



**DECISION OF THE
GENERAL MANAGER
LIQUOR CONTROL AND LICENSING BRANCH
IN THE MATTER OF**

A hearing pursuant to Section 20 of
The Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267

Licensee:	The Grateful Fed Deli 506 Bernard Avenue Kelowna, BC V1Y 6N9
Case:	EH05-142
For the Licensee:	Kamel Abougoush
For the Branch:	Sonja Okada
Enforcement Hearing Adjudicator:	Sheldon M. Seigel
Date of Hearing:	Written Submissions
Place of Hearing:	Victoria, BC
Date of Decision:	January 10, 2006

INTRODUCTION

This hearing was conducted by way of written submissions by agreement of the licensee and the general manager of the Liquor Control and Licensing Branch.

The licensee operates an establishment with Food Primary Licence No. 158178 in the City of Kelowna, British Columbia.

In the evening of August 12, 2005, the licensee failed to ensure that liquor was not removed from the licensed area.

The licensee has acknowledged that the establishment contravened Section 42(4) of the *Liquor Control and Licensing Regulation (Regulation)* by allowing liquor sold in the licensed establishment to be taken from the establishment.

The recommended enforcement action is a one (1) day suspension of the liquor licence. The licensee submitted that the penalty is too severe in light of the circumstances of the contravention.

ALLEGED CONTRAVENTIONS

The licensee contravened Section 42(4) of the *Regulation* by allowing liquor sold in the licensed establishment to be taken from the establishment.

RELEVANT STATUTORY PROVISIONS

Liquor Control and Licensing Regulation, B.C. Reg. 244/2002

Consumption of liquor in licensed establishments

Section 42(4)

All liquor sold or served in a licensed establishment must be consumed there, and the licensee must not allow liquor, other than the following, to be taken from the licensed establishment:

- (a) a bottle of wine that is unfinished by a patron and sealed by the licensee before being taken by that patron from the licensed establishment;
- (b) liquor that is sold for consumption off premises in accordance with the Act, this regulation and the terms and conditions of the license.

Section 63

In this part, "finding of contravention" means in respect of an alleged contravention of a licensee,

- (b) a determination made by the general manager under Section 65, that the contravention occurred.

Section 64(3)

The general manager may hold an enforcement hearing to determine whether the licensee committed the alleged contravention and, if so, to determine what enforcement actions are to be taken against the licensee as a result...

Section 66(1)

If, in relation to a contravention, the enforcement actions specified under Section 64(2)(a) or referred to in Section 65(1) include a suspension, the period of the suspension must, [at minimum] fall within the range established for the contravention under Schedule 4.

ISSUES(S)

The licensee has acknowledged that the alleged contravention has occurred.

The issue, therefore, is whether a penalty is required under the circumstances of this case, and if so, what penalty is appropriate.

EXHIBITS

The licensee provided the following:

Exhibit No. 1

- Comprising of a letter to the general manager of the branch dated December 19, 2005.

The branch provided the following:

Exhibit No. 2

- Notice of Enforcement Action dated November 9, 2005
 - Contravention Notice B003110 dated August 12, 2005
 - Food Primary Licence No. 158178
 - Pages 3, 10, from the Food-Primary Licence Terms and Conditions A Guide for Liquor Licensees in British Columbia Updated May 2005
 - Liquor Primary or Food Primary Inspection Interview Sheet
 - Compliance Meeting form dated April 27, 2004
 - Compliance Meeting form dated August 17, 2005
 - Contravention Notice B005008 dated July 7, 2005
 - Contravention Notice B003619 dated April 22, 2004
 - Inspection Interview Report dated August 28, 2003
 - Notes of Compliance and Enforcement officer
 - Enforcement Action Recommendation Report dated August 29, 2005
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SUBMISSIONS

The licensee submitted that while the contravention did occur, the recommended suspension is severe. The licensee does its very best to keep things within the rules, but "every now and then some one slips through".

The licensee operates a small business and the penalty recommended is very serious. It would put three people out of work for that evening.

The licensee also indicated that they will try harder to control patrons in the future.

The branch submitted that there are no written policies in place to assist the licensee's staff with respect to patrons leaving the red lined area with liquor.

The branch also submitted that this was the third alleged contravention of this type at the establishment within sixteen months and there have been other non-public safety contraventions alleged as well.

The branch argued that enforcement action, and the recommended penalty is required to "send a message to the licensee that the *Act* and *Regulation* as well as the Terms and Conditions of their licence must be followed".

ANALYSIS AND DECISION

The contravention has been admitted. I find that it has indeed occurred. The only issue, therefore, is penalty.

The penalty for a first contravention of this nature is a range of a one (1) to three (3) day suspension and/or \$1000 to \$3000 monetary penalty.

The terms of the licence are fixed and enforceable. It is the sole responsibility of the licensee to ensure compliance with these terms while operating the establishment.

While the branch wishes to have voluntary compliance, it has the mandate to assure compliance through enforcement action if required to do so.

For the purposes of this adjudication, I must consider past contraventions, proven and alleged, as a whole, and in the context of this enforcement action. I find that although the licensee has no history of findings of contravention, it has had previous Contravention Notices issued for issues identical to the current one.

I recognize that the licensee is remorseful for having allowed the alleged contraventions in the past, but simply indicating an intention to "try harder" is insufficient given the past alleged contraventions.

PENALTY

Pursuant to Section 20(2) of the *Act*, having found that the licensee has contravened the *Act*, the *Regulation* and/or the terms and conditions of the licence, I have the discretion to order one or more of the following enforcement actions:

- Impose a suspension of the liquor licence for a period of time
- Cancel a liquor licence
- Impose terms and conditions to a licence or rescind or amend existing terms and conditions
- Impose a monetary penalty
- Order a licensee to transfer a licence

Imposing any penalty is discretionary. However, if I find that either a licence suspension or monetary penalty is warranted, I am bound to follow the minimums set out in Schedule 4 of the *Regulation*.

This is a first contravention. The range of penalty for a first contravention of Section 42(4) of the *Act* in accordance with item 29 of Schedule 4 of the *Regulation* is one (1) to three (3) days suspension, and/or a \$1,000-\$3,000 monetary penalty.

The recommended penalty is a one (1) day suspension. I feel that penalty is appropriate.

ORDER

Pursuant to Section 20(2) of the *Act*, I order a suspension of the Food Primary Licence No. 158178 for a period of one (1) day to commence at the close of business on Thursday February 9, 2006, and to continue each succeeding business day until the suspension is completed. "Business day" means a day on which the licensee's establishment would normally be open for business (Section 67 of the *Regulation*). I direct that the Liquor Licence No. 158178, be held by the branch or the R.C.M.Police Kelowna Detachment from the close of business on Thursday February 9, 2006, until the licensee has demonstrated to the Branch's satisfaction that the establishment has been closed for one (1) business day.

Original signed by

Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: January 10, 2005

cc: R.C.M.Police Kelowna Detachment

Liquor Control and Licensing Branch
Attn: Ron Rodrigue, A/Regional Manager
Vancouver Island/Okanagan/Kootenay

Liquor Control and Licensing Branch, Vancouver Regional Office
Attn: Sonja Okada, Advocate
