

Case Name:

**Quail Place Estates Ltd. v. British Columbia (General Manager,
Liquor Control and Licensing Branch)**

**IN THE MATTER OF Section 20 of the Liquor Control and
Licensing Act, R.S.B.C. 1996, c. 267**

Between

Quail Place Estates Ltd. and 0729184 B.C. Ltd., Petitioners,

and

**General Manager under the Liquor Control and Licensing Act,
Respondent**

[2011] B.C.J. No. 224

2011 BCSC 177

Docket: S104471

Registry: Vancouver

British Columbia Supreme Court
Vancouver, British Columbia

**D.M. Masuhara J.
(In Chambers)**

Heard: August 4-5, 2010.

Judgment: February 11, 2011.

(101 paras.)

Government law -- Liquor control -- Licensing and licenses -- Revocation -- Renewal -- Appeals and judicial review -- Natural justice -- Procedure fairness -- Practice and procedure -- Evidence -- Burden of proof -- Petition for judicial review of respondent's cancellation and refusal to renew liquor license allowed -- Petitioner sold assets to purchaser, conditional on License transfer, and sold building to Landlord -- Four years later, respondent denied transfer because Landlord's shareholder belonged to Hell's Angels -- Petitioner repurchased business and Hell's Angel member sold shares -- Respondent refused renewal on basis petitioner had not established valid interest in business or that it was proper person -- Oral hearing ordered, as credibility was major factor -- Re-

respondent failed to explain significant delay or why it allowed purchaser to operate four years -- Respondent placed onerous burden on petitioner.

Petition by night club operator from respondent's cancellation of and refusal to renew its liquor license. The petitioner held the license since 1999. In 2005, the petitioner sold its assets to the purchaser, conditional on the transfer of the License. The petitioner also sold the building to a company that then became the Landlord. The principal of the purchaser was a shareholder of the Landlord. The purchaser operated a night club for four years under the petitioner's License and the respondent denied the transfer on the basis the shareholder, officer and director of the Landlord was a member of the Hell's Angels. The respondent found that the purchaser's principal's association with a member of Hell's Angels meant he was not a fit and proper person to hold a License. The respondent also pointed a lack of formal sale documentation. The License was cancelled. The petitioner decided to repurchase the business from the purchaser and the Hell's Angels member's shares in the Landlord were bought out. The member also resigned as director and officer. The petitioner applied to have the License renewed. The respondent denied the renewal application on the basis it was not satisfied the petitioner had a valid interest in the business and the petitioner had not established he was not associated with the Hell's Angels so was not a fit and proper person to hold a liquor license. The petitioner argued the decision was unreasonable and unfair.

HELD: Petition allowed. An oral hearing was required to afford the petitioner the opportunity to address issues in decisions. The respondent did not make a specific finding as to whether the petitioner held a valid interest in the business or was a fit and proper person to hold a License. The respondent just found the petitioner had not provided sufficient evidence. The respondent was also asking the petitioner to prove a lack of association with the Hell's Angels, and proving a negative was an onerous burden. The respondent did not explain the significant delay or why it had allowed the purchaser to operate for four years. There was no suggestion that either the petitioner or the purchaser had criminal backgrounds and the petitioner had held the License since 1999. Cancellation was not a necessary consequence; the respondent could have made other orders pursuant to s. 20 of the Liquor Control and Licensing Act.

Statutes, Regulations and Rules Cited:

Administrative Tribunals Act, SBC 2003, CHAPTER 47,

Judicial Review Procedure Act, RSBC 1996, CHAPTER 241, s. 2, s. 3, s. 7

Liquor Control and Licensing Act, RSBC 1996, CHAPTER 267, s. 12(5), s. 16, s. 20

Liquor Control and Licensing Regulation, s. 4

Counsel:

Counsel for Petitioners: Andrew D. Gay.

Counsel for Respondent: Jonathan G. Penner.

Reasons for Judgment

D.M. MASUHARA J.:--

Introduction

1 On May 11, 2010, the General Manager of the Liquor Control and Licensing Branch (the "General Manager") cancelled a liquor licence held by the petitioner, Quail Place Estates Ltd. ("Quail Place") since 1999. The petitioner submits that the General Manager's decision, in addition to several prior decisions, was unreasonable or procedurally unfair, and seeks to have the decision set aside; or alternatively, to have the question of the licence being held by Quail Place remitted back to the General Manager for a proper determination including an oral hearing. The relief sought is pursuant to sections 2, 3 and 7 of the *Judicial Review Procedure Act*, R.S.B.C. 1996, c. 241.

2 Quail Place was the holder of liquor licence #200533 (the "Licence") for a night club on Lawrence Avenue in Kelowna from 1999 to 2004 called Mediterranean Garden Grill, also known as Club Med (the "Business"). The principal of Quail Place is Mr. David Habib, a home builder and former night club owner. Mr. Habib started the club in 1999 which he states he built and started "from scratch". The club burned down in 2001. He re-opened it at its new present location. In the fall of 2005, Quail Place says that it sold the assets of the Business to 0729184 B.C. Ltd. ("072"). The sale was conditional upon the General Manager approving a transfer of the Licence to 072. Mr. Tony Raffele is an owner of 072, and submitted the transfer application in October 2005. From the date of the sale, 072 operated the night club. The Licence remained issued to Quail Place pending approval of the transfer of the Licence to 072 by the General Manager.

3 Concurrent with the asset sale, Mr. Habib caused the company that owned the building in which the night club was located (the "Building") to be sold to a company named Liquid Zoo Holdings Ltd. ("Liquid Zoo"). A director and shareholder of Liquid Zoo was Mr. Damiano Dipopolo, a member of the Hells Angels Motorcycle Club, a known criminal organization. Mr. Raffele was also a director of Liquid Zoo. As a result of the sale to Liquid Zoo, 072 would be a tenant of Liquid Zoo.

4 What is unique about this case is that it took the General Manager approximately four years to consider whether to approve the Licence transfer. Normally, the time frame is one to two months. In this case, the applicant 072 was denied the transfer of the Licence on October 7, 2009. The actions and concerns of the General Manager regarding whether to approve the transfer of the Licence are related to the finding that Mr. Dipopolo was a member of the Hell's Angels Motorcycle Club. The General Manager was of the view that the association of Mr. Raffele with a member of the Hells Angels made Mr. Raffele a person "not fit and proper" to hold a liquor licence. Subsequently, after further review by the Branch of Quail Place, the Licence which remained in the name of Quail Place was terminated by the General Manager on May 11, 2010.

5 At the core of the General Manager's concerns was her dissatisfaction as to the fitness of 072, and subsequently Quail Place, as a licensee under the Act. The concerns start with the association of Mr. Raffele with Mr. Dipopolo. They continued with the lack of documentation of an agreement Quail Place says it entered into with 072 for the sale of the Business, as well as an earlier sale of the Business to a company called Champagne Charlie's, which had not completed. Specifically, there was no formal written agreement setting out the sale of the night club by Quail Place, which was for \$550,000. Apparently, \$350,000 of the purchase price was paid in various ways, and of that sum, Quail Place only received \$25,000. Quail Place could not provide documentation evidencing that it had received \$25,000.

6 Further, the financial transaction to remove Mr. Dipopolo as shareholder in Liquid Zoo for \$250,000 by Mr. Bruno was not satisfactory to the General Manager as the "original" source of the financing by Mr. Bruno, the purchaser of Mr. Dipopolo's shares, had not been identified. Similarly, she was not satisfied with respect to the repurchase of the Business by Quail Place from 072 for \$350,000, as Quail Place had been unable to indicate the source from which the \$350,000 would be paid.

Statutory Framework

7 The *Liquor Control and Licensing Act*, R.S.B.C. 1996, c. 267 (the "Act") governs the General Manager and her actions in relation to the transactions in question.

8 The Act is public safety legislation that balances various competing interests, including the interest of a licensee in maximizing profits and the interests of public safety: *Butterworth Holdings Ltd. v. British Columbia (General Manager, Liquor Control & Licensing Branch)*, 2007 BCSC 6; and *Cambie Malone's Corp. v. British Columbia (General Manager, Liquor Control & Licensing Branch)*, 2009 BCSC 987.

9 The focus of the Act is the protection of society and the General Manager is entitled to be concerned with the public interest over and above the economic interests of individual licensees: *Whistler Mountain Ski Corp. v. British Columbia (Liquor Control & Licensing Branch)*, 2002 BCCA 426 at paras. 45-46.

10 The specific provisions of the Act that are relevant to this case include the following:

16 (1) A licence must not be issued, renewed or transferred if, in the general manager's opinion, the applicant

- (a) is not a fit and proper person,
- (b) is not the owner of the business carried on at the establishment or the portion of the establishment to be licensed,
- (c) is not the owner or lessee of the establishment or the portion of the establishment to be licensed, or
- (d) is disqualified under this Act or has not complied with the requirements of this Act or the regulations.

(2) In deciding if a person is fit and proper for the purposes of subsection (1)(a), the general manager

- (a) must consider convictions of the person under the laws of Canada or a province or the bylaws of a municipality or regional district in British Columbia, and
- (b) may consider
 - (i) administrative penalties levied against the person under a law of Canada or a province,
 - (ii) the financial integrity of the person, and
 - (iii) other factors the general manager believes are relevant to the consideration.

- (2.1) The general manager may at any time, on the general manager's own initiative, if the general manager thinks it necessary or desirable, determine whether a licensee is a fit and proper person.
- (2.2) The general manager may conduct an investigation that the general manager considers is or may be necessary for the purpose of determining whether a person or licensee is fit and proper.
- (3) A licence must not be issued, renewed, transferred or amended if, in the general manager's opinion, it would be contrary to the public interest.

...

20 (1) In addition to any other powers the general manager has under this Act, the general manager may, on the general manager's own motion or on receiving a complaint, take action against a licensee for any of the following reasons:

- (a) the licensee's contravention of this Act or the regulations or the licensee's failure to comply with a term or condition of the licence;
- (b) the conviction of the licensee of an offence under the laws of Canada or British Columbia or under the bylaws of a municipality or regional district, if the offence relates to the licensed establishment or the conduct of it;
- (c) the persistent failure to keep the licensed establishment in a clean and orderly fashion;
- (c.1) a failure by the licensee to take reasonable measures to ensure that the operation of the establishment is not contrary to the public interest and does not disturb persons in the vicinity of the establishment;
- (d) the existence of a circumstance that, under section 16, would prevent the issue of a licence;
- (e) the suspension or cancellation of a municipally, regionally, provincially or federally granted licence, permit or certificate that the licensee is required to hold in order to operate the licensed establishment.

(2) If the general manager has the right under subsection (1) to take action against a licensee, the general manager may do any one or more of the following, with or without a hearing:

- (a) [Repealed 1999-36-13.]
- (b) impose terms and conditions on the licensee's licence or rescind or amend existing terms and conditions on the licence;

- (c) impose a monetary penalty on the licensee in accordance with the prescribed schedule of penalties;
- (d) suspend all or any part of the licensee's licence in accordance with the prescribed schedule of licence suspensions;
- (e) cancel all or any part of the licensee's licence;
- (f) order the licensee to transfer the licence, within the prescribed period, to a person who is at arm's length from the licensee.

...

- (4) On taking action against a licensee under subsection (2), the general manager must
 - (a) provide the licensee with written notice of the action in accordance with the regulations,
 - (b) set out in the notice the reasons for taking the action,
 - (c) set out in the notice the details of the action including
 - (i) if a monetary penalty is imposed, the amount of the penalty and the date by which the penalty must be paid, and
 - (ii) if a suspension is imposed, the period of the suspension and the dates on which the suspension must be served, and
 - (d) [Repealed 2002-48-37.]

11 Liquor licenses expire on the date specified on their face: s. 12(5). Typically, they require renewal annually.

12 Part 2 of the Liquor Control and Licensing Regulation, s. 4 states the following:

- 4 (1) A licence must not be issued or transferred to a person unless that person is
 - (a) the owner of the establishment to which the licence relates, or
 - (b) the lessee of the establishment under a lease that does not expire for at least 12 months after the date of issue or transfer of the licence.
- (2) A licence must not be renewed for an establishment unless the licensee is the owner of the establishment to which the licence relates or provides evidence satisfactory to the general manager that the licensee is the lessee of the establishment under a lease of a duration that is satisfactory to the general manager.

13 The Policy Manual of the Liquor Control and Licensing Branch sets out the following with respect to the requirement for a "valid interest" in an establishment:

[A] liquor licence is linked both to the licensee personally and to the establishment physically. Section 16(1)(b) of the *Liquor Control and Licensing Act* requires, as one feature of applicant suitability, that the applicant be the owner of the business carried on at the establishment for which the licence is sought. In addition to requiring ownership of the business, section 16(1)(c) of the Act requires that the applicant have a valid interest in the establishment, by prohibiting the granting of a licence to a person who is not either the owner or the lessee of the establishment. Section 4(1) of the Liquor Control and Licensing Regulations further clarifies that the person must be either the owner of the establishment or hold a 12-month lease for it.

In other words, a liquor licence applicant must be both the owner of the business and the owner or lessee of the establishment at which the business is carried on. Together, these two elements constitute valid interest in an establishment.

...

Loss of valid interest in the establishment is reason for the general manager to consider cancelling the licence.

14 The Policy Manual also sets out criteria that will be applied by the General Manager with respect to the "fit and proper" determination:

A fit and proper person suitable to hold a liquor licence must:

- * be of good reputation and character, and not have a history of behaviour that would render the person unsuitable to hold a licence;
- * not be involved in criminal activities or be associated with anyone involved in criminal activities;
- * not be a member or associated with a member of an organized crime group;
- * have financial integrity. The General Manager must be satisfied that the funding involved or in support of the licence is not from a criminal source or associated with any criminal source.

Licensing staff, in partnership with compliance and enforcement staff, consider the following factors when deciding whether or not to deem an applicant fit and proper to hold a liquor licence:

...

- * the source of the applicant's funding for the proposed business venture,
- * such other factors as may be relevant in the public interest.

Background

15 In 2005, Quail Place says that it sold the Business to 072 by way of an asset sale, which was subject to the approval of the transfer of the Licence to 072 by the General Manager. There was no written sale agreement. The sale price was said to be \$550,000, with \$350,000 paid up front and \$200,000 to be paid when, and if, the Licence transfer was approved.

16 The principal of Quail Place, Mr. Habib, also owned a company, 614030 B.C. Ltd., which owned the property in which the Business was located. Concurrent with the sale of the Business, Mr. Habib caused 614030 to sell the property to Liquid Zoo. This transaction was documented. Copies of these documents were not in the materials filed. Thereafter, Liquid Zoo leased the premises to 072. Mr. Dipopolo was a one third shareholder and director of Liquid Zoo. The General Manager knew by June 7, 2005 that Mr. Dipopolo was a member of the Hell's Angels.

17 The application to transfer the Licence was submitted to the General Manager by 072 on or about October 14, 2005.

18 While considering the transfer application, the General Manager allowed 072 to operate the night club.

19 A copy of the lease between 072 and Liquid Zoo dated August 1, 2005 was received by the Branch on December 30, 2005.

20 The consideration by the General Manager took an extended period of time. Normally it takes one to two months for such consideration. Mr. Habib and Quail Place went off to pursue other unrelated ventures after handing over the Business to 072, and did not remain involved in the night club.

21 In July 2009, over three and one half years after 072 began operating the night club, Ms. Villa-Arce, Manager of Licensing Administration of the Liquor Control Branch, issued notice to Mr. Raffele that as a result of its investigation it was the Branch's view that Mr. Raffele was not "fit and proper" to hold a liquor licence, and that it was recommended to the General Manager that the transfer not be approved. The investigation report alleged that 072 was associated with Mr. Dipopolo, a member of a criminal organization, the Hell's Angels Motorcycle Club. The association was said to be in two forms:

- (a) that Mr. Dipopolo held one third of the shares in, and was a director of Liquid Zoo; and
- (b) that Mr. Raffele, the manager of the Business, owned 30% of the shares of 072, and was a director of Liquid Zoo.

22 072 was invited to provide written submissions in response to the recommendation within thirty days.

23 By letter dated August 10, 2009, 072 responded. Its submissions did not dispute that Mr. Dipopolo was a member of the Hell's Angels, or that he was associated with 072.

24 Following the submissions, Ms. Caldwell, Deputy General Manager Licensing Division, who has delegated decision-making authority for licensing decisions, determined that the 072 was not fit and proper. As a result, she was required by s. 16 of the Act to refuse to approve 072's application to transfer the Licence from Quail Place. Her decision and reasons were sent to 072's counsel by letter dated October 7, 2009 (the "Decision Letter").

25 No application for a judicial review of that decision was sought. The Petitioner states in its submissions in this proceeding that it does not attack the finding that Mr. Raffeale was not "fit and proper".

26 The Decision Letter granted 072 until October 22, 2009 to prepare for the closure of the Business, a period of two weeks. On that date the Licence would be suspended.

27 On the same date as the Decision Letter, Ms. Villa-Arce wrote to Quail Place on behalf of the General Manager to advise Mr. Habib that the transfer application of 072 had been refused. She advised Mr. Habib that the Licence would be suspended effective October 22, 2009, and that Quail Place would be required to re-establish its eligibility to hold the Licence, failing which the Licence would be cancelled on November 6, 2009. She stated in her letter that:

Unless you, as the licensee, can provide documentation to show that you meet the eligibility requirements, the Branch will cancel Liquor Primary Licence # 200533. If you know of any reason why this licence should not be cancelled it will be necessary for you to provide this information prior to November 6 2009. If you intend to take steps to achieve compliance with section 16 of the Act, then it will be necessary for you to contact me to discuss your proposal prior to taking any action to resolve the matter. It is important that you work with the Branch to ensure that your plan complies with the Act, Regulations and licensing policy and you are aware of the implications of any financial decisions you make.

28 After discussion between Mr. Raffeale and Ms. Villa-Arce, the suspension and cancellation dates were changed to November 3, 2009 and November 20, 2009, respectively.

29 On October 29, 2009, the Business was shut down and thirty employees were terminated on the same day. Ms. Villa-Arce was advised by 072's solicitors, Mair Jensen Blair LLP ("MJB"), that Mr. Raffeale had agreed to purchase Mr. Dipopolo's shares in Liquid Zoo. He requested that the Licence suspension be deferred by several months, and also requested confirmation that the proposed share transfer would result in favourable consideration. Following the letter, a series of telephone conversations transpired between Ms. Villa-Arce and Mr. Raffeale and 072's counsel. Deferment of the suspension was again requested. Ms. Villa-Arce advised that the deferment would not be provided. The Licence suspension took effect November 3, 2009 indefinitely.

30 On November 4, 2009, Ms. Villa-Arce received a fax from Mr. Habib advising that Quail Place had authorized the law firm of MJB "and/or Dennis Coates and/or Barry Carter to act on behalf of Quail Place Estates Ltd." in relation to the Licence.

31 On November 6, 2009, Ms. Villa-Arce wrote in response to the request of 072's solicitors of October 29, 2009 and explained that the General Manager had made her "fit and proper" decision regarding Mr. Raffeale on the basis of information she had been provided, and that she could not reconsider her decision on the basis of a change in circumstances. She stated that:

[t]he general manager can reconsider a decision if there was information before her that she did not consider. This is not the case. The general manager was not presented with information that would allow her to reconsider her decision.

32 Ms. Villa-Arce wrote further that:

The general manager could only reinstate the application to transfer the licence if she was reconsidering her decision. As she is not reconsidering her decision the termination of the application must stand and Mr. Raffele has no authority to use the licence.

As the general manager had determined Mr. Raffele was not fit and proper, it was necessary to terminate the application.

33 On November 6, 2009, Mr. Coates of MJB contacted Ms. Villa-Arce and inquired whether the Branch's concerns would be met if Mr. Dipopolo's interest in Liquid Zoo were removed and a new transfer application submitted. He also stated that "Mr. Habib did not know what information" was required of him by the Branch.

34 On November 9, 2009, an agreement was reached between Mr. Bruno and Mr. Dipopolo pursuant to which Mr. Bruno agreed to purchase Mr. Dipopolo's shares in Liquid Zoo for \$250,000, on the condition that the liquor licensing issues were resolved in six months. Mr. Bruno paid the funds into MJB's trust account. The documentation and steps to effect the transfer of shares and to effect the resignation of Mr. Dipopolo as director and officer of Liquid Zoo was conducted by MJB.

35 On November 10, 2009, Ms. Villa-Arce responded and advised that in the absence of "detailed and complete information" on the proposal and the financial arrangements, as well as names and supporting documentation for all individuals and companies involved, it was not possible for the General Manager to determine whether the proposal would resolve her "fit and proper" concerns. She also advised that no transfer application could be accepted until Mr. Habib had demonstrated that he met the licensee eligibility requirements. Ms. Villa-Arce further stated in her letter in response to counsel's statement that Mr. Habib did not know what was required of him the following:

You have indicated that Mr. Habib does not know what documentation is required from him before November 20, 2009. Mr. Habib needs to demonstrate to the Branch's satisfaction that he is both the owner of the business and the owner or lessee of the establishment at which the business is carried on.

If Mr. Habib intends to obtain valid interest then he will also need to ensure that any financial transactions he enters into are not in contravention of section 16(1)(a) of the Act. As outlined in my October 7, 2009 letter to him, he should provide the Branch details on his proposed financial arrangements. The names and supporting documentation for all individuals and companies involved in any transactions will be required so that the general manager can consider whether those individuals are fit and proper. Also, Mr. Habib should be made aware that, at any time, as a licensee he is subject to a fit and proper review pursuant to section 16(1)(a) of the Act.

36 By letter dated November 12, 2009, Mr. Carter of MJB provided Ms. Villa-Arce a number of documents relating to the transfer of Mr. Dipopolo's interest in Liquid Zoo, and a lease agreement between Quail Place and Liquid Zoo. Mr. Carter provided the materials to "satisfy the Branch's concern regarding Quail Place's valid interest in the establishment and the concerns raised regarding Mr. Dipopolo's interest in the Landlord, Liquid Zoo". The documents enclosed were:

1. The executed Lease between Liquid Zoo and Quail Place, dated September 1, 2009;
2. An Instrument of Transfer regarding the transfer of 50 Common Shares in Liquid Zoo to Franco Bruno, executed by Damiano Dipopolo;
3. The executed Share Certificate of Damiano Dipopolo in Liquid Zoo dated November 9, 2009;
4. The executed Resignation of director of Damiano Dipopolo in Liquid Zoo dated November 9, 2009;
5. The executed Resignation of officer of Damiano Dipopolo in Liquid Zoo dated November 9, 2009;
6. The copy of the Share Certificate of Franco Bruno issued November 9, 2009;
7. Resolution of all Directors of Liquid Zoo re Application for Transfer of Shares;
8. Resolution of all Directors of Liquid Zoo re Resignation of Officers;
9. Consent Resolutions of the shareholders of Liquid Zoo re Resignation of Damiano Dipopolo;
10. Resolution of all Directors of 0729184 B.C. Ltd. re Resignation of King Yung as president of the company;
11. Consent Resolutions of the Shareholders of 0729184 B.C. Ltd. re Appointment of Tony Raffele as director;
12. Waiver and Consent of Liquid Zoo re transfer of shares from Damiano Dipopolo to Franco Bruno;
13. A Letter of Direction to Mair Jensen Blair LLP executed by Franco Bruno and Damiano Dipopolo dated November 9, 2009 to pay \$250,000 to Mair Jensen Blair LLP in trust on the following trust conditions:
 - (a) Upon resolution of the LCLB issues relative to the Liquor Licence, the Purchase Price shall be paid to Dipopolo without deduction or delay;
 - (b) in the event that the LCLB issues relative to the Liquor Licence are not resolved within 8 months of the date of this Direction, the transaction shall be null and void and the Purchase Price shall be refunded to Bruno and the Shares shall be transferred back to Dipopolo.

37 That same day, Mr. Habib provided Ms. Villa-Arce with a letter and a BC Company Summary for Quail Place. In the letter he said that he was the sole shareholder of Quail Place, that he had entered into a sales agreement with the 072 in 2005, and that pursuant to the terms of the agreement he retained a financial interest in the business pending the General Manager's approval of the transfer of the Licence. He said that it was his intention to re-open the business once the Licence suspension was removed, operate the business as "Liquid Zoo", and place an individual named Bob McDonald as the manager. He advised that Quail Place had entered into a lease with Liquid Zoo. He also stated that:

At the time I entered the Lease, I understood that an agreement had been entered into between Franco Bruno and Damiano Dipopolo for the sale of Mr. Dipopolo's shares to Mr. Bruno.

38 On November 17, 2009, Ms. Villa-Arce wrote to both Mr. Habib and Mr. Carter, advising that not all the documentation required establishing Quail Place's valid interest and Mr. Dipopolo's removal from Liquid Zoo had been provided. She advised both of them as follows:

I am responding now to let you know that the information provided is being reviewed and I will be writing to let you know what documentation will be required to demonstrate to the Branch that Quail Place Estates Ltd. has valid interest, in both the business and the property, and that Mr. Dipopolo is no longer involved with Liquid Zoo Holdings Ltd., the landlord. As stated earlier, it will be necessary to ensure that all of the parties involved have no financial relationship with Mr. Dipopolo.

Based on the information provided so far the Branch will rescind the cancellation notice, however the licence will remain suspended until the general manager can make a determination as to whether or not Quail Place Estates Ltd. has met the applicant eligibility criteria, and a resident manager application is approved. However, if the required documentation is not provided within set timelines, or the general manager determines that Quail Place Estates Ltd. does not meet the eligibility requirements and/or there appears to be a financial relationship with Mr. Dipopolo, the licence will be cancelled. [emphasis added]

39 On November 19, 2009, Ms. Villa-Arce issued a rescission of the Notice of Cancellation, and a revised Notice of Suspension, of the Licence.

40 On November 25, 2009, a member of MJB sent an email to Ms. Villa-Arce attaching a copy of a letter from Van City Credit Union dated November 19, 2009 confirming the funds received from Mr. Bruno by MJB in the amount of \$250,000 were drawn from Mr. Bruno's personal account.

41 After learning of the Branch's position that a conditional transfer of shares from Mr. Dipopolo to Mr. Bruno was not acceptable, a new letter of direction was prepared by the parties which authorized MJB to release the \$250,000 that Mr. Bruno had paid into MJB's trust account. The funds were delivered to Mr. Dipopolo's notary public, Mr. Frank Spartano. Mr. Coates has provided copies of two cheques issued by Mr. Spartano to Mr. Dipopolo in the amounts of \$150,000 and \$100,000.

42 On November 30, 2009, Ms. Villa-Arce wrote again to both Mr. Habib and Mr. Coates setting out in detail the documentation that would be necessary to "demonstrate that Quail Place Estates Ltd. has valid interest, both in the property and the business; confirm that the shareholders on record with the Branch have not changed; and ensure that Quail Place Estates Ltd. has not entered into any financial transaction that would contravene section 16(1)(a) of the Act". Among other things, she wrote:

The following is required for Quail Place Estates Ltd.

...

2. Documents that demonstrate Mr. Habib's claim that "pursuant to the terms of the agreement I have retained a financial interest in the business pending that approval."

3. Documents related to the financial transactions between Quail Place Estates Ltd. and 0729184 B.C. Ltd. This includes, but is not limited to the original sale agreements and includes any other documents related to that sale and all recent agreements related to the return of the business to Quail Place Estates Ltd.
4. Documentation that shows the source of financing for the return of the business to Quail Place Estates Ltd.

To demonstrate that Mr. Dipopolo is no longer a shareholder within Liquid Zoo Holdings Ltd.; and ensure that Quail Place Estates Ltd. has not entered into any financial transaction that would contravene section 16(1)(a) of the Act, the following is required.

...

2. Documents that demonstrate the financial transactions and sources of financing for the purchase of Mr. Dipopolo's shares by Mr. Bruno.
3. Documents that demonstrate that the transfer of shares has been completed.

...

If the documentation provided to the Branch shows that Quail Place Estates Ltd. has valid interest, and there are no issues with respect to section 16(1)(a) of the Act, then prior to making a determination the general manager will also need Mr. Habib and Mr. Bruno to confirm the following:

There are no other agreements or financial arrangements that will take precedence over the documents submitted to the Branch.

There are no other agreements or financial arrangements that will be enacted after the decision is made.

They will not enter into any other agreements or financial arrangements with Mr. Dipopolo, directly or indirectly.

Mr. Habib has indicated that he intends to hire Bob McDonald as a resident manager to operate the establishment if it is permitted to re-open. A *Resident Manager Application* for Bob McDonald must be submitted to the Branch for consideration.

The documentation requested in this letter is based on the documentation that has been provided so far. It may be determined that further documents are required to support or clarify any additional documents submitted to the Branch.

43 Mr. Carter responded to this letter on December 11, 2009 with a covering letter and a number of documents.

44 Ms. Villa-Arce wrote to Mr. Carter on December 22, 2009 to advise that, although some of the documentation submitted did address the questions in her letter of November 30, 2009, there were still a number of outstanding issues. In particular, Ms. Villa-Arce noted:

Shareholders: Quail Place Estates Ltd. and Liquid Zoo Holdings Ltd.

... Although the corporate documents provided for Liquid Zoo Holdings Ltd. (LZH), the landlord, show that Mr. Dipopolo is no longer a shareholder or director, the financial transaction required to complete the share purchase has not yet taken place. The Branch does not consider the process complete as there is still an outstanding debt owed.

Original sale of the business from QPE to 0729184 BC Ltd.:

Your letter states that the original purchase was \$550,000 and that \$350,000 was paid to QPE. The remaining payment of \$200,000 was set up as a Promissory Note to be executed 'on demand'. It has been suggested that it was to be payable upon the approval of the transfer of the licences and as this has not occurred the money has not changed hands. The agreement regarding the current repurchase states that with respect to the original purchase, "neither party is in possession of documentation confirming the purchase." You state, "There was no written master agreement re the sale of the business."

It is difficult to understand that there is no other documentation available to show that the sale took place, confirm the purchase price and address payment. The Branch will need some documentation that provides this information. Your client may wish to consider providing bank statements or other similar documentation.

Current proposal for QPE to purchase the business back from 0729184 BC Ltd.:

The "Agreement dated for reference the 1st day of November, 2009", states that QPE need only pay \$350,000 to 0729184 BC Ltd. as the remaining \$200,000 was not paid to QPE. With respect to the current purchase a Promissory Note, dated November 1, 2009, states that QPE agrees to pay \$350,000 to 0729184 BC Ltd. This is a promise to pay, but no financial transactions have occurred, other than nominal \$10.00 paid by each party for consideration of the agreement to repurchase the business. You stated that this is the "source of the financing" for the return of the business, however [your] client has not accounted for the source of the \$350,000.00.

Financing for the purchase of the LZH shares by Mr. Bruno from Mr. Dipopolo:

With respect to Mr. Bruno's purchase of Mr. Dipopolo's shares, a letter from Vancity ... states that a Bank Draft of \$250,000.00 was issued from Mr. Bruno's personal account and deposited into trust at MJB. You state that the money is being held pursuant to the letter of direction, to be paid out in accordance with that document. The transaction between Bruno and Dipopolo has not yet been completed and the letter of direction states that it is dependent upon one of two conditions, LCLB issues must be resolved or if not resolved within 6 months, the shares will be transferred back. Until the shares are fully paid for, Mr. Dipopolo will continue to have interest in the form of a debt owed by Mr. Bruno. As well, the source of financing does not go any further than stating, "a Bank Draft for \$250,000.00 was issued from Mr. Bruno's personal account." No information has been provided on the original source of the funds.

45 Ms. Villa-Arce advised that the Licence would continue to be suspended until the General Manager had sufficient information to make a determination that Quail Place was in compliance with s. 16, and a resident manager had been approved.

46 No further submissions were provided for about two months. On February 17, 2010, Mr. Carter wrote Ms. Villa-Arce with further submissions and provided additional documentation. Included in the documentation were statutory declarations from Mr. Habib and Mr. Raffeale, which included statements to the following effect:

- (a) QPE had entered into an agreement in October of 2004 to sell its assets to a company called Champagne Charlie's Entertainment Inc. ("Champagne Charlie's") for \$550,000. \$200,000 was paid up front, and the remainder was to be paid "on terms, all pending the ... approval of the transfer of the Licence".
- (b) Champagne Charlie's was subsequently unable to complete the deal.
- (c) Mr. Raffeale was one of a group of (unnamed) individuals who approached Mr. Habib in October of 2005 with a view to purchasing QPE's assets.
- (d) Mr. Habib agreed to sell QPE's assets to the Numbered Company, of which Mr. Raffeale was the representative, for \$550,000. \$350,000 was paid up front, and QPE "agreed to terms for the repayment of the remaining \$200,000".
- (e) The agreement was never reduced to writing.
- (f) The \$350,000 down payment was paid, at Mr. Habib's direction, as follows:
 - (i) \$200,000 to Champagne Charlie's;
 - (ii) \$125,000 to a company called K.C. Ventures Ltd. "to retire a debt to them for their financing of the improvements to the premises"; and
 - ...
 - (iv) \$25,000 to QPE.

- (g) The principal of K.C. Ventures Ltd. was one Kirk Chamberlain, who was also a shareholder in the Numbered Company. The \$125,000 that was to be payable to K.C. Ventures was never actually paid, as it was "considered an injection of capital into" the Numbered Company.
- (h) Neither Mr. Habib nor QPE had any documents in their possession evidencing the payment of \$25,000 to QPE, "as the account is long since closed".

47 Mr. Habib phoned Ms. Villa-Arce regularly during this period, two to three times per week, to ask for clarification regarding what documentation the General Manager required and why. Ms. Villa-Arce eventually told him that, in accordance with Branch practice, she was only prepared to deal with either him or his lawyer. Subsequently, Mr. Habib and Mr. Carter arranged for a telephone conference with Ms. Villa-Arce and Ms. Caldwell.

48 On February 24, 2010, Ms. Villa-Arce and Ms. Caldwell had a lengthy teleconference with Mr. Carter and Mr. Habib, during which the General Manager's concerns, and the reasons for requesting certain documents, were discussed. The conversation was summarized in a letter sent to Mr. Carter by Ms. Villa-Arce on March 15, 2010 described below.

49 On March 1, 2010, Mr. Habib faxed Ms. Villa-Arce a copy of a bank draft dated July 12, 2005, showing a transfer of \$170,000 from Mr. Clement Yung to Mr. Charles Stanley. Mr. Yung was a shareholder in 072, and Mr. Stanley was the principal of Champagne Charlie's.

50 In her letter of March 15, 2010, Ms. Villa-Arce pointed out that the Licence would expire on April 30, 2010, and that unless the General Manager was satisfied that her concerns had been met, the Licence would not be renewed. This was in accordance with advice that she had provided to Mr. Habib during one of their telephone conversations, in the course of which she had advised him not to submit a renewal application unless and until the General Manager had determined that Quail Place met the eligibility requirements.

51 Ms. Villa-Arce also pointed out in her letter of March 15, 2010, that if Mr. Habib was not able to provide documentation to support his claim, the General Manager would have to base her decision on the limited information before her.

52 On March 25, 2010, Mr. Coates wrote Ms. Villa-Arce to advise that MJB would be sending a bound book of documents to address the General Manager's concerns. The letter stated that the book would include:

1. Corporate documents for Quail Place Estates Ltd.
2. Corporate documents for Liquid Zoo Holdings Ltd.
3. Purchase documents and Transfer of Funds -- Liquid Zoo Holdings Ltd./Frank Bruno and Mr. Dipopolo.
4. Lease documents -- Liquid Zoo Holdings Ltd. to Quail Place Estates Ltd.
5. Documents regarding Return of Business (Liquid Zoo -729184 B.C. Ltd. to Quail Place Estates Ltd.).
6. Miscellaneous documents regarding required confirmations from Frank Bruno and David Habib as set out in LCLB letter dated November 30, 2009, page 3, last paragraph.

53 The letter further stated:

In July of 2009 the Branch proposed to reject that proposed transfer due to the involvement of Damiano Dipopolo in the landlord company Liquid Zoo Holdings Ltd. based on the fact that he was a member of the Hells Angels.

Subsequent to that, agreements were reached between 729184 B.C. Ltd. and Quail Place Estates Ltd. whereby, Quail Place Estates Ltd. would resume ownership and operation of the business.

The intervening correspondence which has seen documents provided to deal with requests from the LCLB have occurred with the last correspondence being the March 15, 2010 letter from you.

As I understand, one issue is to ensure to your satisfaction that the share transaction within Liquid Zoo Holdings Ltd. is bona fide and a real transaction and also to satisfy yourself on the legitimacy of the funds being \$250,000.00 paid by Bruno to Dipopolo. I propose to provide you with a more extensive letter from the Van City Credit Union as to the source; security and payment arrangements with respect to these monies which I take, you are requesting.

The second issue is to ensure that Quail Place Estates Ltd. has a valid leasehold interest in the property where the license is located.

The third issue is to demonstrate that the return of the business from 729184 B.C. Ltd. to Quail Place Estates Ltd. is real and that this reflects the decision of the Branch to deny that requested transfer from 2005. We may prepare a more comprehensive agreement between 729184 B.C. Ltd. and Quail Place Estates Ltd. which addresses your concerns.

The fourth related issue is to ensure that Quail Place Estates Ltd. has the ability and intention to run the business acknowledging that hopefully, once these issues are resolved, it will be sold to new operators who will have to go through your regular approval process. There is no current intention to have a resident manager.

54 A bound book of documents was delivered to Ms. Villa-Arce on April 19, 2010, along with a covering letter from Mr. Carter. Most of the documents had been provided previously. I note that materials included a certificate from the Registrar of Companies that 072 was dissolved December 10, 2007 and restored September 18, 2008; and another Letter of Direction to MJB from Mr. Dipopolo and Bruno, dated January 9, 2010, which is in addition to that of November 9, 2009, and a re-dated Lease which had earlier been dated September 1, 2009 to November 1, 2009.

55 On April 28, 2010, Mr. Coates wrote Ms. Villa-Arce asking her, in light of the impending expiration of the Licence, to provide a renewal application to MJB for completion and submission. She responded the same day to advise that a decision would be made within the next two to three weeks, and that if the General Manager determined that Quail Place met the eligibility requirements

it would then be possible to renew the Licence. Unless such a determination was made, however, the Licence could not be renewed.

56 Nevertheless, Mr. Habib proceeded to submit a renewal application, which was processed and approved on April 30, 2010 through what was later said by the Branch the result of an "administrative error". Ms. Villa-Arce deposes that she told Mr. Habib not to submit a renewal fee and that if the General Manager held that Quail Place was eligible to hold a licence the Branch would waive the penalty fee. Mr. Habib denies this conversation. It came to light subsequent to the Cancellation Decision that there existed a notation in the Branch's database against the Licence that stated: "DO NOT PROCESS ANY APPLICATIONS FOR THIS ESTABLISHMENT UNTIL FURTHER NOTICE - AS PER CYC". The notation I am told was entered September 22, 2008 and that "CYC" is Ms. Caldwell.

57 On May 11, 2010, Ms. Caldwell decided that Quail Place had not met the eligibility requirements under s. 16. She stated in her decision:

The decision I must make is whether Quail Place Estates Ltd. continues to hold valid interest as required under section 16(1)(b) and (c) of the Act, and is not contravention [sic] of section 16(1)(a) of the Act with respect to any financial transaction entered into with the landlord, Liquid Zoo Holdings Ltd.

58 She decided that Quail Place had not provided sufficient evidence to demonstrate that it held a valid interest in the business. She also decided that she had not been provided with sufficient information to determine that Quail Place had no financial association with Mr. Dipopolo, which precluded a finding that Quail Place was "fit and proper". As a result of those decisions, she said that the Licence, which had expired, would not be renewed. This decision is referred to in the Petition as the "Cancellation Decision". The decision states the following:

I have considered Branch policy, the applicable legislation and your submission on behalf of Mr. Habib. I have reviewed your submission and for ease of reference I have attached a spreadsheet which summarizes the information and documentation you provided. The spreadsheet also shows how I have considered the information/documentation.

You are asking the Branch to accept statutory declarations from Mr. Habib and Mr. Rafelle, but corroborating documentation has not been provided. Supporting documentation has not been provided for the following:

- * Sale/purchase agreements outlining purchase price, cash down payment and balance owing with respect to the sale of the business to Champagne Charlie's Entertainment Inc.
- * Return of the full down payment to Champagne Charlie's Entertainment Inc. by Quail Place Estates Ltd. (documents account for \$170,000.00 but \$30,000.00 is not accounted for).
- * Sale/purchase agreements outlining purchase price, cash down payment and balance owing with respect to the sale of the business to 0729184 BC Ltd.

- * Transactions related to the down payment of \$350,000.00, to Quail Place Estates Ltd. (other than the \$170,000.00 paid to Champagne Charlie's Entertainment Inc.).
 - * Debt of \$125,000.00, owed to K.C. Ventures, Kirk Chamberlain.
 - * Repayment of the debt owed to K.C. Ventures, Kirk Chamberlain.
 - * Payment of \$30,000.00 to Champagne Charlie's Entertainment Ltd.
 - * Payment of \$25,000 to Quail Place Estates Ltd.
- * Source of funds for the return of the down payment of \$350,000.00 to 0729184 BC Ltd. (only document provided is a Promissory Note, payable on demand).

Mr. Habib has not supplied documents related to the sale of the business to 0729184 BC Ltd. However, he has provided documentation with respect to the sale of the property to Liquid Zoo Holdings by 614030 BC Ltd. Mr. Habib was the sole shareholder within 614030 BC Ltd.

With regard to removal of Mr. Dipopolo as shareholder in Liquid Zoo Holdings, you provided the Branch with corporate documents to show that Mr. Dipopolo is no longer a shareholder, however the original source of the \$250,000.00 was not provided. In a letter dated November 19, 2009, Vancity stated that a Bank Draft in the amount of \$250,000.00 was issued from Mr. Bruno's personal account. In a letter dated April 9, 2010 Vancity stated that over the years he has deposited and issued large cheques. It goes on to state that the account is a 'Creditline' Mortgage fully secured by Mr. Bruno's property, and that some funds also came from a transfer from his business account. No bank statements or other documentation was provided and there was no evidence submitted to show that the cheque had been cashed. A copy of the cancelled cheque would show that the cheque had been cashed and demonstrate that the financial transaction was completed. Until the financial transactions between Mr. Bruno and Mr. Dipopolo are completed, Mr. Bruno will be in debt to Mr. Dipopolo and therefore have a financial association with him.

59 Ms. Caldwell's reasons as set out in a letter to Mr. Carter, included the absence of supporting documentation for:

- (a) sale/purchase agreements outlining purchase price, cash down payment and balance owing with respect to the sale of the business to Champagne Charlie's;
- (b) return of the full down payment to Champagne Charlie's;
- (c) sale/purchase agreements outlining purchase price, cash down payment and balance owing with respect to the sale of the business to the Numbered Company;

- (d) transactions related to the down payment of \$350,000 to QPE (other than the \$170,000 paid to Champagne Charlie's);
- (e) source of funds for the return of the \$350,000 down payment to the Numbered Company;
- (f) source of funds for the \$250,000 payment to Mr. Dipopolo for his shares in the Numbered Company.

60 Ms. Caldwell's conclusion reads as follows:

I find that Quail Place Estates Ltd. has not provided sufficient evidence to demonstrate that it meets the eligibility requirements pursuant to section 16 (1) (b) of the Act. With respect to section 16(1)(c) of the Act, I do not have sufficient information to determine that there is no financial association with Mr. Dipopolo, therefore cannot determine whether or not Quail Place Estates Ltd. is in compliance with section 16 (1) (a) of the Act.

61 Also on May 11, 2010 and pursuant to the Ms. Caldwell's decision, Ms. Villa-Arce issued a Notice of Cancellation advising that the Licence, which had been renewed through an "administrative error", would be cancelled effective immediately. This is referred to in the Petition as the "Licence Renewal Decision".

62 The Petitioners filed the within Petition on June 22, 2010, seeking judicial review of the various decisions described above.

Judicial Review

63 In a judicial review the court is exercising a supervisory function to ensure that an administrative body is acting within the statutory powers it has been delegated by Parliament and legislatures. "The function of judicial review is to ensure the legality, the reasonableness and the fairness of the administrative process and its outcomes": *Dunsmuir v. New Brunswick*, 2008 SCC 9 at paras. 27 and 28.

64 In carrying out judicial review, the court is to determine the applicable standard of review and assesses whether the tribunal has made a reviewable error that justifies the intervention of the court.

65 The *Administrative Tribunals Act*, S.B.C. 2003, c. 47 does not apply to decisions of the General Manager, so the standard of review of her decisions is determined by common law.

66 In *Dunsmuir*, the Supreme Court of Canada reduced the standards of review from three to two; correctness and reasonableness. The approach set out in *Dunsmuir* is applicable to this case.

67 The latter standard will generally apply to "questions of fact, discretion and policy as well as questions where the legal issues cannot be easily separated from the factual issues" and deference is usual where "a tribunal is interpreting its own statute or statutes closely connected to its function, with which it will have particular familiarity. This is also the case "where an administrative tribunal has developed particular expertise in the application of a general common law or civil law rule in relation to a specific statutory context." See paras. 53 and 54 of *Dunsmuir*.

68 The reasonableness standard is described in *Dunsmuir* at para. 47 in this way:

Reasonableness is a deferential standard animated by the principle that underlies the development of the two previous standards of reasonableness: certain ques-

tions that come before administrative tribunals do not lend themselves to one specific, particular result. Instead, they may give rise to a number of possible, reasonable conclusions. Tribunals have a margin of appreciation within the range of acceptable and rational solutions. A court conducting a review for reasonableness inquires into the qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes. In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

69 In *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12 at para. 59, the court gave the following description of what is meant by judicial review on a "reasonableness" standard:

[59] Reasonableness is a single standard that takes its colour from the context. ... Where the reasonableness standard applies, it requires deference. Reviewing courts cannot substitute their own appreciation of the appropriate solution, but must rather determine if the outcome falls within "a range of possible, acceptable outcomes which are defensible in respect of the facts and law" (*Dunsmuir*, at para. 47). There might be more than one reasonable outcome. However, as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome.

70 In reviewing a tribunal's findings of fact or inferences made from the evidence, a court can only intervene "where the evidence, viewed reasonably, is incapable of supporting a tribunal's finding of fact": *Butterworth Holdings Ltd.* at para. 17. A tribunal may consider any evidence it deems relevant, reject portions of evidence, accept other positions, and place the weight it decides is appropriate to such evidence it accepts: *Miller's Landing Pub Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2009 BCSC 1352 at para. 34.

71 The correctness standard will apply to questions of law that are of general law that is of "central importance to the legal system" and outside the "specialized area of expertise of the administrative decision maker." However, if a question of law does not rise to this level then a question of law may be considered on the reasonableness standard: *Dunsmuir* at para. 55. Further, at para. 54 the Court held that "[d]eference will usually result where a tribunal is interpreting its own statute".

72 Questions of mixed fact and law are to be reviewed on a reasonable standard.

73 In *693753 Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)*, 2008 BCSC 1037, Ehrcke J., held that a decision of the General Manager when operating under s. 16, is entitled deference in a judicial review, i.e. a reasonableness standard is to be applied as "legal and factual issues are intertwined and cannot be readily separated", see para. 54.

74 On questions of jurisdiction and procedural fairness, deference through a standard of review analysis does not apply.

75 In *Dunsmuir*, Bastarache and LeBel JJ. at para. 79 stated that:

Procedural fairness is a cornerstone of modern Canadian administrative law. Public decision makers are required to act fairly in coming to decisions that affect the rights, privileges or interests of an individual. Thus stated the principle is easy to grasp. It is not, however, always easy to apply. As has been noted many times, "the concept of procedural fairness is eminently variable and its content is to be decided in the specific context of each case" (*Knight*, [1990] 1 S.C.R. 653, at p. 682; *Baker*, at para. 21; *Moreau-Bérubé v. New Brunswick (Judicial Council)*, [2002] 1 S.C.R. 249, 2002 SCC 11, at paras. 74-75).

76 In *Petro-Canada v. British Columbia (Workers' Compensation Board)*, 2009 BCCA 396, Groberman J.A. at para. 65 described the approach to assessing procedural fairness as follows:

65 Procedural fairness requirements in administrative law are not technical, but rather functional in nature. The question is whether, in the circumstances of a given case, the party that contends it was denied procedural fairness was given an adequate opportunity to know the case against it and to respond to it.

77 In *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 S.C.R. 817, 174 D.L.R. (4th) 193, the court identified a non-exhaustive list of factors that "should be used in determining what procedural rights the duty of fairness requires in a given set of circumstances". The factors identified at paras. 23-28 were:

- a) the nature of the decision being made and the process followed in making it;
- b) the nature of the statutory scheme and the terms of the statute under which the administrative decision was made;
- c) the importance of the decision to the individual or individuals affected. The more important the decision is to the lives of those affected and the greater its impact on that person or those persons, the more stringent the procedural protections that will be mandated;
- d) the legitimate expectations of the person challenging the decision may also determine what procedures the duty of fairness requires in given circumstances;
- e) the choice of procedures made by the administrative-decision maker and its institutional constraints. Important weight must be given to the choices of procedures adopted by the decision-maker and its institutional constraints.

78 In the exercise of considering the factors, it is important to note the court's prefacing comment at para. 22:

... I emphasize that underlying all these factors is the notion that the purpose of the participatory rights contained within the duty of procedural fairness is to ensure that administrative decisions are made using a fair and open procedure, appropriate to the decision being made and its statutory, institutional, and social context, with an opportunity for those affected by the decision to put forward their views and evidence fully and have them considered by the decision-maker.

79 The petitioner and respondent agree that the use of the term "opinion" attracts deference in a judicial review. Where the two differ is whether that "opinion" can change.

Analysis

80 In this case, the petitioner seeks the review of various decisions made by the General Manager and submits that they attract different standards of review.

81 The petitioner on each of these decisions raises various issues that attract differing standards of and approaches of review. I will start with an examination of procedural fairness.

Procedural Fairness

82 The petitioner submits that the process of the General Manager in cancelling the Licence was procedurally unfair.

83 The petitioner submits that the Cancellation Decision must be set aside on the basis that:

- (a) the cancellation was made without notice or an opportunity to be heard, including that the decision was based, in part, on a matter with which the General Manager's delegate had informed Quail Place she was not concerned;
- (b) the General Manager inappropriately placed the onus of proof on Quail Place. The Act does not require that a licensee show cause why there should be no cancellation. Further, the General Manager imposed upon Quail Place an unreasonably high standard of proof in relation to the question of whether it satisfied the requirements of s. 16(1) (b) of the Act;
- (c) the General Manager failed to provide timelines for the delivery of additional documentation and without further notice cancelled the Licence;
- (d) the General Manager viewed cancellation of a Licence as a default position arising from her "fit and proper" decision and by doing so fettered her discretion; and
- (e) the petitioner also submits that it was procedural unfair for the General Manager not to give an opportunity to be heard on the appropriate s. 20 sanction, if any, in light of all the new material submitted by Mr. Carter. No opportunity was given to make submissions on whether, in all the circumstances as they stood after Mr. Carter's April 15, 2009 Letter, cancellation was the appropriate remedy.

84 Furthermore, the General Manager failed to state the basis for any "opinion" she had reached that s. 16(1)(b) was not complied with as required under s. 20(4)(b).

85 In addition, though the petitioner says it does not rely upon the long delay between its initial application for transfer to set aside the decision, it says that the extraordinary and unexplained delay on the part of the General Manager in dealing influences the content of the duty of fairness owed by the General Manager to the petitioner. Independently and together, these matters it is submitted constitute an error of law and procedural unfairness.

86 I now turn to consider the factors as identified in *Baker*.

(a) The nature of the decision being made and the process followed

87 Prior to identifying concerns regarding the interest held by Quail Place in the Business and establishment, as well as whether it was fit and proper, the General Manager was, in the first instance, dealing with the application for the transfer of the Licence to 072. As mentioned, the transfer application had been sitting with the General Manager for determination for close to four years. After denying the transfer application, the General Manager, on her own motion, which she is authorized to do, initiated a review regarding the interest held by Quail Place in the Business and the establishment, as well as whether it was fit and proper to hold a licence.

88 The investigation by the General Manager was pursuant to s. 16 of the Act. If the General Manager forms the "opinion" that the Licence holder does not hold an interest in the business or the establishment, the Licence will not be permitted to be issued, transferred or renewed. Quail Place would be precluded from carrying on the Business.

89 The process involved, in this case, an extended process of discussion, requests for information, and production of documents. Branch staff pursued various avenues of inquiry related to the parties with whom Quail Place had transacted those with who 072 had transacted, and the funds used by Mr. Bruno to purchase Mr. Dipopolo's shares in Liquid Zoo. It is apparent from the inquiry by Branch staff that they formed concerns regarding the *bona fides* of Quail Place's interest in the Business based on their view of the transactions that Quail Place had described it had entered into with Champagne Charlie's and 072. This also extended to the share transfer agreement between Mr. Dipopolo's and Mr. Bruno. Ms. Villa-Arce specified a cancellation date in one letter then rescinded it after further discussion with Quail Place. In one letter, she specified that information would have to be submitted by Quail Place in accordance with time lines. However, there is nothing to show that timelines were ever set. Further, there was no formal allegation of a specific deficiency as to the eligibility of Quail Place as is required under s. 20 of the Act. The last set of information submitted by Quail Place was on April 15, 2009. There was no further communications from the Branch until the issuance of the Cancellation Decision.

(b) The statutory scheme and the terms of the statute pursuant to which the body operates

90 The statutory scheme includes the ongoing regulation of licence holders and licensed premises. Public safety is a lay aspect of the Act. The authority provided under the Act is broad and includes the assessment of applicants for licences, the continuation of licences, the issuing of licences, the monitoring and investigation of licencees and activities on premises licensed, the citation of licencees, the prosecution of contraventions under the Act by licensee, the conduct of proceedings before the General Manager, and the assessment of penalties for infractions of the Act and regulations. The specific provisions relevant in this case includes the formulation of an "opinion" by the General Manager as whether the licence holder is the owner of the business, whether the licence holder is the owner or lessee of the licensed establishment; and whether the licence holder is fit and proper. The General Manager is to be provided deference in her determinations on these questions.

91 The Act permits the General Manager to: conduct an investigation on her own motion as to the eligibility of a licence holder; impose terms and conditions to licences or rescind any terms; impose monetary penalties; and suspend or cancel a licence. The General Manager has considerable powers to investigate, search, regulate, supervise, and penalize licence holders. It also has the power to summon witnesses to hearings and require such witnesses to answer an oath. The General Manager can take action against a Licensee either with or without a hearing.

92 I also note that the Act does not specify an appeal procedure for decisions made by the General Manager.

(c) Importance of the decisions to the individual affected

93 There is little doubt that if Mr. Habib's position were accepted as described in the materials submitted to Ms. Villa-Arce, a negative determination by the General Manager would have significant financial implications, as the subject sale would not complete, and would then presumably lead to unwinding the consideration that had flowed under the sale agreement. Mr. Habib would be left with little value in the Business or a business at all, given that the value driver of the business is the Licence - a Licence held since 1999. The evidence suggests that re-entry into the market may not be possible as the number of licences in the community are being reduced. Further, connected with the subject sale was the sale of the property in which the business was located by a company owned by Mr. Habib. There is no suggestion that the property was not owned by a company controlled by Mr. Habib, or that the sale of the property was not bona fide. The importance of the decision to Mr. Habib is reflected in the considerable efforts that he made, including those of his solicitors, to document and produce evidence to support his ownership of the Business and lease in the establishment.

(d) The legitimate expectations of the person challenging

94 Though there is no specific evidence as to expectations, it is clear that oral hearings are expressly contemplated within the design of the Act. The General Manager has the discretion to hold a hearing or not. The General Manager has developed detailed procedures for hearings and does, in the normal course of administering the Act, conduct hearings regularly. The materials indicate that the General Manager, as a matter of policy, does not conduct hearings into whether a licensee has a valid interest, but does so in regard to whether a licensee is "fit and proper". The General Manager also routinely holds hearings dealing with matters that have far less severe consequences than the cancellation of a licence that has been held since 1999, such as, contravention hearings where the result can be short suspensions of a licence. Given that: the General Manager had issues with the credibility of Mr. Habib and Mr. Raffele in the face of their sworn declarations and significant document disclosure; there were concerns regarding the *bona fides* of the sale of the business by Quail Place to 072, and the earlier sale to Champagne Charlie's; there were concerns regarding the sale of Mr. Dipopolo's shares to Mr. Bruno. or more specifically, the source of the funds for the purchase (a VanCity line of credit); and the significance of the effect of a cancellation on Quail Place; it should have been observed that fairness considerations warranted the need for an oral hearing, even though Quail Place's counsel, who are described as experienced, did not seek a hearing. The reasons expressed in the Cancellation Decision confirm the need for such a hearing. I also note that there appears to be some conflict in the evidence between Mr. Habib and Ms. Villa-Arce as to whether Ms. Villa-Arce told Mr. Habib that the Branch had no concerns with Quail Place not being fit and proper, and thus issues which Quail Place believed were not issues may have been taken into consideration by Ms. Caldwell. It is also notable that Ms. Caldwell did not state an opinion that Quail Place did not meet the eligibility requirements under s. 16, but stated that she was not provided sufficient evidence and information to make a determination, which included whether Quail Place was fit and proper. As noted below, when questions as to whether a licensee is fit and proper arise, as in this case, the Branch's manual expressly indicates hearings are often conducted. There is no indication as to the reason for such a hearing was not offered by the General Manager. Again, I note the signif-

icant period of time from the date of the transfer application to the date when the review of Quail Place's eligibility was raised by the Branch.

(e) Choices of the procedure adopted by the General Manager

95 The Act permits the General Manager discretion with respect to procedure. However, as discussed above, the General Manager has a sophisticated hearing structure in place which includes rules concerning disclosure, evidence, and hearing process.

96 There exist no institutional constraints that would prevent the General Manager from having conducted a hearing. The General Manager has resources, procedures, and experience in conducting hearings that deal with matters such as in issue in this case. There was nothing specific about the nature of the issues before the General Manager that would militate against conducting a hearing. Rather, given that an issue as to whether Quail Place was fit and proper was a specific matter raised in the Cancellation Decision, this case would fit properly within the General Manager's Compliance and Enforcement Policy s. 29.2.2, as well as, the Branch's Procedures Manual and Administrative Bulletin published July 25, 2006, the latter of which states:

A licensee will be informed of any allegations with respect to fit and proper/applicant suitability and will be given a chance to respond, often by way of a hearing, prior to the General Manager deciding whether to renew or issue the licence. [emphasis added]

97 I note as well the centrality of credibility in this matter.

Result

98 Balancing the above factors, I conclude that a hearing was required to afford the petitioner an opportunity to address the issues identified in the Cancellation Decision, and particularly the credibility and *bona fides* issues. It is significant that Ms. Caldwell in the Cancellation Decision did not make a specific negative finding as to whether Quail Place held a valid interest in the business, or whether Quail Place was "fit and proper", but rather held that Quail Place had not provided sufficient evidence as to having an interest in the business, and that there was not sufficient information to determine whether there was a financial association with Mr. Dipopolo. Further, the circumstances identify the need for elaboration on the meaning of "valid interest" in the context of s. 16.

99 Though the Act does not required the General Manager to hold a hearing, the importance of the credibility and *bona fide* aspects reflected in the Cancellation Decision serve to favour of the need for a hearing. It weighs even more so in this case when consideration is also given to the following factors: that Quail Place had been a licence holder since 1999; that the Branch permitted 072 to operate the Business for close to four years while it considered the application to transfer the Licence to 072; there is no explanation for the General Manager's significant delay; there is no suggestion that Mr. Habib or Mr. Raffele have a criminal background, and it appears from the material that criminal records disclosure was consented to by Mr. Habib; that significant disclosure has been provided by Quail Place and 072; that it is the usual commercial result that when a sale of a business cannot complete because of failure of condition precedent, which in this case was by the direct action of the General Manager, the business reverts back to the seller, Quail Place; that no third party has been identified as holding the interest in the Business or holding a lease in the establishment or asserting that it does; that it is apparent that Quail Place had entered into a formal Lease for the

establishment; and that there has been considerable disclosure and significant resources invested in meeting the queries of the Branch. It is also apparent in these circumstances that cancellation of a licence was not a necessary result. There were other options open to the General Manager under s. 20. Further, it is apparent that there are questions with respect to the validity of the Renewal Decision. I also note that the standard of proof is on a preponderance of the evidence. In this case, there appears to have been some effort on the part of the Branch of requiring Quail Place to prove a negative. This can be onerous in circumstances when that person does not have access to or control over the needed evidence.

Reasonableness

100 Detailed submissions have been provided on the merits regarding the decisions of the General Manager. Having remitted the matter back for reconsideration through a hearing, assessment on the reasonableness of the decisions would be premature.

Conclusion

101 For all of the above reasons, the Cancellation Decision and Renewal Decision are set aside. Reconsideration by the General Manager is ordered. In this regard, the General Manager is to offer Quail Place an oral hearing to provide Quail Place the opportunity to address all issues regarding its fitness to hold a licence, and its interest in the Business and the establishment.

D.M. MASUHARA J.

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