



**Ministry of Public Safety and Solicitor General  
LIQUOR CONTROL AND LICENSING BRANCH  
CONSULTATION PAPER  
January 2011**

**TIED HOUSES AND TRADE PRACTICES**

Request to interested liquor-related industry associations as well as other stakeholders for input into new legislation that permits tied houses and inducements unless specifically restricted or prohibited by regulation or by government policy.

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This consultation document has been sent to a number of liquor related organizations. It is also posted on the Liquor Control and Licensing Branch (LCLB) website [www.pssg.gov.bc.ca/lclb](http://www.pssg.gov.bc.ca/lclb).

**If you would like to provide a written submission e-mail comments to Barry Bieller, Director of Policy, Planning and Communications at the LCLB at the email address below.**

**Deadline for written submissions is February 15, 2011.**

Those organizations that receive this document from LCLB will be contacted directly in the coming weeks and asked if they would like to:

- meet with the LCLB to discuss further,
- make a written submission, or
- not make any comment.

Any meetings with stakeholders will occur in either Vancouver or Victoria in early 2011. We may attempt to meet with more than one stakeholder at a time.

**In both written and oral presentations the LCLB is looking for the following information:**

- Your views on the options presented in this paper,
- Other options you think the government should consider, if any, and
- The reasons for the position you have taken.

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Following the consultation process, a decision document regarding the new legislation will be prepared for the Minister. If regulations are required these will be submitted to Cabinet for its approval. The process to draft regulations and obtain cabinet approval is fairly lengthy and can take several months or more.

## **INTRODUCTION**

In June 2010 the BC Legislature passed legislation that will amend the Liquor Control and Licensing Act (the Act) in respect of tied house and trade practice laws. A tied house is an establishment that has an association, financial or otherwise, with a liquor manufacturer or its agent that is likely to lead to its products being favoured. Trade practice laws place prohibitions and restrictions on the commercial interactions between liquor suppliers and licensed establishments including restrictions on promoting specific manufacturers and their products in exchange for benefits provided by the supplier. These rules help prevent tied houses.

The legislation is not yet in force pending consultation with industry and other stakeholders and the subsequent development of policies and potentially regulations. However, the basics of the legislative changes indicate the deregulatory purpose behind them. While the current legislation prohibits tied houses and inducements unless specifically exempted, the new legislation permits tied houses and inducements unless specifically restricted or prohibited by regulation or by government policy. Government has indicated that its goal is to deregulate in these areas as much as possible while ensuring that public safety and the public interest are maintained (please see appendix 1 for a copy of the existing and new legislation and comments made by the Honourable Rich Coleman, Minister, in the Legislature during debate on the amendments).

While separate, tied houses and trade practices are closely related and realistically cannot be dealt with separately. For instance, it would not be feasible to, say, repeal most or all limits on tied houses while maintaining the present trade practice rules. This is because tied houses invariably demonstrate to some degree favouritism to products made by the associated liquor manufacturer. However, for the purposes of this consultation document, it was felt it would be clearer if these two issues were presented separately with options specific to each.

Please note that related policies of the Liquor Distribution Branch are not part of this review. The government is committed to retaining uniform product pricing (e.g. all bars and restaurants purchase liquor at the same price from the LDB. Private liquor stores purchase at the same price within their category but prices vary across store categories due to differing LDB discount rates) and the present policies on direct delivery to licensees by liquor manufactures. In addition, the legal requirement that licensees purchase their liquor from the LDB will also remain unchanged and this prohibits the offering of free or undocumented liquor to licensees by liquor suppliers.

## **BACKGROUND**

After the repeal of prohibition throughout Canada and the United States in the 1920's and 1930's tied houses were outlawed across the United States and were eventually prohibited in all the provinces of Canada.

In British Columbia, the Liquor Inquiry Commission of 1952 led to changes in the Liquor Act, including the introduction of laws that prohibit both tied houses and inducements (gifts and money that effectively integrate business through means other than ownership). The Liquor Commission had found that breweries in British Columbia had consolidated and competition was limited. Over the past 25 years there has been a gradual liberalization of these rules. Tied house exemptions have been provided for brewpubs and stadiums and allowed wineries to have an on-site establishment to

feature their products. Trade practice rules have also loosened, most recently in 2004 when suppliers were permitted to provide many more non-liquor goods and promotions to licensees, primarily for the benefit of the licensee's patrons. Liquor suppliers were also given greater leeway to fund licensee educational and hospitality expenses.

There are a number of reasons to reduce or eliminate regulation in this area:

- The federal government, through the Competition Act, already regulates business practices between suppliers and their customers. The federal rules prohibit:
  - the use of anti-competitive conduct by a dominant firm to substantially lessen competition;
  - a supplier requiring or inducing a customer to buy products primarily from them or preventing the customer dealing in another's product; and
  - someone being seriously affected or prevented from carrying on business because they cannot obtain adequate supplies.
- The LCLB's limited resources might be better spent on public safety priorities such as over-service, over-crowding and service to minors. Enforcement of an unlawful tied house or an inducement is very challenging. The resources to investigate these cases are significant and include the skills of forensic accountants, many hours reviewing complex financial relationships and many hours of investigation.
- Anecdotally, it is known that inducements between suppliers and licensees are quite common. Given this, any deregulation may not lead to a significant change in actual business practices.
- In 1952, at the time of the Liquor Inquiry Commission, there were very few manufacturers and agents in the province with a limited selection of products. On a per capita basis the number of licensed establishments was much smaller with no licensed restaurants or private liquor stores and only about 600 bars and clubs. Today there are over 9000 licensed establishments, including 5,600 restaurants. It is unlikely that a liquor supplier(s) could purchase or induce a significant number of licensed establishments so as to adversely impact consumer choice.
- The LCLB has approved a number of financial ties between liquor suppliers and licensees but not permitted the sale of the manufacturer's product in these establishments so as to avoid a tied house. In some cases this has involved small wineries and bars where it is difficult to defend the decision as being in the public interest or defending public safety.

Conversely, there are potential concerns with deregulation. Smaller volume liquor manufacturers may be concerned that legalizing inducements will result in larger competitors taking away business. Similarly, smaller volume licensees may be concerned that any supports from liquor suppliers will be directed to larger accounts allowing these facilities to sell liquor profitably at a lower cost than the smaller operators can afford.

It is widely accepted that liquor is a product that can cause both immediate and long term harm if abused and that government imposed controls are required to limit the personal, social and economic costs to society. However, it must be asked whether restrictions on tied houses and trade practices make any significant contribution to reducing these costs especially given floor price restrictions in place in both the retail and on-premise sectors, as well as limits on advertising, promotions and sponsorships. If the answer is no, then arguably a government liquor control scheme should not be imposing (or should be imposing fewer) limits in these areas and direct its resources to public safety concerns.

## OPTIONS – FOR FEEDBACK

**This paper does not contain any recommendations. Through the consultation process we hope to gather more information from you about these issues and the options offered so that government can make an informed decision.**

What follows is a series of options for tied house and trade practices. The status quo is not offered as an option because government, through its legislative amendments, has demonstrated its intent to move away from the status quo and deregulate. These options are presented at a fairly high level with not every detail assessed. Given the large number of policies presently in place, especially regarding trade practices, it is not practical to address every issue at this time. Implementation of any of these options will require a more detailed analysis.

In addition to the options described below there may be others that you prefer and we welcome your proposals.

### **Section A: Tied House**

#### **Option 1:**

#### **Eliminate tied house prohibitions altogether – permit exclusivity.**

This would remove all restrictions on tied houses, subject to the federal Competition Act. If the tied house prohibition was eliminated the laws around trade practices would have to be revised to reflect the new business relationships. For example, if a brewery also owns a number of restaurants then it is reasonable to conclude that the brewery's products would be promoted in the associated restaurants. At issue is whether product exclusivity, i.e. all liquor in a category supplied by one company, would be permitted or whether a variety of products from other suppliers would also have to be made available.

<b>Pros:</b>	<b>Cons:</b>
<ul style="list-style-type: none"><li>• Simple to understand</li><li>• LCLB resources can be redeployed to public safety issues.</li><li>• Opens industry up to more investment (e.g. hotels, restaurants more likely to invest in manufacturers and vice versa).</li></ul>	<ul style="list-style-type: none"><li>• May be some market consolidation</li><li>• Potential that problems that arose prior to implementation of tied house prohibitions will return – licensees that encourage over-consumption, aggressive marketing.</li><li>• Would require monitoring to determine if any problems are emerging.</li></ul>

**Option 2:****Permit tied houses between the same corporate entity, but limit the number of tied houses a person can hold to limit risk of market consolidation, e.g. 5 or 6**

Similar to Option 1, at issue is whether product exclusivity would be permitted or whether a variety of products from other suppliers would also have to be made available.

<b>Pros:</b>	<b>Cons:</b>
<ul style="list-style-type: none"> <li>• Reasonably simple to understand.</li> <li>• Provides investment opportunities for industry</li> <li>• Will permit tied houses for a number of pre-existing investments where the manufacturer has been prevented from selling their product in the jointly owned licensed establishment</li> </ul>	<ul style="list-style-type: none"> <li>• Any number limit is somewhat arbitrary.</li> <li>• If manufacturers are permitted to have, say, 5 tied houses it will eventually lead to lobbying for additional tied houses.</li> <li>• To exceed whatever number limit is imposed, some persons may attempt to get around this limit by setting up complicated corporate structures to hide the tied house.</li> <li>• If the maximum number of tied houses were located in a small community consumer choice might be impacted.</li> </ul>

**Option 3:****Permit tied houses with public interest restrictions**

Permit tied houses but provide in either regulation or policy the authority for the LCLB to prohibit or impose conditions on tied houses. An example of a term and condition applying to all tied houses would require other manufacturer's products to be sold in the establishment for any off-site establishment, e.g. a winery could operate a tied house at their winery and sell only their product but if operated off-site then products from other wineries would have to be available. An example of a prohibition would be the prohibiting or revoking of a tied house if competition in a community was adversely impacted due to the tied house(s).

<b>Pros:</b>	<b>Cons:</b>
<ul style="list-style-type: none"> <li>• Easier to justify than an arbitrary limit on the number of permitted tied houses.</li> <li>• Provides more flexibility than option 2</li> <li>• Opportunity to open industry up to more investment (e.g. hotels, restaurants more likely to invest in manufacturers and vice versa).</li> <li>• Has more safeguards than option 1</li> </ul>	<ul style="list-style-type: none"> <li>• Provides less certainty for industry and the regulator.</li> <li>• May be difficult to develop appropriate safeguards that balance public safety, public interest and industry needs.</li> </ul>

**Section B: Trade Practices**

**Option 1:**

**Eliminate trade practice restrictions altogether.**

<b>Pros:</b>	<b>Cons:</b>
<ul style="list-style-type: none"><li>• Simple to understand</li><li>• LCLB resources can be redeployed to public safety issues.</li><li>• Liquor supplier/licensee relations treated the same as non-liquor sectors</li><li>• Federal Competition Act in place to address abuses.</li></ul>	<ul style="list-style-type: none"><li>• Suppliers may be concerned that licensees will make unreasonable and expensive demands</li><li>• Smaller volume suppliers and licensees may worry about loss of market share if they can't offer or aren't offered deals</li><li>• Assistance provided by suppliers may allow licensees to sell liquor at reduced prices contributing to over-consumption.</li><li>• Would require monitoring to determine if any problems are emerging.</li></ul>

**Option 2:**

**Reduce or eliminate most trade practice restrictions.**

This option would eliminate most trade practices restrictions and requirements, e.g. the Buy/Sell agreements, and allow financial support from suppliers to licensees including non-liquor products and services necessary to the operation of the business, joint advertising, etc.

However, product exclusivity within a product category would not be permitted, e.g. all packaged beer provided by one supplier. The exception to this might be if Option 2 in Section A of this paper was implemented which would allow the same corporate entity to have a limited number of tied houses.

<b>Pros:</b>	<b>Cons:</b>
<ul style="list-style-type: none"><li>• Same as Option 1</li><li>• Places some limits on potential market concentration</li></ul>	<ul style="list-style-type: none"><li>• Same as Option 1</li></ul>

**Option 3:**

**Streamline some trade practice policies and procedures.**

This option would eliminate the need for Buy/Sell agreements and permit those activities without need of documentation. Sponsorship rules could be relaxed to permit joint licensee and supplier sponsorships. Other presently prohibited practices would continue to be prohibited, e.g. provision of items necessary for the operation of the establishment like tables and draught lines. Similar to Option 2 above, if a tied house was permitted product exclusivity within a product category might be permitted in those limited circumstances but not otherwise.

<b>Pros:</b>	<b>Cons:</b>
<ul style="list-style-type: none"><li>• Potentially less impact on smaller volume licensees and suppliers</li><li>• Places some limits on potential market concentration</li><li>• Provides some streamlining</li></ul>	<ul style="list-style-type: none"><li>• Investigation and enforcement of the provisions very challenging</li><li>• LCLB resources not dedicated to public safety provision</li><li>• Redundancy with federal legislation</li></ul>

## APPENDIX 1

### Section 1: Liquor Control and Licensing Act Provisions

#### Tied House - Old Wording

18 (1) A licence, other than a licence referred to in section 52, 57 or 58, must not be issued, renewed or transferred

(a) to a person who has agreed or arranged with another to sell the liquor of a manufacturer to the exclusion of the liquor of another manufacturer, or

(b) to a liquor manufacturer or the manufacturer's agent, or a person who is so associated with, connected with or financially interested in them, that it is likely to promote the sale of liquor for that manufacturer or person.

(1.1) Subject to subsection (1.3), a licence referred to in section 12.1 must not be issued, renewed or transferred to a person who

(a) holds a licence referred to in section 12, 52, 57 or 58, or

(b) is associated with, connected with or financially interested in a person holding a licence referred to in section 12, 52, 57 or 58.

(1.2) Subject to subsection (1.3), a licence referred to in section 12, 52, 57 or 58 must not be issued, renewed or transferred to a person who

(a) holds a licence referred to in section 12.1, or

(b) is associated with, connected with or financially interested in a person holding a licence referred to in section 12.1.

(1.3) Subsections (1.1) and (1.2) do not apply to a person if

(a) the person held, on April 1, 2000,

(i) a licence referred to in section 12.1, and

(ii) a licence referred to in section 12, 52, 57 or 58, and

(b) any association, connection or financial interest referred to in subsection (1.1) or (1.2) of this section, as the case may be, existed on April 1, 2000 and has not, since that date, in the general manager's opinion, expanded in scope or degree.

(2) If conditions referred to in subsection (1), (1.1) or (1.2) that would prevent a licence from being issued, renewed or transferred apply to a person who is applying for a licence under this

Act, the applicant must disclose the conditions to the general manager whether or not that subsection applies to that person.

(2.1) If conditions referred to in subsection (1), (1.1) or (1.2) that would prevent a licence from being issued, renewed or transferred apply to a licensee after the licence is issued, the licensee must, promptly after the conditions begin to apply, disclose the conditions to the general manager whether or not that subsection applies to that licensee.

(2.2) An action or other proceeding must not be brought or commenced in a court in British Columbia in respect of an agreement, arrangement, concession, obligation, undertaking or interest referred to in subsection (1), (1.1) or (1.2).

(3) This section does not apply to a person who operates, in accordance with the regulations,

(a) a brew pub and an establishment, licensed under section 12, that is operated in conjunction with and at the same site as the brew pub, with respect to liquor manufactured on the premises, or

(b) a winery and an establishment, licensed under section 12, that is operated in conjunction with and at the same site as the winery, with respect to liquor manufactured on the premises.

(4) Subject to the regulations, the general manager may exempt a person from prohibitions and restrictions under subsection (1) in respect of an establishment, and may impose terms and conditions for the exemption

### **Tied House - New Wording**

#### ***Section 18 is amended***

***(a) by repealing subsection (1),***

***(b) in subsections (2) and (2.1) by striking out "subsection (1), (1.1) or (1.2)" and substituting "subsection (1.1) or (1.2)",***

***(c) in subsection (2) by striking out "whether or not that subsection applies to that person",***

***(d) in subsection (2.1) by striking out "whether or not that subsection applies to that licensee", and***

***(e) by repealing subsections (2.2), (3) and (4) and substituting the following:***

(4) Subject to the regulations, the general manager may specify that a licence, other than a licence referred to in section 52, 57 or 58, must not be issued, renewed or transferred

(a) to a person who has agreed or arranged with another to sell the liquor of a manufacturer to the exclusion of the liquor of another manufacturer, or

(b) to a liquor manufacturer or the manufacturer's agent, or to a person who is so associated with, connected with or financially interested in them, that it is likely to promote the sale of liquor for that manufacturer or person

### **Trade Practices – Old Wording**

**45** (1) A person must not offer or give or agree to offer or give and a licensee or the licensee's employee must not demand, accept or receive or agree to accept or receive money, gifts, reward or remuneration, directly or indirectly, for promoting, inducing or furthering the sale of a particular kind, class or brand of liquor.

(2) A licensee or the licensee's employee must not induce, further or promote the sale of a particular kind, class or brand of liquor.

(3) Subsection (2) does not apply in respect of liquor sold at a brew pub, winery, distillery, brewery or establishment referred to in section 18 (3) that is operated in accordance with the regulations.

(4) Subject to the regulations, the general manager may exempt a person from prohibitions and restrictions under subsections (1) and (2) in respect of an establishment, and may impose terms and conditions for the exemption.

### **Trade Practices – New Wording**

*Section 45 is repealed and the following substituted:*

#### **Licensee not to give or accept gifts**

**45** Subject to the regulations, the general manager may specify that a licensee must not offer or give, agree to offer or give, demand, accept or receive, or agree to accept or receive, money, gifts, reward or remuneration, directly or indirectly, for promoting, inducing or furthering the sale of liquor.

## Section 2: Bill 20 Debate in the Legislature June 1, 2010

**V. Huntington:** I should have said earlier to the minister.... I'm sorry. I didn't forewarn him about my interest in some of these sections. I am learning.

Section 138 is curious. The section itself suggests it's a restrictive power, and yet when you look at the explanatory note, the section is allowing "inducements for the sale of liquor subject to regulations."

I prefer the sense of the section itself, where the general manager may specify that a licensee must not offer, accept or receive — or agree to accept or receive — money, gifts or remuneration for promoting or inducing the sale of liquor.

I wonder if perhaps you could explain this a little further. I am concerned that you are opening up a situation where inducements will, in fact, be possible.

**Hon. R. Coleman:** This is really removing something that is somewhat arcane in our ability to enforce and manage the operation of liquor in British Columbia. The section actually prohibits a liquor manufacturer from offering or giving a licensee, for asking or accepting inducements to favour the product of that manufacturer....

Today we've modernized to the point where we're not going in and saying that you can't give somebody a T-shirt from a beer operator that one of your staff might want to wear or some gifts you might want to put up for door prizes or whatever for people in your establishment — or even coasters. We have actually gotten past that, yet we still have some rules on the books that would legally, theoretically, prohibit that.

This is to modernize, frankly, the trade practices relationship between licensees and liquor suppliers. When these rules were put in place.... There were only a few liquor suppliers in the entire marketplace decades ago.

It was all about tied houses and things like that, where people would come in and offer: "You become a specific beer for the whole operation, and we'll do this, this and this for you." That would be called a tied house, and there was concern about those breweries coming in and owning the brewery as well as owning the retail.

The reality is that today the consumer has a number of choices that they want when they go into a licensed establishment, and so they do that.

The historical reasons for the policy are no longer very applicable. The rules don't help us protect public safety, and experience has shown us that the rules are widely ignored and virtually impossible to enforce because of....

What we really want our people concentrating on is four things. We want them concentrating on four public safety issues with regards to enforcement of liquor. These are overservice to people, serving of people under-age, overcrowding in liquor establishments and the sale of illegal liquor. Those are the four priorities we want our people to be concentrating on.

We've always felt that as we modernize and we learned, prior to the Olympics and going through the Olympics, how we could handle these things with regards to the operation of liquor establishments, we can take this next step in modernization and still protect the public safety.

**V. Huntington:** I can certainly understand that explanation and appreciate it. It's very helpful. I'm really concerned about abuse, though, and I'm wondering if you can describe how the regulations will be developed and who they will be discussed with. And will they prescribe certain types of inducements that are permissible and others that are not?

**Hon. R. Coleman:** Well, certainly in our work leading up to this, I and the branch have had extensive discussions with the entire industry, but we didn't know when we would get this to the House. So the next step would then be to go into the next level of consultation with industry particularly, which this has the most effect on with regards to how trade practices will change and how they will be able to do their business a bit differently.

Some will embrace it; others won't. But that describes the entire liquor file. Some embrace it. Some don't, no matter what change or whatever we do on the file. There's always one piece of the industry pushing and pulling against the other. It's just the nature of the beast, I guess you could say.

Having had the liquor file for four years, from 2001 to 2005, and now having it back again for two years, I do believe that we've actually matured to the point where we can handle this properly.