquor not purchased from or served by licensee, s. 141(2) Reg

- Constable Balderston observed persons in The Vault with liquor in their hands
- Constable Balderston observed open cans of beer and cider on a table near the persons in The Vault
- Amanda Scott advised Constable Balderston that the persons brought in their own liquor
- Amanda Scott advised Liquor Inspector deLaronde that the persons brought in their own liquor

4. REASONS FOR PURSUING ENFORCEMENT

4.1 Licensee - Liquor not purchased from or served by licensee, s. 141(2) Reg

Customers may not bring in their own bottles of liquor to consume in an establishment. This rule is part of the larger regulatory scheme that, among other things, requires a licensee to purchase liquor from the Liquor Distribution Branch and have those sales recorded on their licence. As with that rule, the purpose of prohibiting the consumption of liquor not purchased in the establishment is to ensure the quality of liquor and prevent over-consumption in licensed establishments. Over-consumption of liquor has an impact on public safety and community standards, and may impair the ability of the licensee to manage and control the establishment.

The hours of liquor sales and service are printed on the face of the Liquor Licence 305411.

In this case the licensee acquiesced to illegal liquor being brought into her licensed establishment after the stated hours of liquor service. Policing resources are already occupied maintaining a public safety profile as at the time of the events at The Vault numerous Liquor primary establishments are busy closing their doors for the evening.

5. REASONS FOR THE RECOMMENDED ENFORCEMENT ACTION (i.e. penalty)

5.1 Licensee - Liquor not purchased from or served by licensee, s. 141(2) Reg: 4 day suspension or \$5000 monetary penalty

For the alleged contravention of Licensee - Liquor not purchased from or served by licensee, s. 141(2) Reg (Contravention Notice Number B015305), a suspension penalty of four (4) days is proposed. This recommended suspension penalty falls within the penalty range set out in schedule 2, item 26 of the Regulation for a first contravention of this type.

The suspension will be served starting on a Saturday and will continue on successive business days until completed.

OR

For the alleged contravention of Licensee - Liquor not purchased from or served by licensee, s. 141(2) Reg (Contravention Notice Number B015305), a monetary penalty of \$5,000.00 (Five Thousand Dollars) is proposed. This recommended monetary penalty falls within the penalty range set out in schedule 2, item 26 of the Regulation for a first contravention.

In this case, it is in the public interest that a penalty be levied against the licensee as a deterrent to other licensee who may contemplate similar actions.

6. THE PROCEDURES

As noted in Section 1, you (the licensee) have the option of choosing either penalty (fine or suspension) if you choose to sign a document called a waiver. By signing a waiver, you irrevocably

- Agree that the contravention(s) occurred,
- Accept the penalty you have selected,
- Agree that the contravention(s) and penalty will form part of the compliance history of the licensee, and
- Waive the opportunity for an enforcement hearing.

You (the licensee) may agree with or dispute the above allegation(s) and recommended penalty options.

If there is a dispute, the general manager will decide if the contravention(s) occurred and what enforcement action, if any, is warranted. A hearing may be scheduled for that purpose.

If the general manager decides that enforcement action is warranted, the general manager will determine the enforcement action to be imposed on the licensee and may:

- Impose a suspension of the liquor licence for a period of time
- Impose a monetary penalty
- Cancel the liquor licence
- Rescind, amend or impose new terms and conditions on the licence
- Order a transfer of the licence

Imposing any penalty is discretionary. Where the general manager finds that a suspension or monetary penalty is warranted the general manager must follow the minimums set out in Schedule 2 of the Regulations. The general manager is not bound by the maximums and may impose a higher suspension or monetary penalty when it is in the public interest to do so. The general manager is not bound to order the penalty recommended in this NOEA.

Schedule 2 of the Regulation sets out the range of enforcement actions for when a contravention occurs in an establishment within a 12 month period of a contravention of the same type. It is the date that the contravention occurred that is used for the purpose of determining if a contravention is a first, second or subsequent contravention for penalty purposes.

If you decide to sign a waiver, or if you have any questions regarding this matter, please contact me at 250 741-3625 as soon as possible. If you do not sign a waiver, the branch registrar will provide you with the next steps in the hearing process.

For further information about the hearing and waiver process please visit our website at <http://www2.gov.bc.ca/gov/content/employment-business/business/liquor-regulation-licensing/compliance-enforcement>

Yours truly,

Mike de Laronde
Liquor Inspector

Enclosures

Copy of *Liquor Control and Licensing Branch Enforcement Process – Information for Liquor Licensees* (located at <http://www2.gov.bc.ca/gov/content/employment-business/business/liquor-regulation-licensing/compliance-enforcement/enforcement-process>)

ENFORCEMENT ACTION

If the general manager determines that the licensee has committed the above alleged contravention(s), the general manager may consider the following when determining what enforcement action, if any, is warranted pursuant to section 51(2) of the Act:

Past Enforcement Action Taken

Date of Incident	Licence Number	Identifying documents	Finding of Contravention	Enforcement Action
March 25, 2016	FP#305411	CN#B013219; EH16-032	*Overcrowd beyond person capacity more than occupant load, s. 6(4) Reg.	7 day suspension

Compliance Meetings

No compliance meetings found

Other Factors



**NOTICE OF ENFORCEMENT ACTION-Amended
Liquor Control and Licensing Act, SBC 2015, c.19**

File: EH17-083
Job: 000711672-038

November 17, 2017

Hornby Island Resort Ltd.
c/o Hornstein, John
105-2100 Guthrie Road
Comox, BC V9M 3P6

Re: Licence Number: 030318
Licence Type: Liquor Primary
Licence Expiry Date: September 30, 2018
Establishment: The Thatch
CN #: B015332

The purpose of this notice is to inform you that pursuant to section 51 of the *Liquor Control and Licensing Act* (the Act), the general manager is pursuing enforcement action against the licensee.

This Notice of Enforcement Action (NOEA) will:

1. Set out the branch's allegation(s) of non-compliance with the Act, and or the *Liquor Control and Licensing Regulation* (the Regulation) and or the terms and conditions of the licence,
2. Provide a narrative of events,
3. Describe the evidentiary basis for the elements of each alleged contravention,
4. Provide reasons why the branch is pursuing enforcement,
5. Provide reasons why the branch believes the enforcement action (i.e. penalty) recommended is warranted, and
6. Outline the licensee's options and the branch procedures that will be followed depending on whether or not the licensee disputes what is being alleged.

Included with this NOEA is the licensee's enforcement history and an explanation of how that history will be applied in any hearing decision of the general manager.

Ministry of Attorney
General

Liquor Control and
Licensing Branch

Mailing address:
PO Box 9292 Stn Prov Gov
Victoria BC V8W 9J8

Toll Free: 1 866 209-2111
Telephone: 250 952-5787

Location:
Fourth Floor, 3350 Douglas Street
Victoria BC

www.gov.bc.ca/liquorregulationandlicensing

1. THE ALLEGED CONTRAVENTION(S):

When a first contravention has occurred and either minimum penalty for that contravention is appropriate, you (the licensee) may be given the option to select one of those two penalties when you choose to sign a waiver (see Section 6 - The Procedures). The choice of penalties is noted below under Recommended Enforcement Action.

No.	Title of Contravention(s)	Section of the Act/Regulation or T&C Reference	Date and time of Contravention(s)	Recommended Enforcement Action
1.	Licensee - Unlawful sale of liquor, s. 8(2)(a) Act	s. 8(2)(a) Act	2017-SEP-16 4:50 PM	10 day suspension or \$7500 monetary penalty

2. NARRATIVE

The Thatch is a liquor primary licensed establishment located at 4325 Shingle Spit Road on Hornby Island BC. The establishment is authorized to sell and serve liquor during its hours of operation and is subject to the terms and conditions of Liquor Primary Licence 030318.

The terms and conditions of Liquor Primary Licence 030318 are:

- the terms and conditions to which this licence is subject include the terms and conditions contained in the licensee Terms and Conditions Handbook, which is available on the Liquor Control and Licensing Branch website. The Terms and Conditions Handbook is amended from time to time.
- Liquor may only be sold, served and consumed within the service areas outlined on the official floorplan, 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.
- Patio extension permitted as outlined in red on the official plan.

Liquor Primary Licence 030318 is issued to Hornby Island Resort Ltd. a private corporation. Hornby Island Resort Ltd. is comprised of John (Jack) Hornstein^{s.22}, partnership Greg and Lucille Osborne^{s.22}, 463382 BC Ltd.^{s.22}) and 630914 BC Ltd.^{s.22}

463382 BC Ltd. is comprised of John Douglas Ross^{s.22}

630914 BC Ltd. is comprised of Bradford Alan Hornstein^{s.22} and Margo Lynne Hornstein^{s.22}

On September 16, 2017, Liquor Inspector Mike deLaronde attended the licensee establishment known as The Thatch Pub in a covert capacity. Liquor Inspector deLaronde observed 2 adult males enter the establishment and within minutes exit the establishment carrying what appeared to be an opened cardboard 6 pack of beer. The males proceeded directly to a pleasure boat moored nearby.

Liquor Inspector deLaronde entered The Thatch and proceeded to sit at a table located on the patio. Liquor Inspector deLaronde then went to the bar service area and spoke to the bartender. The bartender advised that he was a "fill-in" bartender and had worked at The Thatch intermittently. Liquor Inspector deLaronde placed a drink order with the bartender and while the bartender prepared the drinks Liquor Inspector deLaronde read Liquor Licence 030318. Liquor Inspector deLaronde noticed that the posted liquor licence did not contain an "off-premise" sales endorsement. Liquor Inspector deLaronde noted that a price list was taped to a cash register on the public side of the register and the price list was entitled "The Thatch Off-Sales".

Liquor Inspector deLaronde returned to the patio table and conducted a review of the branch online database "POSSE." Liquor Inspector deLaronde noted that The Thatch liquor primary licence 030318 was not endorsed with an off-premise sales endorsement, The Thatch Food Primary Licence 145174 was not endorsed with an off-premise sales endorsement and a licensee retail store (LRS) licence located at the same address was "Dormant".

On September 17, 2017, Liquor Inspector deLaronde returned to The Thatch and identified himself as a Liquor Inspector to bartender s.22 . s.22 advised Liquor Inspector deLaronde that he had worked at The Thatch for 10 years and during that time off-premise sales had always occurred.

Liquor Inspector deLaronde retrieved Liquor Licence 030318 off the wall and asked s.22 if he could see any indication that the licence was endorsed with an off-premises sales endorsement. s.22 could not locate the endorsement.

s.22 asked if he should stop selling off-sales immediately and Liquor Inspector deLaronde advised that further investigation would be required as there may be an error or omission in the branch's liquor licensing division. Liquor Inspector deLaronde advised that s.22 should speak to The Thatch ownership or management to see if the endorsement could be located and if so to email the endorsement to Liquor Inspector deLaronde within 3 days. Liquor Inspector deLaronde further advised s.22 that The Thatch was not required to cease off-premise sales until a lack of endorsement was confirmed.

Liquor Inspector deLaronde photographed the price list document taped to the cash register and departed The Thatch.

On September 18, 2017, Liquor Inspector deLaronde initiated contact with the Liquor Control and Licensing Branch Headquarters seeking further information regarding The Thatch.

Licensee representative, Jack Hornstein, emailed Liquor Inspector deLaronde and stated that the current ownership has owned The Thatch since 2008 and that The Thatch has always had off-sales. Further, Hornstein advised that one of the current owners had owned the pub before and that he also had off-sales since the 80's.

Licensing Analyst Maureen Earl conducted an extensive review of the licensing history of Liquor Primary licence 030318 and reported that the current licensee, Hornby Island Resort Ltd. has been the licensee since 2008. Maureen Earl further

reported that the last time the licence was endorsed with an off-premise sales endorsement was in 2002 when the licensee was Roscro Investments Ltd.

On September 20, 2017, Maureen Earl advised Liquor Inspector deLaronde that on April 13, 2002 the licensee elected not to renew the off-premise sales endorsement and prior to that the previous licences were endorsed with an additional condition stating, "sale of packaged coolers containing not greater than 7% alcohol, beer, cider and wine for off-premises consumption is only permitted before 11:00 pm during the hours of sale as shown on the licence." The liquor licence issued on the same day reflected the decision made by Roscro Investments Ltd.

On September 21, 2017, Contravention Notice B015332 alleging a contravention of the unlawful sale of liquor was sent via registered mail to Hornby Island Resort Ltd.

At 1400 hours, Liquor Inspector deLaronde spoke with Jack Hornstein of Hornby Island Resort Ltd. Hornstein stated that he was always under the belief that the current liquor licence always had the off-premise sales endorsement because one of partners in the Hornby Island Resort Ltd., John Ross, told Hornstein that they could sell off-sales.

Liquor Inspector deLaronde advised Hornstein that continuing to sell off-sales would be viewed as a continuation of an offence and that the current licence is not endorsed to permit off-premise sales. Hornstein advised that he would immediately cease selling off-sales.

3. THE ELEMENTS OF THE ALLEGED CONTRAVENTION(S)

Liquor Control and Licensing Act, section 8(2) states: "Except as provided under this Act or the *Liquor Distribution Act*, a person must not, personally or otherwise, keep liquor for sale or sell liquor."

The General Manager may on application by a person issue a licence of a class of licences established by the regulation and the General Manager may endorse a licence with a class of endorsement established by the regulation.

In this case, Licence 030318 was issued by the General Manager however the licence has not been endorsed with an off-premises sales endorsement authorizing the licensee to sell to patrons liquor in unopened containers from the service area under the licence for the purpose of removing the liquor from the establishment.

3.1 Licensee - Unlawful sale of liquor, s. 8(2)(a) Act

Hornby Island Resort Ltd. is a licensee as evidenced on the face of licence 030318.
Licence 030318 is not endorsed with an off-premise sales endorsement
Off-premise sales were witnessed by a Liquor Inspector
Off-Sales Price List is displayed in a public area at the establishment
Staff statements confirm the licensee always sells off-sales
Ownership statement confirms the licensee always sells off-sales

4. REASONS FOR PURSUING ENFORCEMENT

4.1 Licensee - Unlawful sale of liquor, s. 8(2)(a) Act

The off-premise sales of liquor by a licensee who is not authorized to conduct such an activity results in an unfair competition in the legitimate liquor industry.

In this case the licensee did not make appropriate confirmation that an off-premise sales endorsement had actually existed at the time of the licence purchase by Hornby Island Resort Ltd.

Hornby Island Resort Ltd. has been selling liquor since 2008 and has conducted off-premises sales since that time..

5. REASONS FOR THE RECOMMENDED ENFORCEMENT ACTION (i.e. penalty)

5.1 Licensee - Unlawful sale of liquor, s. 8(2)(a) Act : 10 day suspension or \$7500 monetary penalty

For the alleged contravention of Licensee - Unlawful sale of liquor, s. 8(2)(a) Act (Contravention Notice Number B015332), a suspension penalty of ten (10) days is proposed. This recommended suspension penalty falls within the penalty range set out in schedule 2, item 17 of the Regulation for a first contravention of this type.

The suspension will be served starting on a Saturday and will continue on successive business days until completed.

OR

For the alleged contravention of Licensee - Unlawful sale of liquor, s. 8(2)(a) Act (Contravention Notice Number B015332), a monetary penalty of \$7,500.00 (Seven Thousand Five Hundred Dollars) is proposed. This recommended monetary penalty falls within the penalty range set out in schedule 2, item 17 of the Regulation for a first contravention.

In this case the contravention has occurred over a period of 9 years and during that period the licensee has realized a profit although participating in an unauthorized activity. An exact realization of value cannot be ascertained however if the activity was not profitable the licensee would stop doing it.

6. THE PROCEDURES

As noted in Section 1, you (the licensee) have the option of choosing either penalty (fine or suspension) if you choose to sign a document called a waiver. By signing a waiver, you irrevocably

- Agree that the contravention(s) occurred,
- Accept the penalty you have selected,
- Agree that the contravention(s) and penalty will form part of the compliance history of the licensee, and

- Waive the opportunity for an enforcement hearing.

You (the licensee) may agree with or dispute the above allegation(s) and recommended penalty options.

If there is a dispute, the general manager will decide if the contravention(s) occurred and what enforcement action, if any, is warranted. A hearing may be scheduled for that purpose.

If the general manager decides that enforcement action is warranted, the general manager will determine the enforcement action to be imposed on the licensee and may:

- Impose a suspension of the liquor licence for a period of time
- Impose a monetary penalty
- Cancel the liquor licence
- Rescind, amend or impose new terms and conditions on the licence
- Order a transfer of the licence

Imposing any penalty is discretionary. Where the general manager finds that a suspension or monetary penalty is warranted the general manager must follow the minimums set out in Schedule 2 of the Regulations. The general manager is not bound by the maximums and may impose a higher suspension or monetary penalty when it is in the public interest to do so. The general manager is not bound to order the penalty recommended in this NOEA.

Schedule 2 of the Regulation sets out the range of enforcement actions for when a contravention occurs in an establishment within a 12 month period of a contravention of the same type. It is the date that the contravention occurred that is used for the purpose of determining if a contravention is a first, second or subsequent contravention for penalty purposes.

If you decide to sign a waiver, or if you have any questions regarding this matter, please contact me at 250 741-3625 as soon as possible. If you do not sign a waiver, the branch registrar will provide you with the next steps in the hearing process.

For further information about the hearing and waiver process please visit our website at <http://www2.gov.bc.ca/gov/content/employment-business/business/liquor-regulation-licensing/compliance-enforcement>

Yours truly,

Mike de Laronde
Liquor Inspector

Enclosures

Copy of Liquor Control and Licensing Branch Enforcement Process – Information for Liquor Licensees (located at <http://www2.gov.bc.ca/gov/content/employment-business/business/liquor-regulation-licensing/compliance-enforcement/enforcement-process>)

ENFORCEMENT ACTION

If the general manager determines that the licensee has committed the above alleged contravention(s), the general manager may consider the following when determining what enforcement action, if any, is warranted pursuant to section 51(2) of the Act:

Past Enforcement Action Taken

No compliance history found

Compliance Meetings

No compliance meetings found

Other Factors

Hornby Island Resort Ltd., shareholder John (Jack) Guthrie advised Liquor Inspector deLaronde that a current shareholder was the licensee prior to the ownership of the current licensee. Shareholder John Ross was the prime shareholder in Roscro Investments.

A licence history examination revealed that prior to a licensed retail store being opened on Hornby Island, The Thatch, Licence 031318, had an off-sales endorsement. After the licensee of The Thatch was successful in obtaining a LRS licence, the off-sales endorsement was no longer needed because patrons wishing to purchase liquor for off-site consumption would be directed to the new LRS. The licensee chose not to renew the endorsement. The LRS operated for a number of years before being sold to another party who placed the licence in dormancy. The significant dates are:

September 12, 2001, Licence 30318 was issued to Roscro Investments Ltd. for the operation of The Thatch on Hornby Island. Included on the face of the licence was an endorsement authorizing the off-sales of liquor.

April 13, 2002, Roscro Investments Ltd. elected not to renew the off-sales endorsement of Licence 30318.

April 13, 2002, Licence 30318 was issued to Roscro Investments Ltd. for the operation of the Thatch located on Hornby Island. An endorsement permitting the off sales of liquor was not on the face of the licence.

April 13, 2002, On October 11, 2002, John Ross applied to the Liquor Control and Licensing Branch to obtain a licence for the operation of a new Licensed Retail Store located on Hornby Island. John Ross filed documents in support of the application citing ownership of The Thatch Pub and Roscro Investments.

June 10, 2003, Licensed Retail Store Licence 195179 was issued to Roscro Investments Ltd. for a new LRS on Hornby Island.

February 7, 2008 Hornby Island Resort Ltd. purchases Roscro Investments Ltd. and John Ross is a ^{s.22} shareholder of Hornby Island Resort Ltd. John Ross continues in his role as the Resident Manager of The Thatch.

February 12, 2014, LRS Licence 195179 was transferred to Partytime Liquor Stores and the licence was placed in Dormancy.

September 16, 2017, Liquor Inspector observes off-sales occurring and initiates investigation.



NOTICE OF ENFORCEMENT ACTION
Liquor Control and Licensing Act, SBC 2015, c.19

File: EH17-057
Job: 018755912-013

July 26, 2017

Solstice Enterprises Ltd.
c/o Zakkour, Tanya
529 Pandora Avenue
VICTORIA, BC V8W 1N5

Re: Licence Number: 305083
Licence Type: Food Primary
Licence Expiry Date: August 31, 2017
Establishment: Solstice Cafe
CN #: B020055

The purpose of this notice is to inform you that pursuant to section 51 of the *Liquor Control and Licensing Act* (the Act), the general manager is pursuing enforcement action against the licensee.

This Notice of Enforcement Action (NOEA) will:

1. Set out the branch's allegation(s) of non-compliance with the Act, and or the *Liquor Control and Licensing Regulation* (the Regulation) and or the terms and conditions of the licence,
2. Provide a narrative of events,
3. Describe the evidentiary basis for the elements of each alleged contravention,
4. Provide reasons why the branch is pursuing enforcement,
5. Provide reasons why the branch believes the enforcement action (i.e. penalty) recommended is warranted, and
6. Outline the licensee's options and the branch procedures that will be followed depending on whether or not the licensee disputes what is being alleged.

Included with this NOEA is the licensee's enforcement history and an explanation of how that history will be applied in any hearing decision of the general manager.

Ministry of Attorney
General

Liquor Control and
Licensing Branch

Mailing address:
PO Box 9292 Stn Prov Gov
Victoria BC V8W 9J8

Toll Free: 1 866 209-2111
Telephone: 250 952-5787

Location:
Fourth Floor, 3350 Douglas Street
Victoria BC

www.gov.bc.ca/liquorregulationandlicensing

1. THE ALLEGED CONTRAVENTION(S):

When a first contravention has occurred and either minimum penalty for that contravention is appropriate, you (the licensee) may be given the option to select one of those two penalties when you choose to sign a waiver (see Section 6 - The Procedures). The choice of penalties is noted below under Recommended Enforcement Action.

No.	Title of Contravention(s)	Section of the Act/Regulation or T&C Reference	Date and time of Contravention(s)	Recommended Enforcement Action
1.	Licensee - Contravene T & C - Fail to post licence, authorization or permit, s. 139 Reg	s. 139 Reg	2017-JUL-19 2:15 PM	1 day suspension or \$1000 monetary penalty
2.	Licensee - Contravene T & C - Fail to provide access to approved floor plan	Licensee T&C	2017-JUL-19 2:15 PM	1 day suspension or \$1000 monetary penalty

2. NARRATIVE

Solstice Café Ltd., dba Solstice Café owns and operates a restaurant, with a food Primary licence number 305083 ("the licensee") at 529 Pandora Ave Victoria, BC ("the Restaurant")

According to the terms of the licence, the licence may sell liquor from 0900 a.m. to midnight Monday to Sunday. The licence is, as are all liquor licences issued in the province, subject to the terms and conditions contained in the publication "Food Primary Terms and Conditions Handbook"

Ms. Tanya Zakkour and Mr. Farssani Yadollahi are the two ^{s.22} shareholder of the establishment. On July 05, 2017 after receiving a complaint submitted through the LCLB website, a routine inspection and investigation was commenced.

Compliance Deficiencies

On Wednesday April 26, 2016, Liquor Inspector Ron Cridland was conducting routine compliance inspections of various licenced liquor establishments in Victoria, BC. At approximately 11:20 a.m., Liquor Inspector Cridland entered the Solstice Café restaurant where he was met by the licensee Ms. Tanya Zakkour. Liquor Inspector Cridland identified himself as a Liquor Inspector and informed her he was in the restaurant to conduct a routine inspection to ensure compliance with the regulations and the terms and conditions of the licence. Liquor Inspector Cridland asked for and received the liquor licence. He noted, it was not posted in the service area as required by the Liquor Control and Licensing Regulation. Food Primary Licence #305083 was identified as a valid licence that expires on August 31, 2017.

Liquor Inspector Cridland asked to see a record of staff Serving It Right certificates to which they were provided. He further asked to see a record of all the liquor purchased by the licensee. Ms. Tanya Zakkour and Liquor Inspector Cridland discussed what was required for a proper liquor register in order to be compliant with the terms and conditions. Liquor Inspector Cridland asked to view a drink menu and was informed the menu was on a chalk board elevated and posted on the wall behind the bar. The board was in a menu style with prices for drinks containing liquor. The liquor items did not state the size or amount of liquor contained in each serving and was noted. He then noted that spirits and draught beer were all available on the menu and the actual products were within the view of the restaurant patrons.

Liquor Inspector Cridland walked throughout the restaurant in search for the Approved Social Responsibility Materials such as a poster or tent card to which one was located and noted. He then asked to see the approved floor plan to which Ms. Tanya Zakkour could not produce for inspection as required by the Food Primary Terms and Conditions.

Liquor Inspector Cridland advised Ms. Tanya Zakkour of the noted compliance deficiencies and provided information on how to obtain a new approved floor plan to help bring the restaurant into voluntary compliance. He then informed her that a follow up inspection would be conducted to ensure the non-compliance issues would be corrected.

Contravention Details

On July 19, 2017 Liquor Inspector(s) Cridland and Scott conducted a follow up inspection of the Solstice Café while conducting a public complaint investigation received by the Branch on July 05, 2017. The investigation was related to an allegation of operating outside of licence purpose. During the inspection it was determined the licensee was maintaining a primary focus on the service of food and was not operating outside of licence purpose. Both Liquor Inspector(s) Cridland and Scott confirmed there was adequate kitchen equipment, and reviewed their breakfast and lunch food menus. Furthermore, it was also confirmed the restaurant is only open from 0900 a.m. to 6:00 p.m. daily.

Various pre-made sandwiches and coffee was available at the counter for patrons. At the time of the inspection only one (1) out of fifteen (15) patrons was consuming liquor in the form of a draft beer. The remainder were consuming coffee and other hot beverages. Liquor Inspector Cridland checked the day's receipts for confirmation the restaurant is involved in primarily food service operation confirming that food service and coffee were the principal staples sold during the day of the inspection. The inspection also revealed the restaurant was found not to be in compliance with the *Liquor Control Licensing Act* and Regulation specifically the contravention of the terms and conditions of the licence; "Fail to maintain liquor registry"; "Fail to post licence, authorization or permit"; and "Fail to provide access to approved floorplan".

During the inspection, it was observed and noted the liquor licence was not posted in a conspicuous place in the restaurant as required by the Liquor Control Licensing Regulation. As part of the inspection the staff member was then requested to produce the liquor licence. After a short search it was located and retrieved from a drawer located at the bar. A copy of the approved floor plan and the liquor register were also additionally requested. The staff member had no idea of where the floor plan or the liquor register were located and a search for the documents produced negative results.

Liquor Inspector Scott checked his mobile POSSE application on his government issued cell phone and confirmed the inspection conducted on April 26, 2017 resulted in compliance deficiencies being noted on the licence file identifying a verbal notification for fail to post licence, authorization or permit; and fail to provide access to approved floorplan were provided to the licensee by Liquor Inspector Cridland.

Liquor Inspector Cridland determined a total of 84 days had passed after the initial inspection of which no steps were taken by the licensee to correct the deficiencies and bring the restaurant into voluntary compliance with terms and conditions of the Food Primary licence.

Liquor Inspector Cridland asked the staff member when the licensee is expected to be in so the contraventions could be addressed. She stated "Tanya" was not in on a regular basis and she was unsure when she would be in next. Subsequently, Liquor Inspector Cridland advised the staff member that a Contravention Notice would be issued to the licensee and that an enforcement action may occur as a result of failing to bring the restaurant into compliance with the Terms and Conditions since the previous inspection. He then produced his business card and requested her to have the licensee call him.

On July 20, 2017 Ms. Tanya Zakkour contacted Liquor Inspector Cridland via telephone where the contraventions were addressed. Liquor Inspector Cridland advised the Ms. Tanya Zakkour that a Contravention Notice was sent out via registered mail and report identifying the contraventions would be forwarded to the Regional Manager recommending enforcement action taken for failing to correct the deficiencies and bring the restaurant into voluntary compliance with Terms and Conditions of Food Primary licence within a reason amount of time.

3. THE ELEMENTS OF THE ALLEGED CONTRAVENTION(S)

On April 26, 2017 Liquor Inspector Cridland conducted a routine compliance inspection of the Solstice Café Restaurant located in Victoria BC. At the time of the inspection Liquor Inspector Cridland observed liquor on display, however there was no valid liquor licence posted in a prominent location of the restaurant's service area as required by the Liquor Control and Licensing Regulation. Nor was there an approved copy of the floor plan available for inspection as required by the Food Primary Terms and Conditions.

As a result of the inspection on April 26, 2017 Compliance Deficiencies were noted to the Licencing file. Liquor Inspector Cridland provided verbal notification to Ms. Tanya Zakkour the licensee of the requirements to ensure the issued liquor licence #305083 was posted in a conspicuous location and to ensure the approved floor plans were ready for immediately available for review by liquor inspectors or police if so requested in accordance with the Food Primary terms and conditions Handbook.

On July 19, 2017 (84 days later), Liquor Inspector(s) Cridland and Scott conducted a follow up inspection of the Solstice Café for a complaint which was determined to be unfounded. During the inspection, it was noted the licensee had failed to post the liquor licence and obtain an approved floor plans for the restaurant as requested during a routine inspection on April 26, 2017.

No steps had been taken by the licensee to correct the above noted contraventions in order to bring the restaurant into voluntary compliance.

Solstice Café is a restaurant licensed to sell and serve liquor authorized by Food Primary Licence #305083.

Liquor Distribution Branch report data identifies that liquor purchases made by Solstice Café Restaurant are consistent with a restaurant that sells and serves liquor.

On July 19, 2017 a total of 84 days had passed after a routine inspection was conducted and verbal notification was provided by Liquor Inspector Cridland to Ms. Tanya Zakkour requesting her to bring the restaurant in to voluntary compliance. Liquor inspectors determined no steps had been taken by the licensee to correct the contraventions identified on April 26, 2017.

4. REASONS FOR PURSUING ENFORCEMENT

4.1 Licensee - Contravene T & C - Fail to post licence, authorization or permit, s. 139 Reg

In this case, on April 26, 2017 Liquor Inspector Cridland provided verbal notification to Ms. Tanya Zakkour the licensee of the Solstice Café of the requirement to ensure the liquor licence #305083 issued to her restaurant was posted in a conspicuous location within the service area of the restaurant in accordance with the Liquor Control Licensing Regulation. On July 19, 2017 a routine inspection was conducted as a result of an unfounded public complaint against the restaurant. It was noted a total of 84 days had passed after the initial inspection was completed to which no steps were taken by the licensee to correct the deficiencies and bring the restaurant into voluntary compliance with Liquor Control Licensing Regulation and the terms and conditions of Food Primary licence.

4.2 Licensee - Contravene T & C - Fail to provide access to approved floor plan

In this case, on April 26, 2017 Liquor Inspector Cridland provided verbal notification to Ms. Tanya Zakkour the licensee of the Solstice Café of the requirement to have the approved floor plan immediately available for review by liquor inspectors or police, in accordance with the Food Primary terms and conditions Handbook. Furthermore during the inspection Liquor Inspector Cridland provided directions on how to obtain a new copy of the approved floor plan from the Liquor Control and Licensing Branch to assist the licensee with voluntary compliance. On July 19, 2017 a routine inspection was conducted as a result of an unfounded public complaint against the restaurant. It was noted a total of 84 days had passed after the initial inspection of which no steps were taken by the licensee to correct the deficiencies and bring the restaurant into voluntary compliance with terms and conditions of Food Primary licence.

5. REASONS FOR THE RECOMMENDED ENFORCEMENT ACTION (i.e. penalty)

5.1 Licensee - Contravene T & C - Fail to post licence, authorization or permit, s. 139 Reg : 1 day suspension or \$1000 monetary penalty

For the alleged contravention of licensee - Contravene T & C - Fail to post licence, authorization or permit, s. 139 Reg (Contravention Notice Number B020055), a suspension penalty of one (1) day is proposed. This recommended suspension penalty falls within the penalty range set out in schedule 2, item 54 of the Regulation for a second contravention of this type.

The suspension will be served starting on a Wednesday and will continue on successive business days until completed.

OR

For the alleged contravention of licensee - Contravene T & C - Fail to post licence, authorization or permit, s. 139 reg (Contravention Notice Number B020055), a monetary penalty of \$1,000.00 (One Thousand Dollars) is proposed. This recommended monetary penalty falls within the penalty range set out in schedule 2, item 54 of the Regulation for a contravention.

In this case, Liquor Inspector Cridland's efforts to encourage voluntary compliance by the licensee failed. The licensee began moving towards compliance only after Liquor Inspector Cridland advised the staff that a Contravention Notice would be issued and a report identifying the contraventions would be forwarded to the Regional Manager for consideration of further enforcement action.

5.2 Licensee - Contravene T & C - Fail to provide access to approved floor plan : 1 day suspension or \$1000 monetary penalty

For the alleged contravention of licensee - Contravene T & C - Fail to provide access to approved floor plan (Contravention Notice Number B020055), a suspension penalty of one (1) day is proposed. This recommended suspension penalty falls within the penalty range set out in schedule 2, item 54 of the Regulation for a first contravention of this type.

The suspension will be served starting on a Wednesday and will continue on successive business days until completed.

OR

For the alleged contravention of licensee - Contravene T & C - Fail to provide access to approved floor plan (Contravention Notice Number B020055), a monetary penalty of \$1,000.00 (One Thousand Dollars) is proposed. This recommended monetary penalty falls within the penalty range set out in schedule 2, item 54 of the Regulation for a first contravention.

In this case, Liquor Inspector Cridland's efforts to encourage voluntary compliance by the licensee failed. The licensee only began moving towards compliance after Liquor Inspector Cridland advised the staff that a Contravention Notice would be issued and a

report identifying the contraventions would be forwarded to the Regional Manager for consideration of further enforcement action.

6. THE PROCEDURES

As noted in Section 1, you (the licensee) have the option of choosing either penalty (fine or suspension) if you choose to sign a document called a waiver. By signing a waiver, you irrevocably

- Agree that the contravention(s) occurred,
- Accept the penalty you have selected,
- Agree that the contravention(s) and penalty will form part of the compliance history of the licensee, and
- Waive the opportunity for an enforcement hearing.

You (the licensee) may agree with or dispute the above allegation(s) and recommended penalty options.

If there is a dispute, the general manager will decide if the contravention(s) occurred and what enforcement action, if any, is warranted. A hearing may be scheduled for that purpose.

If the general manager decides that enforcement action is warranted, the general manager will determine the enforcement action to be imposed on the licensee and may:

- Impose a suspension of the liquor licence for a period of time
- Impose a monetary penalty
- Cancel the liquor licence
- Rescind, amend or impose new terms and conditions on the licence
- Order a transfer of the licence

Imposing any penalty is discretionary. Where the general manager finds that a suspension or monetary penalty is warranted the general manager must follow the minimums set out in Schedule 2 of the Regulations. The general manager is not bound by the maximums and may impose a higher suspension or monetary penalty when it is in the public interest to do so. The general manager is not bound to order the penalty recommended in this NOEA.

Schedule 2 of the Regulation sets out the range of enforcement actions for when a contravention occurs in an establishment within a 12 month period of a contravention of the same type. It is the date that the contravention occurred that is used for the purpose of determining if a contravention is a first, second or subsequent contravention for penalty purposes.

If you decide to sign a waiver, or if you have any questions regarding this matter, please contact me at 250 952-5747 as soon as possible. If you do not sign a waiver, the branch registrar will provide you with the next steps in the hearing process.

For further information about the hearing and waiver process please visit our website at <http://www2.gov.bc.ca/gov/content/employment-business/business/liquor-regulation-licensing/compliance-enforcement>

Yours truly,

Ron Cridland
Liquor Inspector

Enclosures

Copy of Liquor Control and Licensing Branch Enforcement Process – Information for Liquor Licensees (located at <http://www2.gov.bc.ca/gov/content/employment-business/business/liquor-regulation-licensing/compliance-enforcement/enforcement-process>)

ENFORCEMENT ACTION

If the general manager determines that the licensee has committed the above alleged contravention(s), the general manager may consider the following when determining what enforcement action, if any, is warranted pursuant to section 51(2) of the Act:

Past Enforcement Action Taken

No compliance history found

Compliance Meetings

No compliance meetings found

Other Factors



NOTICE OF ENFORCEMENT ACTION
Liquor Control and Licensing Act, SBC 2015, c.19

File: EH17-031
Job: 000697243-063

May 4, 2017

0741190 B.C. Ltd.
c/o Moldenhauer, Rody
275 8TH ST
COURTENAY, BC V9N 1N4

Re: Licence Number: 113818
Licence Type: Liquor Primary
Licence Expiry Date: May 31, 2017
Establishment: Mt. Washington Hostel
CN #: B 013197

The purpose of this notice is to inform you that pursuant to section 51 of the *Liquor Control and Licensing Act* (the Act), the general manager is pursuing enforcement action against the licensee.

This Notice of Enforcement Action (NOEA) will:

1. Set out the branch's allegation(s) of non-compliance with the Act, and or the *Liquor Control and Licensing Regulation* (the Regulation) and or the terms and conditions of the licence,
2. Provide a narrative of events,
3. Describe the evidentiary basis for the elements of each alleged contravention,
4. Provide reasons why the branch is pursuing enforcement,
5. Provide reasons why the branch believes the enforcement action (i.e. penalty) recommended is warranted, and
6. Outline the licensee's options and the branch procedures that will be followed depending on whether or not the licensee disputes what is being alleged.

Included with this NOEA is the licensee's enforcement history and an explanation of how that history will be applied in any hearing decision of the general manager.

Ministry of Small
Business and Red Tape
Reduction and
Responsible for Liquor
Distribution Branch

Liquor Control and
Licensing Branch

Mailing address:
PO Box 9292 Stn Prov Gov
Victoria BC V8W 9J8

Toll Free: 1 866 209-2111
Telephone: 250 952-5787

Location:
Fourth Floor, 3350 Douglas Street
Victoria BC

www.gov.bc.ca/liquorregulationandlicensing

1. **THE ALLEGED CONTRAVENTION(S):**

When a first contravention has occurred and either minimum penalty for that contravention is appropriate, you (the licensee) may be given the option to select one of those two penalties when you choose to sign a waiver (see Section 6 - The Procedures). The choice of penalties is noted below under Recommended Enforcement Action.

No.	Name of Contravention(s)	Section of the Act/Regulation	Date and time of Contravention(s)	Recommended Enforcement Action
1.	Licensee - Fail to comply with T & C	N/A	2017-MAR-05 12:05 AM	3 day suspension or \$3000 monetary penalty

The Liquor Primary Terms and Conditions published in January 2017 outline the requirements of the *Liquor Control and Licensing Act*, the Regulations and the terms and conditions that relates to owners of liquor primary establishments. The Terms and Conditions state, it is the responsibility of the licensee to be aware of and to operate in compliance with these rules. Further, licensees must follow B.C.'s liquor laws and the terms and conditions at all times.

Licensees and their employees are responsible for controlling the behavior of patrons. Licensees must ensure that no one is harmed as a result of liquor misuse or criminal activity in an establishment or at an event site. Licensees are required to take steps to ensure that their business does not disturb the surrounding community.

The Terms and Conditions state, a licensee and their staff must take reasonable measures to ensure their business does not;

- 1) Operate contrary to the public interest, and
- 2) Does not disturb people near the establishment or an event site

The staff of the licensee contributed to the licensee operating contrary to the public interest by facilitating the violent assault of a patron in the entranceway of the establishment.

2. **NARRATIVE**

Avalanche Bar & Grill is liquor primary establishment located at 275 8th Street in Courtenay, BC. The establishment is authorized to sell and serve liquor during its hours of operation and subject to the terms and conditions of Liquor Primary Licence 113818.

The terms and conditions Liquor Primary Licence 113818 are;

- Hours of operation 9:00 am until 2:00 am 7 days a week
- Capacity 210 persons
- The terms and conditions to which this licence is subject include the terms and conditions contained in the publication "Guide for Liquor Licensees in British Columbia" as that publication is amended from time to time.

- 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 the 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.
- Sale of packaged coolers containing not greater than 7% alcohol, beer, cider and wine for off-premises consumption is only permitted before 11:00 pm during the hours of sale as shown on the licence.
- Family Foodservice term and condition permits minors accompanied by a parent or guardian in all licensed areas until 10 PM when meal service is available.

Liquor Primary Licence 113818 is issued to 0741190 B.C. Ltd and expires on May 31, 2017. The shareholder of 0741190 B.C. Ltd is Rody Travis Moldenhauer and 0741190 B.C. Ltd has been the licensee since 2008.

On March 5, 2017, Comox Valley Royal Canadian Mounted Police (RCMP) responded to a "call to assist" initiated by Emergency Health Services personnel who were assisting an unconscious male subject on the sidewalk adjacent to a liquor primary establishment known as the Avalanche Bar and Grill.

RCMP learned that the unconscious male had been assaulted directly outside the main entrance to the establishment and that the security staff witnessed the event and did not take preventative steps to avoid the assault of the unconscious patron.

Police Licensed Premises Check (LPC) 027781 was completed and hand delivered to Avalanche Bar and Grill bartender who signed the acknowledgement of receipt.

On March 6, 2017, Comox Valley RCMP emailed Liquor Inspector deLaronde an electronically scanned version of LPC B 027781 citing contravention of *Liquor Control and Licensing Act* section 61(2)(b)(iii) "*allow violent, quarrelsome, riotous or disorderly conduct*".

On March 10, 2017, Liquor Inspector Mike deLaronde attended to the Avalanche Bar and Grill and met with Devin Moldenhauer, the General Manager. Moldenhauer and deLaronde viewed the security video recorded on the evening of the assault.

The video was captured from 3 separate cameras and depicts the events that led to the assault of the patron. Inspector deLaronde advised Moldenhauer that he should deliver the video to the local RCMP in a timely manner as the video clearly depicts a violent event and police notification of violent incidents is a term and condition of the liquor primary licence.

Moldenhauer showed Inspector deLaronde a written summary of the events that Moldenhauer had written following discussions with the Avalanche staff. Inspector deLaronde requested that video recordings, copies of incident log entries and any other documentation regarding the event be sent to Inspector deLaronde. Moldenhauer agreed to the request and was fully co-operative with Inspector deLaronde's request.

During the discussion Moldenauer described that the Avalanche had recently purchased an electronic identification scanner and that patrons attending the Avalanche would be required to produce age verification identification to be scanned by Avalanche staff prior to entering the establishment. Moldenauer advised Inspector deLaronde that the identification of the assailant was not scanned on the evening of the assault.

Moldenauer further advised deLaronde that the assailant was known to the staff and that the staff was fearful of the assailant. The assailant's name was not identified on the staff completed incident log and only the first name of the victim was recorded. Moldenauer went on to say that 1 security staff, s.22 would not record the assailant's name s.22
s.22

On March 14, 2017, Inspector deLaronde received via electronic mail from Moldenhauer, 3 documents entitled 1) incidents march 4.pdf, 2) Violent Behavior policy.pdf, & 3) incident report march 4, 2017.pdf.

Document **"incidents march 4.pdf"** was written by Moldenhauer and describes that 2 male patrons had a verbal altercation inside the establishment and that nothing further happened as a result of the conversation. One of the patrons, identified as s.22 appeared to be the aggressor. s.22 exited the establishment through the main entrance.

Shortly after s.22 departure the second male, identified as s.22, also left through the main entrance. s.22 assaulted s.22, knocking s.22 unconscious with an elbow strike. s.22 then dragged the unconscious s.22 away from the main entrance and around the corner of the building where s.22 attempted to revive s.22. Bar staff attended to s.22 and s.22 departed the scene.

Document **"Incident report march 4, 2017.pdf"** is a template form filled in by staff shortly after an event occurs. The form details that 6 Door staff were working on the night of the assault and that there were 2 ejections and 1 denial. The assault was specifically recorded in a narrative portion stating, "One fight outside the bar. Guy named s.22 was involved in physical altercation outside after verbal altercation inside the bar with another patron. "was later attended by bar staff, paramedics and cops."

The template form has sections entitled "Persons involved" and "Additional Notes". Neither of the 2 sections contains any information and have been struck out.

Document "**Violent Behavior policy.pdf**" dated March 10, 2017, written by Devin Moldenhauer advises staff that the Avalanche Bar and Grill has a zero tolerance policy for violent behavior. Anyone who displays violent behavior will be banned for a minimum of 3 months and serious offenders to be banned for life. s.22 is banned for life due to the assault that occurred on March 4, 2017.

The document provides instruction in the event s.22 attempts to gain entry into the Avalanche and includes instruction to advise s.22 he is not allowed to enter due to his violent behavior and if s.22 becomes aggressive the RCMP must be contacted immediately.

On March 15, 2017 Moldenhauer advised Inspector deLaronde that the video footage had been delivered to the RCMP.

On March 20, 2017, Comox Valley RCMP confirmed that a thumb drive had been attached to the police investigative file.

On March 27, 2017, Inspector deLaronde emailed Moldenhauer requesting that Moldenhauer advise of when Moldenhauer sent the video to Inspector deLaronde.

On March 29, 2017 Inspector deLaronde received an envelope mailed by Moldenhauer. No thumb drive was in the envelope as it appeared the thumb drive had fallen out during transport.

On March 30, 2017, Inspector deLaronde attended the Avalanche Bar and Grill and received a USB thumb drive containing the video recordings of the assault.

Inspector deLaronde reviewed the video footage and determined that on the evening of the assault, s.22 and s.22 were patrons of the Avalanche Bar and Grill.

s.22 was involved in socializing behaviour involving multiple persons in an area near one of the pool tables. s.22 had many interactions with staff and patrons.

s.22 was involved in socializing behaviour involving multiple persons in an area near one of the pool tables. s.22 had many interactions with staff and patrons.

At approximately 12:06 am ^{s.22} confronted ^{s.22} near the pool table where ^{s.22} had been socializing. Avalanche Security Staff witnessed the meeting between ^{s.22} and ^{s.22}. ^{s.22} soon departed to wait on the sidewalk immediately outside of the Avalanche. Within seconds of ^{s.22}'s departure the Avalanche Security Staff escorted ^{s.22} out of the establishment through the same door that ^{s.22} had exited.

^{s.22} immediately approached ^{s.22} and without warning struck ^{s.22}, rendering ^{s.22} immediately unconscious. ^{s.22} then dragged unconscious ^{s.22} away from the front entrance. The Avalanche Security staff was within 1 meter of ^{s.22} when ^{s.22} struck him. Further the Avalanche Security Staff did not take action to protect ^{s.22} and in fact walked beside ^{s.22} while he was dragging ^{s.22}.

Chronology of events recorded on video

Identifications used in Chronology

F1 Female wearing dark waist length jacket and white scarf, blonde hair
^{s.22} wearing dark ball cap on backwards and ¾ length sleeve shirt with circular crest
 F2 Female wearing jeans, long sleeved sweater with long dark hair
 M1 Male wearing dark hoody, bald headed
 F3 Female wearing vest, knee high boots
 M2 Male wearing plaid jacket dark hair
^{s.22} Victim identified as ^{s.22} wearing backwards ball cap
 LT Pool table area left on screen
 RT Pool table area right on screen
 Exits Leaves establishment

Chronology

23:30:20 ^{s.22} with F1 @ LT
 23:31:26 F2 joins ^{s.22} and F1
 23:31:50 F1 exits
 23:32:10 F1 re-enters
 23:32:24 F2 exits
 23:33:04 M1 enters and joins ^{s.22} and F2. No scan of id for M1. M1 & F1 are a couple
 23:33:44 F2 re-enters
 23:35:18 3 Avalanche Security at entrance. M1 off screen towards bathroom area
 23:36:10 M1 returns
 23:36:20 F2 off screen towards bar
 23:37:26 F1 off screen towards bar
 23:37:26 Security ^{s.22} @ entrance
 23:38:07 F2 returns with drinks
 23:38:45 F1 returns empty handed
 23:40:45 ^{s.22} joins M1, F2 at table. Conversation occurs
 23:42:02 ^{s.22} leaves table
 23:46:07 ^{s.22} sits beside M1
 23:37:48 F1 and M1 talk. F2 and ^{s.22} talk at same table.

23:48:42 s.22 enters and proceed to pool table (RT). s.22 removes jacket
 23:49:13 s.22 to pool table (LT)
 23:50:28 M1 and F2 to pool table (LT)
 23:51:04 M1 to table to talk to F1
 23:51:14 F2 to table and speaks to M1
 23:51:38 F1 off screen to bathroom
 23:52:46 F1 returns
 23:53:43 s.22 sets up pool balls at RT.
 23:55:45 F1 exits
 23:56:27 M1 exits
 23:57:57 F2 off screen to bathroom
 23:59:18 F3 enters and meets s.22 near LT.
 23:59:36 F2 exits.
 23:59:46 F2 returns and waits for s.22 to acknowledge her
 23:59:59 s.22 points out F2 to F3. F2 waits to be invited to conversation
 00:00:16 F2 introduced to F3. They hug
 00:00:30 F3 off screen to bar
 00:00:42 F2 off screen to bathroom
 00:00:56 M2 enters and meets s.22 near LT. Hands clasp
 00:01:25 s.22 and M2 clasp hands again. F2 returns
 00:01:32 M2 departs towards bar. s.22 and F2 move towards exit
 00:01:47 s.22 **and F2 exit**
 00:01:49 Security approaches s.22 near RT
 00:02:16 M1 returns
 00:02:59 Security and s.22 conversing. Waitress delivers drink to s.22
 00:03:02 Conversation between Security and s.22 ended.
 00:03:44 M1 exits
 00:04:16 s.22 approaches Security staff at entranceway. s.22 and Security
 00:04:58 step outside entry to converse. 4 Security staff with s.22 .
 Conversation ended. s.22 and Security re-enter. s.22 returns to RT
 and picks up his drink.
 00:05:20 Security s.22 enters main entrance and has a discussion with 2 security
staff. Security s.22 proceeds into the room.
 00:06:38 s.22 **enters. Proceeded directly to RT. F2 follows s.22 . 1 security**
staff followed
 00:06:46 **F2 reaches out to s.22 as s.22 approached s.22**
 00:06:49 s.22 **pulls arm away from F2**
 00:06:58 F2 returns to LT and retrieves jacket. **Security watching s.22 and**
 s.22
 00:07:17 **2 Security move closer to s.22 and s.22**
 00:07:32 1 Security moved back to entrance
 00:07:40 **F2 returns to s.22**
 00:08:00 s.22 **gestures and F2 exits**
 00:08:29 1 security moves to RT area
 00:08:39 **1 security moves towards s.22 and s.22**
 00:08:50 u/k female patron appears to tell s.22 to leave
 00:08:58 s.22 **exits unescorted. Security s.22 moves to RT.**
 00:09:02 s.22 and 1 security s.22 walk s.22 towards exit. s.22 did not
 resist and did not retrieve his jacket.
 00:09:16 s.22 **on sidewalk near entrance speaking to u/k male**

00:09:20 s.22 and security staff have discussion at entranceway. Waitress joins discussion.

00:09:30 s.22 **standing on sidewalk looks towards entrance.** 2 u/k persons standing nearby.

00:09:41 s.22 exits. Security s.22 follows s.22

00:09:47 s.22 approaches s.22 in entranceway. s.22 hands are down. F1 walks towards entrance. Security s.22 exits

00:09:49 s.22 strikes s.22 F1 within a foot of s.22 Security s.22 within 2 feet of s.22

00:09:50 s.22 unconscious on sidewalk in entrance way.

00:09:52 s.22 grasps s.22 right wrist and begins dragging s.22 s.22 follows. F1 does not enter and chooses to depart.

00:09:56 Security s.22 re enters

00:10:07 All Security staff outside. No door control

00:11:18 Patron re-enters. Security re-enters

00:12:12 Security s.22 re-enters

00:12:37 Patron gestures to another patron appearing to describe a strike blow

LRS camera (approximate Time corrected)

00:10:09 s.22 **walking backwards drags s.22 to corner of building.**

00:10:13 s.22 beside s.22 4 door sedan car approaches Stop sign. Does not drive on.

00:10:18 Sedan waits at corner

00:10:34 s.22 **opens passenger front door of sedan, leans in and then returns to s.22**

00:10:48 Second car pulls up behind sedan. Sedan doesn't move. s.22 **meets M1 on sidewalk.**

00:10:58 Third car pulls up. Sedan doesn't move.

00:11:00 F1 enters rear driver's side of sedan.

00:11:06 M1 enters right rear passenger of sedan

00:11:10 s.22 **enters front passenger of sedan. Sedan departs towards Cliffe Street.**

00:16:30 EHS attends to unconscious s.22 on sidewalk.

Summary
23:48:42

s.22 entered the Avalanche Bar and Grill on a Friday evening. He entered through the main entrance and proceeded to a pool table area on the left side of the entrance way.

s.22 removed his jacket and became involved in playing pool with other patrons.

00:02:59 A Security staff and s.22 were conversing on the stairway near the pool table. A waitress delivered a drink to s.22. Two minutes later, s.22 walked to the entranceway and again spoke to a Security staff. The two moved outside to talk because of the loud noise inside and were joined by 2 other Security staff that were already outside.

00:04:58 s.22 and the Security staff re-entered the Avalanche and s.22 proceeded to join the pool game and drink his drink.

00:05:20 Security s.22 re-entered the Avalanche and has a discussion with 2 security staff and enters the main room. Security staff attention became focused on the area where s.22 was playing pool.

00:06:46 s.22 re-enters the Avalanche and proceeded directly to s.22 at the pool table. The Security staff was watching the interaction between s.22 and s.22. Minutes later a female patron told s.22 to leave them alone.

00:08:58 s.22 left the Avalanche to stand on the sidewalk just outside the entrance.

00:09:02 Within 4 seconds of s.22 leaving, Security s.22 and 1 other Security staff walked with s.22 to the entrance. s.22 did not retrieve his jacket.

00:09:41 s.22 steps through the entrance onto the sidewalk where is knocked unconscious by the waiting s.22. This event occurred within 1 meter of the security staff.

s.22 drags unconscious s.22 away from the main entrance and around the corner of the building. Security s.22 walks beside s.22.

00:11:10 s.22 F1 and M1 depart in sedan car that arrived as s.22 dragged unconscious s.22 around the corner of the building.

00:16:30 EHS Ambulance arrives and attends to the still unconscious s.22

Within 14 minutes of entering the Avalanche, s.22 had a conversation with one security staff at the request of the security staff. 2 minutes later s.22 approached the same security at the main entrance and proceeded out the main entrance to have a discussion. At this point there were 4 security and s.22 outside the main entrance. At the conclusion of the discussion s.22 returned to the pool table and his drink.

5 minutes later s.22 is escorted to the front door. There was no struggle and no sense of urgency. s.22 did not gather his belongings before walking with security to the door.

s.22 and Security s.22 stepped through the front door and s.22 was knocked unconscious by s.22.

From the time s.22 entered the Avalanche to the time he was unconscious on the sidewalk was 21 minutes.

On April 13, 2017 Inspector deLaronde issued Contravention Notice B013197 citing contraventions;

- 1) Allow violent, quarrelsome, riotous or disorderly conduct contrary to *Liquor Control and Licensing Act*, section 61(2)(b)(iii), and
- 2) Fail to comply with Terms and Conditions: Take reasonable measures contrary to *Liquor Control and Licensing Act*, section 15(2)(h).

The contravention notice was sent via registered mail to the licensee 0741190 BC Ltd.

The *Liquor Control and Licensing Act* section 61(2)(b)(iii) states: "A licensee or permittee or an employee of either must not allow violent, quarrelsome, riotous or disorderly conduct in an establishment or at an event site."

The *Liquor Control and Licensing Act* defines establishment as a place, premises or vehicle that is the subject of a licence.

The *Liquor Control and Licensing Act* defines event site as a place, premises or vehicle referred to in an authorization or permit.

The prescribed penalty range for a first contravention of section 61(2)(b)(iii) is 10-15 licence suspension or a \$7,500-\$10,000 monetary penalty.

The *Liquor Control and Licensing Act* section 15(2)(h) states: *"Without limiting subsection (1), the general manager may impose terms and conditions respecting all matters related to the manufacture, purchase, sale, service and consumption of liquor under a licence or endorsement and the operation of establishments and service area, including, without limitation, respecting the safety of employees, patrons, employees of the licensee, and the public"*.

The Liquor Primary Terms and Conditions imposed by the general manager and published in January 2017, make it a term and condition of every liquor primary licensee to take reasonable measures to ensure the business does not operate contrary to the public interest and does not disturb people near the establishment or an event site. Reasonable measures are measures that are reasonable in the circumstances and reasonably within the capacity of the licensee to effect.

The prescribed penalty range for a first contravention of section 15(2)(h) is 1-3 day licence suspension or a \$1,000-\$3,000 monetary penalty.

3. THE ELEMENTS OF THE ALLEGED CONTRAVENTION(S)

4. REASONS FOR PURSUING ENFORCEMENT

- 4.1 Licensee - Fail to comply with T & C to wit take reasonable measures to ensure the business does not operate contrary to the public interest and does not disturb people near the establishment or an event site.

In this case the licensee did not ensure that the public safety was preserved. In fact, the staff of the licensee were well aware of the assaultive person prior to this event and the staff actually contributed to the assault.

The staff stood by while an apparent verbal discussion occurred between the 2 patrons and then within seconds of the apparent aggressor departing through the main entrance the staff then escorted the other patron (victim) out the same door.

The staff took no action to protect the victim and the victim was struck within a meter of the security staff.

5. REASONS FOR THE RECOMMENDED ENFORCEMENT ACTION (i.e. penalty)

- 5.1 Licensee - Fail to comply with T & C : 3 day suspension or \$3000 monetary penalty

For the alleged contravention of licensee - fail to comply with T & C (Contravention Notice

Number B 013197), a suspension penalty of three (3) days is proposed. This recommended suspension penalty falls within the penalty range set out in schedule 2, item 54 of the Regulation for a first contravention of this type.

The suspension will be served starting on a Saturday and will continue on successive business days until completed.

OR

For the alleged contravention of licensee - fail to comply with T & C (Contravention Notice Number B 013197), a monetary penalty of \$3,000.00 (Three Thousand Dollars) is proposed. This recommended monetary penalty falls within the penalty range set out in schedule 2, item 54 of the Regulation for a first contravention.

In this case the extent of the injuries were significant however the significance of the injuries sustained by the victim are not related to the recommended penalty. The egregious action of the staff and their failure to protect the patrons in favour of the assaultive person is related.

6. THE PROCEDURES

As noted in Section 1, you (the licensee) have the option of choosing either penalty (fine or suspension) if you choose to sign a document called a waiver. By signing a waiver, you irrevocably

- Agree that the contravention(s) occurred,
- Accept the penalty you have selected,
- Agree that the contravention(s) and penalty will form part of the compliance history of the licensee, and
- Waive the opportunity for an enforcement hearing.

You (the licensee) may agree with or dispute the above allegation(s) and recommended penalty options.

If there is a dispute, the general manager will decide if the contravention(s) occurred and what enforcement action, if any, is warranted. A hearing may be scheduled for that purpose.

If the general manager decides that enforcement action is warranted, the general manager will determine the enforcement action to be imposed on the licensee and may:

- Impose a suspension of the liquor licence for a period of time
- Impose a monetary penalty
- Cancel the liquor licence
- Rescind, amend or impose new terms and conditions on the licence
- Order a transfer of the licence

Imposing any penalty is discretionary. Where the general manager finds that a suspension or monetary penalty is warranted the general manager must follow the minimums set out in Schedule 2 of the Regulations. The general manager is not bound by the maximums and may impose a higher suspension or monetary penalty when it is

in the public interest to do so. The general manager is not bound to order the penalty recommended in this NOEA.

Schedule 2 of the Regulation sets out the range of enforcement actions for when a contravention occurs in an establishment within a 12 month period of a contravention of the same type. It is the date that the contravention occurred that is used for the purpose of determining if a contravention is a first, second or subsequent contravention for penalty purposes.

If you decide to sign a waiver, or if you have any questions regarding this matter, please contact me at 250 741-3625 as soon as possible. If you do not sign a waiver, the branch registrar will provide you with the next steps in the hearing process.

For further information about the hearing and waiver process please visit our website at <http://www2.gov.bc.ca/gov/content/employment-business/business/liquor-regulation-licensing/compliance-enforcement>

Yours truly,

Mike de Laronde
Liquor Inspector

Enclosures

Copy of Liquor Control and Licensing Branch Enforcement Process – Information for Liquor Licensees (located at <http://www2.gov.bc.ca/gov/content/employment-business/business/liquor-regulation-licensing/compliance-enforcement/enforcement-process>)

ENFORCEMENT ACTION

If the general manager determines that the licensee has committed the above alleged contravention(s), the general manager may consider the following when determining what enforcement action, if any, is warranted pursuant to section 51(2) of the Act:

Past Enforcement Action Taken

Date of Incident	Licence Number	Identifying documents	Finding of Contravention	Enforcement Action
April 3, 2009	LP#113818	CN#B019932; EH09-042	*Permit intoxicated person to remain, s. 43(2)(b) Act	5 day suspension
April 3, 2009	LP#113818	CN#B019932; EH09-042	*Sell or give liquor to intoxicated person, s. 43(1) Act	5 day suspension
June 12, 2009	LP#113818	CN#B008934; EH09-085	*Contravene term & condition, s. 12 Act	1 day suspension
April 8, 2012	LP#113818	CN#B012506; EH12-097	*Permit intoxicated person to remain, s. 43(2)(b) Act	7 day suspension
January 25, 2013	LP#113818	CN#B007081; EH13-019	*Contravene term & condition - Exceed maximum drink size, s. 12 Act	2 day suspension \$1000 monetary penalty
January 25, 2013	LP#113818	CN#B007081; EH13-019	*Contravene term & condition - Liquor removed from redline area, s. 12 Act	2 day suspension

Compliance Meetings

Licence	Date	Topic
113818	October 25, 2013	Minors in premises, Controlling establishment and overcrowding.

Other Factors

During the course of the investigation following receipt of the LPC issued by RCMP, it was learned that the victim had sustained serious head injuries that required a multiple day stay in hospital.

The injuries may have been exacerbated by allowing the victim to be dragged by one arm around the corner of the establishment. This dragging of the victim occurred while the security staff walked right beside the dragged victim and the staff made no effort to

stop this action from occurring although the staff witnessed the strike, the victim fall and the victim's head striking the concrete sidewalk.

RCMP advise that security staff instructed persons who came across this victim on the sidewalk to not call the police.

The matter is currently under police investigation and criminal charges may be forthcoming.



NOTICE OF ENFORCEMENT ACTION
Liquor Control and Licensing Act, SBC 2015, c.19

File: EH18-037
Job: 000677132-029

May 9, 2018

Yu Lin Enterprises Co. Ltd
c/o Xiaolin Li
347 COOK ST
VICTORIA, BC V8V 3X8

Re: Licence Number: 201804
Licence Type: UBrew/UVin
Licence Expiry Date: March 31, 2019
Establishment: Cook Street Wine Works
CN #: B022012

The purpose of this notice is to inform you that pursuant to section 51 of the *Liquor Control and Licensing Act* (the Act), the general manager is pursuing enforcement action against the licensee.

This Notice of Enforcement Action (NOEA) will:

1. Set out the branch's allegation(s) of non-compliance with the Act, and or the *Liquor Control and Licensing Regulation* (the Regulation) and or the terms and conditions of the licence,
2. Provide a narrative of events,
3. Describe the evidentiary basis for the elements of each alleged contravention,
4. Provide reasons why the branch is pursuing enforcement,
5. Provide reasons why the branch believes the enforcement action (i.e. penalty) recommended is warranted, and
6. Outline the licensee's options and the branch procedures that will be followed depending on whether or not the licensee disputes what is being alleged.

Included with this NOEA is the licensee's enforcement history and an explanation of how that history will be applied in any hearing decision of the general manager.

Ministry of Attorney
General

Liquor Control and
Licensing Branch

Mailing address:
PO Box 9292 Stn Prov Gov
Victoria BC V8W 9J8

Toll Free: 1 866 209-2111
Telephone: 250 952-5787

Location:
Fourth Floor, 3350 Douglas Street
Victoria BC

www.gov.bc.ca/liquorregulationandlicensing

1. THE ALLEGED CONTRAVENTION(S):

When a first contravention has occurred and either minimum penalty for that contravention is appropriate, you (the licensee) may be given the option to select one of those two penalties when you choose to sign a waiver (see Section 6 - The Procedures). The choice of penalties is noted below under Recommended Enforcement Action.

No .	Title of Contravention(s)	Section of the Act/Regulation or T&C Reference	Date and time of Contravention(s)	Recommended Enforcement Action
1.	UBrew/UVin - No customer acknowledgement that product for personal consumption, s. 43(1)(b) Reg	s. 43(1)(b) Reg	2018-APR-24 1:05 PM	3 day suspension or \$3000 monetary penalty

2. NARRATIVE

Cook Street Wine Works holds a valid UBrew/UVin licence # 201804. Yu Lin Enterprises Co. Ltd is the licensee for Cook Street Wine Works. LCLB records indicate that Xiaolin LI is the sole shareholder within Yu Lin Enterprises Co. Ltd.

The following terms and conditions area attached to licence # 201804:

- Hours of Sale: 9:00AM to 11:00PM seven days a week
- The terms and conditions to which this licence is subject include the terms and conditions contained in the licensee Terms and Conditions Handbook, which is available on the Liquor Control and Licensing Branch website. The Terms and Conditions Handbook is amended from time to time.
- The licence is provided to operate a facility in the establishment that provides goods or services to a customer who manufactures beer, cider or wine in the establishment for their own consumption or consumption at no charge to others.

On April 24, 2018 at 13:05 hours, Inspector SCOTT (writer) attended Cook Street Wine Works to conduct a routine inspection of the establishment. As part of the routine inspection, Inspector SCOTT was also following-up on contraventions identified on the previous two inspections (May 15, 2017 & November 9, 2017) of Cook Street Wine Works by Inspector CRIDLAND.

Upon entry into Cook Street Wine Works, Inspector SCOTT was greeted by a lone female staff member, later identified as s.22 . Inspector SCOTT identified himself as the Regional Manufacturing Inspector with the Liquor Control and Licensing Branch and advised her that he was there to conduct a liquor inspection of the

establishment. During conversation, Inspector SCOTT asked ^{s.22} if they had been busy today. ^{s.22} indicated that they hadn't been very busy with walk-in clients but had a few phoned in orders. She also indicated that a customer was coming in a 13:30hours to bottle. Inspector SCOTT found the statement about telephone orders odd, but did not press the issue any further. ^{s.22} also indicated that she was fairly new to the business and didn't know too much, but that ^{s.22} would be back in a bit and he could help Inspector SCOTT with any questions.

As Inspector SCOTT was conducting the inspection, he noted a number of carboy tags that had "signature", "need signature" or "sig" handwritten on the carboy tag. Additionally, Inspector SCOTT also noted some carboy tags had "hasn't paid" or "owe \$131.61" written on the tag. Inspector SCOTT found these items written on the carboy tags very interesting and started taking photographs of all the tags with similar wording written on them. In total Inspector SCOTT photographed 17 carboy tags with similar wording.

While Inspector SCOTT was conducting the inspection a second staff member arrived at the establishment. This staff member identified himself as ^{s.22}. After Inspector SCOTT was done photographing the carboy tags that indicated they still required signature or payment, Inspector SCOTT asked ^{s.22} to provide the corresponding invoices for the carboys.

The first invoice Inspector SCOTT reviewed was invoice number 39425. The carboy tag for invoice number 39425 had the following handwritten on it "*signature * please give invoice w/mc receipt attached (in April folder)*". A review of Invoice 39425 showed that the customer had not signed a declaration stating that the product was for personal consumption. The invoice also had a MasterCard receipt stapled to it for the amount of \$186.58. The MasterCard copy indicated that it was the "cardholder copy".

Inspector SCOTT asked both staff members why the invoices would not have the customer's signature. ^{s.22} indicated that it was because they were phoned in orders and that the customer usually signs when they come to bottle. Inspector SCOTT advised them that the customer was required to sign the declaration on their first visit. ^{s.22} indicated that they do not carry a large selection of wine kits at their location, so they order the kit and take payment over the phone from the customer, but that the customer signs the invoice on their first visit. ^{s.22} statement is contrary to the information observed on both the carboy tags and invoices located within the establishment.

At this point, Inspector SCOTT asked to see all the invoices for the month of April. In review of the April invoices, Inspector SCOTT identified the following:

- **Invoice # 39477** – Customer declaration was not signed. A cardholder copy of a Visa receipt was attached to the invoice in the amount of \$242.77. The invoice indicated the charges were for: (1) VR – White Pinot Grs 5wk (\$69.26), (1) WV-White French Sauv Blanc (\$71.96), (2) Equipment Charge (\$84.00), and (2) bottle dressing (\$17.25)
- **Invoice # 39472** – Customer declaration was not signed. A cardholder copy of a MasterCard receipt was attached to the invoice in the amount of \$166.92. The invoice

indicated the charges were for: (2) WV-Red Aust Shiraz 5wk (\$82.92), and (2) Equipment Charge (\$84.00)

- **Invoice #39474** – Customer declaration was not signed. A Cardholder copy of a MasterCard receipt was attached to the invoice in the amount of \$649.93. The invoice indicated the charges were for: (2) VR-Red Sangiovese 5wk (\$159.92), (1) VR-Red Mezza Luna 5wk (\$79.96), (5) Equipment Charge (\$210.00), (5) bottle dressing (\$43.13), (1) WV-White Aust Chard 5wk (\$79.96), (1) VR-White Viognier 5wk (\$79.96), and (1) VR-White Sauvignon Blanc 5 (\$0.00)
- **Invoice # 39463** – Customer declaration was not signed. A cardholder copy of a Visa receipt was attached to the invoice in the amount of \$89.84. The invoice indicated the charges were for: (1) Winery Series Italian Pinot Gri (\$130.95), (1) Equipment Charge (\$42.00), and (30) Corks (\$6.72). The invoice also indicated that the customer had paid \$89.84 and had a balance remaining of \$89.83.

After reviewing a number of invoices and carboy tags, Inspector SCOTT asked ^{s.22} if they were making wine without customer involvement. ^{s.22} indicated that it would be better for Inspector SCOTT to speak with ^{s.22} the manager.

It was clear to Inspector SCOTT from all the information reviewed that (carboys, carboy tags, invoices, credit card receipts and staff statements) that customers were not being required to perform all of their responsibilities as required in the UBrew/UVin Terms and Conditions Handbook. Specifically, there were a large number of invoices without declarations signed by customers and corresponding carboys with product that had already started the manufacturing process. As a result of the observed contraventions, Inspector SCOTT informed ^{s.22} that a Contravention Notice would be issued and mailed via registered mail to the licensee. ^{s.22} indicated that the licensee ^{s.22} and it would be better for Inspector SCOTT to communicate with ^{s.22} about the contravention notice.

13:45 hours, Inspector SCOTT departed the establishment. Just after departing, Inspector SCOTT received a telephone call from a person who identified themselves as ^{s.22} and stated they were the manager of Cook Street Wine Works. Inspector SCOTT advised ^{s.22} of the contraventions observed and indicated that the licensee would be issued a Contravention Notice and Notice of Enforcement Action for the contraventions. During the conversation ^{s.22} indicated that the invoices without customer signature were just for ordering product and that the wine had not been made yet. Inspector SCOTT advised ^{s.22} that there were numerous carboys with wine at the secondary fermentation process which had no customer signature on the declarations and which still had the customer copy of the credit card receipt attached. ^{s.22} at this point changed his story slightly and said staff sometime forgets the rules (indicating they are starting the process for customers without their involvement).

3. THE ELEMENTS OF THE ALLEGED CONTRAVENTION(S)

3.1 UBrew/UVin - No customer acknowledgement that product for personal consumption, s. 43(1)(b) Reg

- Inspector SCOTT identified multiple invoices during the month of April with no signature in the customer declaration located at the bottom of the invoice
- All invoices had a generic declaration section at the bottom with a blank location for the customer to sign.
- Staff indicated that they take telephone orders
- Staff indicated that the customer sometimes do not sign the invoices until they come into bottle
- Multiple carboys containing product undergoing fermentation had carboy tags indicating that they still required customer signature or payment.

4. REASONS FOR PURSUING ENFORCEMENT

4.1 UBrew/UVin - No customer acknowledgement that product for personal consumption, s. 43(1)(b) Reg

In this case the licensee and the licensee's staff clearly do not understand or are willfully ignoring the terms and conditions of their licence. This licence has been inspected three times since May of 2017. In each inspection contraventions were identified. Furthermore, the Inspector who identified the contraventions did not pursue enforcement action with the expectation that voluntary compliance would be achieved. It is clearly evident that voluntary compliance has not been achieved and that the licensee continues to operate their licence contrary to the terms and conditions applicable to it.

5. REASONS FOR THE RECOMMENDED ENFORCEMENT ACTION (i.e. penalty)

5.1 UBrew/UVin - No customer acknowledgement that product for personal consumption, s. 43(1)(b) Reg : 3 day suspension or \$3000 monetary penalty

For the alleged contravention of UBrew/UVin - No customer acknowledgement that product for personal consumption, s. 43(1)(b) Reg (Contravention Notice Number B022012), a suspension penalty of three (3) days is proposed. This recommended suspension penalty falls within the penalty range set out in schedule 2, item 45 of the Regulation for a first contravention of this type.

The suspension will be served starting on a Tuesday and will continue on successive business days until completed.

OR

For the alleged contravention of UBrew/UVin - No customer acknowledgement that product for personal consumption, s. 43(1)(b) Reg (Contravention Notice Number B022012), a monetary penalty of \$3,000.00 (Three Thousand Dollars) is proposed. This recommended monetary penalty falls within the penalty range set out in schedule 2, item 45 of the Regulation for a first contravention.

In this case a penalty should impress upon the licensee and the licensee's staff the importance of abiding by the Terms & Conditions, the Act and the Regulations. It is expected that the licensee will use this as a strong reminder to follow the terms and conditions of their licence and to reflect upon their overall business model to ensure they are fully compliant as a licensee.

6. THE PROCEDURES

As noted in Section 1, you (the licensee) have the option of choosing either penalty (fine or suspension) if you choose to sign a document called a waiver. By signing a waiver, you irrevocably

- Agree that the contravention(s) occurred,
- Accept the penalty you have selected,
- Agree that the contravention(s) and penalty will form part of the compliance history of the licensee, and
- Waive the opportunity for an enforcement hearing.

You (the licensee) may agree with or dispute the above allegation(s) and recommended penalty options.

If there is a dispute, the general manager will decide if the contravention(s) occurred and what enforcement action, if any, is warranted. A hearing may be scheduled for that purpose.

If the general manager decides that enforcement action is warranted, the general manager will determine the enforcement action to be imposed on the licensee and may:

- Impose a suspension of the liquor licence for a period of time
- Impose a monetary penalty
- Cancel the liquor licence
- Rescind, amend or impose new terms and conditions on the licence
- Order a transfer of the licence

Imposing any penalty is discretionary. Where the general manager finds that a suspension or monetary penalty is warranted the general manager must follow the minimums set out in Schedule 2 of the Regulations. The general manager is not bound by the maximums and may impose a higher suspension or monetary penalty when it is in the public interest to do so. The general manager is not bound to order the penalty recommended in this NOEA.

Schedule 2 of the Regulation sets out the range of enforcement actions for when a contravention occurs in an establishment within a 12 month period of a contravention of the same type. It is the date that the contravention occurred that is used for the purpose of determining if a contravention is a first, second or subsequent contravention for penalty purposes.

If you decide to sign a waiver, or if you have any questions regarding this matter, please contact me at 250 896-6509 as soon as possible. If you do not sign a waiver, the branch registrar will provide you with the next steps in the hearing process.

For further information about the hearing and waiver process please visit our website at <https://www2.gov.bc.ca/gov/content/employment-business/business/liquor-regulation-licensing/bc-liquor-control-compliance-and-enforcement>

Yours truly,

Robert Scott
Liquor Inspector

Enclosures

Copy of Liquor Control and Licensing Branch Enforcement Process – Information for Liquor Licensees (located at <https://www2.gov.bc.ca/gov/content/employment-business/business/liquor-regulation-licensing/bc-liquor-control-compliance-and-enforcement/bc-liquor-control-enforcement-process>)

ENFORCEMENT ACTION

If the general manager determines that the licensee has committed the above alleged contravention(s), the general manager may consider the following when determining what enforcement action, if any, is warranted pursuant to section 51(2) of the Act:

Past Enforcement Action Taken

No compliance history found

Compliance Meetings

No compliance meetings found

Other Factors