



BUSINESS LICENCE HEARING MINUTES

FEBRUARY 4, 2014

A Business Licence Hearing was held on Tuesday, February 4, 2014, at 6:06 pm, in the Council Chamber, Third Floor, City Hall, to determine whether or not the suspension by the Chief Licence Inspector of the 2013 business licences 13-156756 and 13-163081 issued to Hastings Coin Operated Service for business premises located at 643 East Hastings Street, Vancouver, British Columbia, should be upheld, removed or varied.

PRESENT: Councillor Heather Deal, Chair
Councillor George Affleck
Councillor Elizabeth Ball

CITY CLERK'S OFFICE: Nicole Ludwig, Meeting Coordinator

**1. Hastings Coin Operated Service
643 East Hastings Street, Vancouver, BC**

The Business Licence Hearing Panel had before it for consideration an Evidence Brief, prepared by the City of Vancouver's Legal Department, which contained the following material (*on file in the City Clerk's Office*) and the evidence of witnesses:

Notice of Hearing

Tab

1 Licenses & Inspections Department

- Copy of 2013 Business Licences: #13-156756 and #13-163081
- Copy of 2014 Business Licences: #14-105018 and #14-111489

2 Police Department - 2012

- Report (VPD) #VA 2012-188179, dated November 23, 2012

3 Correspondence - 2013

- Letter of Receipt of Appeal sent to Hien Thi Phan, dated July 25, 2013
- Letter of Appeal from Lawrence D. Myers, sent to Iain Dixon, City of Vancouver, dated July 23, 2013
- Copy of computer entry by Property Use Inspector, Andy Chinfen, dated July 16, 2013, noting hand delivery of Suspension Letter to Hien Thi Phan on July 16, 2013
- Letter of Suspension for 643 East Hastings, DBA: Hastings Coin Operated Service, addressed to Hien Thi Phan, dated July 12, 2013

- Meeting notes (handwritten) by Tom Hammel, from meeting held on May 7, 2013, dated May 7, 2013
- Letter to Hien Thi Phan (meeting request) dated April 29, 2013

4 Police Department - 2006

- Report (VPD) #VA 2006-100042, dated May 15, 2006
- Printout of 2006 Business Licence screen lookup with VPD handwritten notes.

5 Provincial Reports (BC) - 2006 & 2004

- Consumer Taxation Audit Branch - Inspection Report for Thi Phan (CA:496574) , dated May 15, 2006
- Ministry of Provincial Revenue (Consumer Taxation Branch) - Inspection Report for Thi Phan (DBA Hastings Coin Op Service), dated April 28, 2004

6 Correspondence - 2007-2006

- Warning Letter sent to Hien Thi Phan, dated January 3, 2007
- Meeting notes (handwritten) by Barb Windsor, dated July 19, 2006
- Meeting notes (handwritten), dated July 18, 2006
- Report by Property Use Inspector, Lynn Urekar, dated July 17, 2006

7 Police Department - 2000

- Report (VPD) Case #: 00-69360, dated March 29, 2000

8 Correspondence - 2000

- Letter of Agreement sent to Diep T.H. Nguyen Law Corporation acknowledging withdrawal of Appeal, dated May 12, 2000
- Meeting notes (handwritten) dated May 11, 2000
- Letter from Diep T.H. Nguyen Law Corporation requesting reduction of Suspension with Statutory Declaration attached, dated May 11, 2000
- Report by Property Use Inspector, John Chadwick, dated May 3, 2000
- Letter of Suspension for 643 East Hastings, DBA: Hastings Coin Operated Service Ltd, addressed to Thi Hien Phan, dated April 28, 2000
- Meeting notes (handwritten), dated April 26, 2000
- Letter (meeting request) sent to Hien Thi Phan, dated April 25, 2000

Police and regulatory agency reports included in the Evidence Brief provided information on alleged activities at the Premises. Specifically, the allegations centred around the Licensee purchasing stolen property from people entering the premises.

Iain Dixon, Assistant Director, Enforcement and Prosecution, Law Department, represented the City of Vancouver. The Licensee, Hien Thi Phan was represented by Hubert Gawley, Myers McMurdo Karp & Patey, and was assisted by an interpreter, Chanh Bui.

Mr. Dixon advised this appeal had been brought before Council pursuant to Section 277 of the *Vancouver Charter*, and in accordance with Section 17 of the *City of Vancouver Procedure By-law*. He noted Council's discretion to uphold, remove, or vary the suspension. Mr. Dixon also explained that the Panel also has the option to cancel the 2014 Business Licences under section 275 of the *Vancouver Charter*, and that case law requires the Panel to give reasons in any decision made regarding this appeal. He noted that the Panel needs to consider issues of management, in particular whether the business has been run properly in the past, and whether it will be run properly in the future.

Mr. Dixon referred the Panel to the reasons for the Chief Licence Inspector's suspension of the Business Licenses, as set out in the Notice of Hearing dated January 17, 2014. Specifically, the Chief Licence Inspector believed that the Licensee had failed to properly manage the premises by:

- (a) Carrying on business to the detriment of the safety and wellbeing of the public, and
- (b) Carrying on business to detriment of other licensed business in the City of Vancouver.

Mr. Dixon also discussed the principles of natural justice, in particular the requirements of notice and the opportunity to be heard.

In support of the allegations set out in the above-noted reports and evidence, Mr. Dixon called the following witnesses:

Tom Hammel, Deputy Chief Licence Inspector (Retired)
Constable Kirk Miles, Vancouver Police Department
Doug Fell, Vancouver Police Department
Alen Ivezic, Vancouver Police Department

Mr. Gawley provided the Panel with a sworn affidavit (*on file*) from the Licensee in which she denied many of the allegations contained in the evidence brief.

While cross-examining Constable Miles, Mr. Gawley noted the *R. v. Swan* ruling is the leading judicial ruling regarding entrapment and requires a threshold of "reasonable suspicion" prior to police starting an investigation similar to the one described in tab 2 of the evidence brief. He asked for Constable Miles' opinion on whether the actions of the police in this case would be in violation of that ruling. Constable Miles asked for time to review the ruling prior to providing more testimony. The Panel agreed and Constable Miles left the Chamber to review the ruling. During this time, the Panel heard testimony from Constable Fell. Constable Fell explained how the Vancouver Police Department had become aware of the activities at the premises and the relationship with the source of the information that led to the project.

When Constable Miles returned to continue his testimony in regards to the *R. v. Swan* ruling, Mr. Gawley read out one line from the ruling to ask if the officer believes it pertains to this case.

Councillor Ball rose on a point of information to ask if it is appropriate for Mr. Gawley to use one line of a 23 page ruling in his client's defence. She also asked whether it is appropriate for Mr. Gawley to use the ruling since the Panel has not been given the opportunity to review it. Mr. Dixon responded that if the ruling is relevant, it can be used in this case, but that it is inappropriate for a police officer to interpret a judicial ruling. The Chair directed Constable Miles to be circumspect in his answers and not to make any assumptions.

At this point in the proceedings, Mr. Gawley requested the Panel postpone the rest of the hearing because the undercover police officer involved in Scenario 1, tab 2, page 9 of the evidence package, when the owner/employee of the Premises did not buy any property, is not present to provide testimony, and the integrity of the hearing has been compromised due to this absence. He also noted he would not be calling the Licensee as witness as he had provided the sworn affidavit to the Panel. In response, Mr. Dixon noted that an analysis of Scenario 1 could be done if the Licensee testifies, and that if she is not willing to testify, the affidavit should not be included as evidence in this matter because an affidavit cannot be cross-examined.

The Chair ruled the hearing would continue at this time.

Mr. Gawley declined to make opening remarks, but noted he will not be calling his client as a witness since she struggles with English even with an interpreter and gets very anxious and upset when being questioned. He requested the Panel receive Ms. Phan's affidavit as evidence.

In closing, Mr. Dixon noted the Panel can consider the affidavit, but it should be given little weight if the person swearing it is not prepared to testify. Mr. Gawley objected to this statement and noted that it is up to the Panel to decide how the value of the evidence provided by the affidavit should be weighted. He also submitted that his client felt intimidated by the undercover officers and bought goods from them so they would leave the premises.

Mr. Dixon continued his closing arguments, noting there is virtually no evidence solicited from the witnesses that the Licensee was intimidated into making the purchases which led to the suspension. He submitted the Licensee was purchasing items she should have known are stolen and that her motive for doing it is unclear and irrelevant. He concluded by noting that property crime in Vancouver is exacerbated by businesses who engage in practices outlined in the evidence for this hearing, and demonstrates bad management contrary to proper business practices.

In closing, Mr. Gawley explained his client's sworn affidavit states the first two times undercover officers offered her goods for sale, the Licensee refused and the other times she purchased goods from undercover officers was to ensure they would leave the property. Mr. Gawley also explained it was his belief that the information Vancouver Police Department used to start the current investigation into the business does not meet the threshold of reasonable suspicion required by the *R. v. Swan* decision. Mr. Gawley submitted that a 35-day suspension would be detrimental to the Licensee since the business is her family's primary source of income.

PANEL MEMBERS DISCUSSION

In discussion the Panel noted that while there is a lack of evidence showing the Licensee was selling stolen goods, there is evidence that she had purchased goods she should have known were stolen. They also noted behaviour detailed in the evidence brief is detrimental to the neighbourhood and its businesses. Finally, the Panel believed witnesses' testimony were clear and compelling to support a suspension.

MOVED by Councillor Ball
SECONDED by Councillor Affleck

THAT the suspension by the Chief Licence Inspector of the 2013 Business Licences 13-163081 and 13-156756 issued to Hastings Coin Operated Service for business Premises located at 643 East Hastings Street be upheld because the Licensee has been:

- (a) Carrying on business to the detriment of the safety and wellbeing of the public;
and
- (b) Carrying on business to the detriment of other licensed businesses in the City of Vancouver.

FURTHER THAT the suspension be reduced from 35 days to 30 days, because there is no evidence of the sale of stolen goods from the Premises;

FURTHER THAT the 30 day suspension be served on the 2014 Business Licences 14-105018 and 14-111489 issued to Hastings Coin Operated Service for business premises located at 643 East Hastings Street.

CARRIED UNANIMOUSLY

ADJOURNMENT

MOVED by Councillor Affleck
SECONDED by Councillor Ball

THAT the meeting be adjourned.

CARRIED UNANIMOUSLY

The Business Licence Hearing adjourned at 8:28 pm.

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