

Re: Business Licence for Johnson and Franklin Distributors Limited
 (Item 4, In-Camera Report No. 20, March 11, 1974)
 (Item 24, Report No. 23, March 25, 1974)

Following is a chronological sequence of events concerning a business licence for Johnson and Franklin Distributors Limited:

March 11 - Council received a letter from Mr. William H. Deverell, Solicitor for the subject firm, advising that he would not be able to appear before Council until May because he is serving as a prosecutor in the jury assize in Vancouver, and requesting that he be provided with a reason for the Chief Licence Inspector's decision to not renew the firm's business licence.

Council received a report from the Chief Licence Inspector (Item 4, In-Camera Report No. 20). This report is attached because it is appropriate for the information therein contained to be presented in an "open" session of Council.

Council resolved that an appeal of the Inspector's decision must be heard on or before April 8th and that, if the appeal is not heard by that date, the Municipality would proceed with legal action against the firm for operating without a business licence.

March 25 - Council received a letter from Mr. Josiah Wood requesting permission to appear before Council for the purpose of requesting a deferral of the appeal to May 6th. After hearing the delegation, Council re-affirmed the resolution noted above (to proceed with prosecution if an appeal is not heard before April 8th).

By way of background information, an annual review of the firm's licence was stipulated as a requirement by Council in August, 1971. Following is an excerpt from the minutes of the meeting on August 9, 1971:

"Mr. William H. Deverell, Barrister and Solicitor, spoke with reference to his client, Johnson and Franklin Wholesale Distributors Ltd., who had made application to have their Trades Licence reinstated, since they have been charged with being in possession and distributing obscene literature in the Greater Vancouver Area.

Mr. Deverell referred to the conviction obtained by the Courts in Vancouver re the obscene literature. The nature of the business of this company was the distribution of books and magazines of all types.

The range of reading included comic books, dictionaries, nursery books etc. Mr. Deverell presented some samples to the Council and submitted that these were only books classed as normal reading material. Others carried suggestive covers but the reader was betrayed by the cover. The company employed eleven persons of an age range from twenty to fifty-four years. The company has a three and one-half year lease yet to run. The obscenity faction of their literature is in the gray area of the law. There is enormous difficulty to decide which is obscene and which is not. The company relies on the acceptance into the Country, of literature, by the Customs Department. Most of the literature comes from the United States and the Federal Government (Department of Customs) determines which is allowed on one hand, and the same Government law enforcement agencies should not be acting as they are re obscene literature. Mr. Deverell said that Mr. Ed Reiter was present and was the Customs Broker for the company. Mr. Reiter was afforded an opportunity to speak and submitted his qualifications as eleven and one-half years as an officer in the Customs and Excise Branch in Vancouver and worked for Customs Brokers and now had a distribution company of his own. The literature was imported expressly for customs examination, in single copy, and they ruled whether the literature was acceptable or not. In the case of literature which was 'borderline' reference was made to Ottawa for a decision on whether or not the material should be permitted into the Country. Decisions on the rulings from Ottawa can be appealed. Books accepted by the Customs are allowed to be imported. The Customs Department have written guide lines on what should be allowed for importation. Mr. Deverell submitted that import licences for better type books were sewed-up by other companies and the Johnson and Franklin Organization must import literature of lesser known publishers and are attempting to import tape decks and other novelties in order to keep their business in the black.

Re: Business Licence for Johnson and Franklin Distributors Limited - Cont'd.

Mr. Deverell was asked whether or not his client would be prepared to set up a separate group to examine material of its own and not rely strictly on Customs approval for the importation of their literature and Mr. Deverell advised that his client would not be prepared to do this.

MOVED BY ALDERMAN MERCIER, SECONDED BY ALDERMAN DAILY:

'That a Trades Licence be granted to Johnson and Franklin Wholesale Distributors Limited for the normal course of the licence, and that such licence be reviewed upon the termination date and also be reviewed annually thereafter.'

CARRIED UNANIMOUSLY"

The most recent decision to not grant the firm a renewal of licence was reached following consultation with the Municipal Solicitor and was based on the firm's November 15, 1973 conviction for possession of obscene written material for purposes of distribution, publication or circulation, as provided for in Section 458 of the Municipal Act which reads as follows:

" Powers for
licence
inspector.

458. (1) The Council may by by-law delegate to any official designated in the by-law power to grant a licence where he is satisfied that the applicant therefor has complied with the requirements of the by-laws of the municipality regulating building, zoning, health, sanitation, and business, and may also delegate to such official the power to suspend for such period as he may determine any licence if the holder of the licence

- (a) is convicted of an offence indictable in Canada;
- (b) is convicted of any offence under any municipal by-law or Statute of the Province in respect of the business for which he is licensed or with respect to the premises named in his licence;
- (c) has, in the opinion of such official, been guilty of such gross misconduct in respect of the business or in or with respect to the premises named in his licence as to warrant the suspension of his licence;
- (d) has ceased to meet the lawful requirements to carry on the business for which he is licensed or with respect to the premises named in his licence.
- (e) has, in the opinion of such official,
 - (i) conducted his business in a manner; or
 - (ii) performed a service in a manner; or
 - (iii) sold, offered for sale, displayed for sale, or distributed to a person actually or apparently under the age of sixteen years any thing

that may be harmful or dangerous to the health or safety of a person actually or apparently under the age of sixteen years.

Appeals to
Council.

(2) Any person whose licence has been suspended under subsection (1) may appeal to the Council and upon such appeal the Council may confirm or may set aside such suspension on such terms as it may think fit.

Revocation
and suspension
of
licence.

(3) The Council may revoke a licence for reasonable cause after giving notice to the licensee and after giving the licensee an opportunity to be heard.

Exception.

(4) The notice and opportunity to be heard referred to in subsection (3) is not required in respect of the licensee who by reasonable efforts cannot be found.

(5) Any person who has applied for but failed to be granted a licence may appeal to the Council, and section 455 applies mutatis mutandis. 1957, c. 42, s. 455; 1958, c. 32, s. 211; 1964, c. 33, s. 39; 1966, c. 31, s. 12; 1972, c. 36, s. 22."

Continued ...

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Section 455 of the Act gives Council the authority to refuse the issuance of a licence:

" Refusal of
licence.

455. Notwithstanding anything contained in this Act or in the by-laws of the municipality, the Council may, upon the affirmative vote of at least two-thirds of all the members, refuse in any particular case to grant the request of an applicant for a licence under this Division, but the granting or renewal of a licence shall not be unreasonably refused. 1957, c. 42, s. 452; 1964, c. 33, s. 35; 1968, c. 33, s. 122. "

Renewal of a licence is not, of course, automatically granted; a licensee should anticipate renewal only if there is continued compliance with regulations and the conditions that govern the operation of businesses.

The hearing of an appeal should be confined to the matter of the licence. The question of censorship has been dealt with by the Courts. The basic question before Council at this time is if Council wants the firm to continue operating as a business in the Municipality of Burnaby.

In the event that Johnson and Franklin Distributors Limited do not proceed with the appeal by April 8, 1974, the Chief Licence Inspector will proceed with legal action for operating without a current licence, in accordance with Council's directions as given on March 11, 1974.

This is for the information of Council.

Re: Letter dated February 22, 1974 from Mr. William H. Deverell
Deverell, Harrop and Company, Barristers and Solicitors
801 East Hastings Street, Vancouver
Business Licence for Johnson and Franklin Wholesale Distributors Limited

Appearing on the In Camera Agenda for the March 11, 1974 meeting of Council is a letter from Mr. William H. Deverell regarding the renewal of a business licence for Johnson and Franklin Wholesale Distributors Limited. Following is a report from the Chief Licence Inspector regarding this matter.

RECOMMENDATIONS:

THAT the appeal be heard on or before April 8, 1974; and

THAT Deverell, Harrop and Company be further advised that unless an appeal is heard on or before April 8, 1974, the Municipality will proceed with legal action against Johnson and Franklin Wholesale Distributors Limited for operating without a business licence.

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ITEM 7
MANAGER'S REPORT NO. 27
COUNCIL MEETING April 8/74

MUNICIPAL MANAGER

MARCH 7, 1974

CHIEF LICENCE INSPECTOR

RE: JOHNSON & FRANKLIN WHOLESALE DISTRIBUTORS LTD
REFUSAL TO RENEW 1974 LICENCE

Johnson & Franklin Wholesale Distributors Ltd. and their predecessor, West Coast News (W.C.N.) Ltd., which operated the same business, have been convicted on four occasions for possession of obscene written matter for the purpose of distribution, publication or circulation. Convictions were recorded:

March 1968	-	West Coast News (W.C.N.) Ltd.
February 1969	-	" " " " "
April 1971	-	Johnson & Franklin Wholesale Distributors Ltd.
October 1972	-	" " " " "

Following each conviction, the companies have appeared before Council to show cause why their licence should not be revoked. Council's decision for each hearing permitted the business to continue but directed that in the event of additional convictions, the question of the licence was to be returned for their further consideration.

On November 15, 1973, the company was convicted a fifth time in County Court, New Westminster, B.C. for possession of obscene written matter for the purpose of distribution, publication or circulation. In addition to a fine of \$1,500.00, all seized material, which amounted to an excess of 25,000 copies of magazines and books, was forfeited to the Crown for disposal. This conviction relates to charges laid in 1970, under the Criminal Code. (Attached is a copy of conviction order). At this time there is one more charge to be heard which relates to a seizure made in 1972. No trial date has been set as yet.

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March 7, 1974

As a result of this conviction, renewal of the 1974 business licence was denied and the company was so advised by double registered letter dated January 31, 1974. They were further advised of their right to appeal the decision to Council, as provided in section 458(5) of the Municipal Act.

In response to the refusal of business licence, the firm of Deverell, Harrop and Company, Barristers and Solicitors, advised they would act for Johnson & Franklin in this matter. Subsequent to this advice, Mr. Deverell, wrote to the Municipality, requesting arrangements be made for a hearing before Council and the reason for the Chief Licence Inspector's decision not to renew the licence. Mr. Deverell further stated that due to a commitment to act as prosecutor in the March-April Assize Courts in Vancouver, he must request the licence hearing be deferred until some date in May.

The company is conducting its business without benefit of a licence, and a hearing sometime in the month of May would only serve to compound that situation. (The 1974 licence and business tax fees have been received and placed in our trust account, pending a decision on the appeal).

RECOMMENDATIONS:

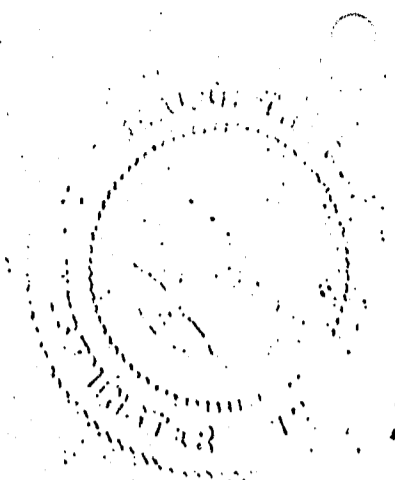
THAT the appeal be heard on or before April 8, 1974, and;

THAT Deverell, Harrop and Company be further advised that unless an appeal is heard on or before April 8, 1974, the municipality will proceed with legal action against Johnson & Franklin Wholesale Distributors Ltd. for operating without a business licence.

H. Buckley,
CHIEF LICENCE INSPECTOR

PK:nc

cc MUNICIPAL SOLICITOR



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Conviction
 (C.C., ss. 500 and 741)

NOV 14 1973

CANADA:

PROVINCE OF BRITISH COLUMBIA,
 COUNTY OF Westminster

HER MAJESTY THE QUEEN against JOHNSON & FRANKLIN
 WHOLESALE DISTRIBUTORS LTD.

Be it remembered that on the 15th day of October, A.D. 1973,
 at New Westminster, Province aforesaid, JOHNSON & FRANKLIN WHOLESALE
 DISTRIBUTORS LTD.

hereinafter called the "accused," was tried under Part (XVI ~~XXXIV~~) of the Criminal Code upon the charge that they, JOHNSON & FRANKLIN WHOLESALE DISTRIBUTORS LTD., ANTHONY PERRY and JOSEPHINE LINDLEY, at the Municipality of Burnaby, County of Westminster, Province of British Columbia, on or about the 15th day of May, A.D. 1970, unlawfully had in their possession at or about 7488 Griffiths Avenue, in the Municipality of Burnaby, County and Province aforesaid, for the purpose of distribution, publication or circulation a quantity of obscene written matter, to wit: books and magazines, contrary to the form of the Statute in such case made and provided and against the peace of our Lady the Queen, Her Crown and Dignity, AND the accused was found guilty as charged, AND JUDGMENT WAS RESERVED to the 7th day of November, A.D. 1973, and on the 7th day of November, A.D. 1973 it was further remanded to the 14th day of November, A.D. 1973, AND on the 14th day of November, A.D. 1973

~~was ordered to be punished~~ the following punishment was imposed upon him, namely: That the accused forfeit and pay the sum of Fifteen Hundred (\$1500.00) dollars, to be applied according to law, ~~and to be paid~~

~~the said sum~~ and in default of payment of the said sums forthwith or within the period of thirty (30) days, ^(Within a time fixed.) Distress proceedings will be taken, unless the said sums

~~are sooner paid.~~
 ALSO: All matter seized will be forfeited to the Crown for disposal.

Dated this 14th day of November, A.D. 1973, at New Westminster, B.C.

[Signature]
 Clerk of the Court

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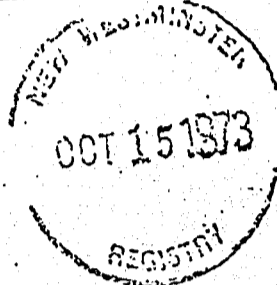
IN THE COUNTY COURT JUDGE'S CRIMINAL COURT
FOR THE COUNTY OF WESTMINSTER

ITEM 4 (IN CAMERA)

MANAGER'S REPORT NO. 20

COUNCIL MEETING Mar. 11/74

C A N A D A
PROVINCE OF BRITISH COLUMBIA
COUNTY OF WESTMINSTER
CITY OF NEW WESTMINSTER



HER MAJESTY THE QUEEN

against

JOSEPHINE LINDLEY

BE IT REMEMBERED that on the 15th day of October, A.D. 1973 at New Westminister, County of Westminister, in the Province of British Columbia, JOHNSON & FRANKLIN WHOLE-SALE DISTRIBUTORS LTD., ANTHONY PERRY and JOSEPHINE LINDLEY appeared upon a charge THAT: on or about the 15th day of May, A.D. 1970, they did unlawfully have in their possession at or about 7488 Griffiths Avenue, in the Municipality of Burnaby, County of Westminister, Province of British Columbia, for the purpose of distribution, publication or circulation, a quantity of obscene written matter, to wit: books and magazines, contrary to the form of the Statute in such case made and provided and against the peace of our Lady the Queen her Crown and Dignity, AND at the request of W. Derby, as agent for the Department of Justice, it was directed that the Clerk of the Court make an entry on the record that the PROCEEDINGS BE STAYED against JOSEPHINE LINDLEY.

DATED at New Westminister, Province of British Columbia this 15th day of October, A.D. 1973.

CLERK OF THE COURT

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IN THE COUNTY COURT JUDGE'S CRIMINAL COURT
FOR THE COUNTY OF WESTMINSTER

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C A N A D A
PROVINCE OF BRITISH COLUMBIA
COUNTY OF WESTMINSTER
CITY OF NEW WESTMINSTER

OCT 15 1973

HER MAJESTY THE QUEEN

against

ANTHONY PERRY

BE IT REMEMBERED that on the 15th day of October, A.D. 1973 at New Westminster, County of Westminster, in the Province of British Columbia, JOHNSON & FRANKLIN WHOLESALE DISTRIBUTORS LTD., ANTHONY PERRY and JOSEPHINE LINDLEY appeared upon a charge THAT: on or about the 15th day of May, A.D. 1970, they did unlawfully have in their possession at or about 7488 Griffiths Avenue, in the Municipality of Burnaby, County of Westminster, Province of British Columbia, for the purpose of distribution, publication or circulation, a quantity of obscene written matter, to wit: books and magazines, contrary to the form of the Statute in such case made and provided and against the peace of our Lady the Queen her Crown and Dignity, AND at the request of W. Derby, as agent for the Department of Justice, it was directed that the Clerk of the Court make an entry on the record that the PROCEEDINGS BE STAYED against ANTHONY PERRY.

DATED at New Westminster, Province of British Columbia this 15th day of October, A.D. 1973.

J.P. Carleton
CLERK OF THE COURT