



**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, RSBC c. 267***

Licensee:	Moshi Moshi Tei 8171 Leslie Road Richmond, BC V6X 1E4
Case:	EH06-153
For the Licensee:	Man Tat Cheung
For the Branch:	James Macdonnell
Enforcement Hearing Adjudicator:	Sheldon M. Seigel
Date of Hearing:	November 14, 2006
Place of Hearing:	Vancouver, BC
Date of Decision:	November 24, 2006

## INTRODUCTION

The licensee operates a Food Primary licensed establishment in Richmond under Licence No. 300950. The establishment is known as Moshi Moshi Tei. The hours of service are noon to midnight, seven days per week.

In a telephone pre-hearing conference held on October 23, 2006, the licensee admitted that the contravention took place as alleged. He indicated that he understood the liquor service hours under his licence end at midnight, and that all liquor must be removed from the tables within a half hour of liquor service ending. The contravention occurred at 2:45 AM on September 15, 2006.

## ALLEGED CONTRAVENTIONS

The branch alleged that on September 15, 2006, the licensee contravened Section 44 (1)(b) of the *Liquor Control and Licensing Regulation* (the "*Regulation*") by failing to clear liquor within ½ hour after liquor service hours.

## RELEVANT STATUTORY PROVISIONS

### ***Liquor Control and Licensing Regulation, BC Reg. 244/2002***

44 (1) Unless otherwise authorized by the general manager,

(b) food primary licensees must ensure that liquor is taken from patrons within ½ hour after the time stated on the licence for the hours of liquor service, unless the liquor is a bottle of wine that is sealed in accordance with section 42(4)(a).

**ISSUE**

As the licensee admitted that he contravened Section 44 (1)(b) of the *Regulation* on September 15, 2006, by failing to clear liquor within ½ hour after liquor service hours, the only issue is whether a penalty is warranted, and if warranted, what the appropriate penalty should be.

**EVIDENCE**

The liquor inspector testified that he inspects the establishment regularly, and invariably finds it operating well beyond the hours of service specified on the licence.

In an effort to obtain voluntary compliance with the *Regulation*, the inspector has issued "three or four" contravention notices for after-hours service, or failing to clear liquor or patrons within the time specified on the licence. He has also conducted an equal number of compliance meetings with the licensee to reinforce the need to adhere to the specified hours of operation.

The licensee was also found to have contravened Section 44(1)(b) of the *Regulation* by an enforcement hearing adjudicator, and served a seven-day suspension for that contravention. On that occasion the liquor inspector recommended the suspension rather than a financial penalty in support of the interests of the licensee. This allowed the food primary establishment to remain open and producing revenue while the liquor licence was suspended.

The inspector recommended a monetary penalty in this case because previous suspensions have not brought the licensee into compliance.

The licensee testified that this is a small business, with a gentle clientele that does not fight or get into trouble. He said that he couldn't afford a monetary penalty.

## **SUBMISSIONS**

The branch submitted that based on the compliance history of the establishment, and the manner in which the licensee runs his establishment the recommended penalty is just and fair.

The licensee submitted that a monetary penalty is inappropriate because he cannot afford to pay it. He offered no alternative.

## **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 license or rescind or amend existing terms and conditions
- impose a monetary penalty
- order a licensee to transfer a license

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*.

I am not bound by the maximums and may impose higher penalties when it is in the public interest to do so. I am not bound to order the penalty proposed in the Notice of Enforcement Action (NOEA).

The branch recommended a \$5,000 penalty for the contravention of Section 44(1)(b) of the *Regulation*.

The range of penalty for a first contravention of this section of the *Regulation* in accordance with Schedule 4 of the *Regulation* is four (4) to seven (7) days suspension and/or a monetary penalty of \$4,000-\$7,000.

The licensee has had three or four contravention notices served for after-hours service, three or four compliance meetings for the same contraventions, and a seven-day suspension for failure to clear liquor within a half hour after liquor service hours. He also refused entry to the police on one occasion, for which he served a fifteen-day suspension.

I find that the licensee understood his obligations to adhere to the hours of liquor service and the requirement to clear liquor within a half hour of liquor service. The licensee has either chosen to disregard his obligations in this respect, or he has no control over his patrons and his establishment. In either case, the continuation of the licence under these circumstances represents both a danger to the public and a complete lack of respect for the administration of the branch.

The liquor inspector has been more than patient with the licensee, and indeed quite generous. Multiple compliance meetings and two lengthy suspensions of the food primary liquor licence have had no effect on achieving compliance from this licensee.

I have doubt that any penalty will elicit future compliance. I note, however, that a monetary penalty has not yet been levied.

The licensee argued that he could ill-afford a monetary penalty. The ability of a licensee to pay a penalty is not a factor to be taken into account in awarding one. To do so would be to open the hearing process to evidence of financial matters beyond the mandate of the hearing adjudicator. The only factors to be considered when determining an appropriate penalty are the severity of the contravention (including public safety issues), and the likelihood of obtaining voluntary compliance in the future.

Finally, I note that the licensee did not take advantage of the opportunity to sign a waiver of a hearing and pay the recommended monetary penalty. The record of the pre-hearing conference indicates that the licensee advised the branch as follows:

- \$5,000 is too much for him to pay. He would like an opportunity to be heard by the adjudicator before a decision is made regarding what penalty, if any, is warranted.

On the strength of that request, the branch arranged for a hearing on the matter of penalty. The licensee attended at the appointed time, but offered no further submissions whatsoever. The licensee therefore caused the expenditure of considerable branch resources to no end other than the delay of his obligation to pay a monetary penalty.

In light of all of the aforementioned circumstances, I find that an appropriate penalty is \$7,500. In the event that the licensee cannot pay as required, the branch may cancel Food Primary Licence No. 300950 on appropriate notice.

**ORDER**

Pursuant to Section 20(2) of the *Act*, I order the licensee to pay a monetary penalty of seven thousand five hundred dollars (\$7,500) relating to Food Primary Licence No. 300950. The monetary penalty must be paid no later than the close of business on December 22, 2006.

*Original signed by*

Sheldon M. Seigel  
Enforcement Hearing Adjudicator

Date: November 24, 2006

cc: R.C.M.Police Richmond Detachment

Liquor Control and Licensing Branch, Vancouver Regional Office  
Attn: Lee Murphy, Regional Manager

Liquor Control and Licensing Branch, Surrey Regional Office  
Attn: James Macdonnell, Branch Advocate