



**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:	Vine-Yard Restaurant Ltd. dba Vine-Yard Steak & Seafood Restaurant 2296 West 4 Avenue Vancouver, B. C. V6K 1N8
Case:	EH06-031
For the Licensee:	Nick Gnissios
For the Branch:	Sonja Okada
Enforcement Hearing Adjudicator:	Sheldon M. Seigel
Date of Hearing:	Written Submission
Place of Hearing:	Victoria, B. C.
Date of Decision:	July 18, 2006

## **INTRODUCTION**

The licensee operates a food primary establishment in the Kitsilano district of Vancouver under Food Primary Licence No. 014872.

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

The licensee acknowledged that on December 10, 2005, the establishment contravened Section 44(3) of the *Liquor Control and Licensing Regulation* (the *Regulation*).

The recommended enforcement action is a five thousand dollar (\$5,000) monetary penalty. The only issue is as to what penalty, if any, is appropriate.

## **ALLEGED CONTRAVENTIONS**

The licensee contravened Section 44(3) of the *Regulation* by allowing a person to consume liquor in the licensed establishment beyond one half hour after the time stated on the licence for the hours of liquor service.

## **RELEVANT STATUTORY PROVISIONS**

### ***Liquor Control and Licensing Regulation***

Section 44(3) Unless otherwise authorized by the general manager, a licensee must not allow a person to consume liquor in the licensed establishment beyond ½ hour after the time stated on the licence for the hours of liquor service.

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**ISSUES**

The licensee has accepted that the contravention occurred as alleged. The issue therefore, is whether a penalty is required under the circumstances of this case, and if so, what penalty is appropriate.

**EXHIBITS**

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|---------------|---|
| Exhibit No. 1 | The Branch submitted a package of documents               |
| Exhibit No. 2 | The licensee submitted correspondence dated June 15, 2006 |

**EVIDENCE**

The evidence as provided in Exhibit No. 1 is clear and uncontroverted. The food primary licence indicates that liquor service must cease at 2:00 a.m. The evidence shows that on the December 10, 2005, (business day of December 9, 2005) liquor was served to multiple patrons after 2:30 a.m. and patrons were allowed to consume liquor after 2:30 a.m.

The evidence also discloses that the establishment has a history of allegations of allowing patrons to consume beyond one half hour after the time indicated for the cessation of service. Indeed that the evidence in this case was obtained primarily by under-cover police officers who had targeted the establishment because it enjoyed a reputation for serving liquor after the allowed time.

**SUBMISSIONS**

The licensee submitted that he has owned and operated the establishment for 29 years, and "in light of the fact that we made immediate changes to ensure

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compliance, it is a first contravention and the suggested fine would be severely detrimental to our family run business, we request no monetary fine or in the alternative a four day suspension”.

The licensee further submitted that since the events in question, the establishment now closes at 2:00 a.m. rather than 4:00 a.m. in order to ensure compliance.

Finally, the licensee submitted: "Unfortunately over the last few years we may have let our policies slip but we are now back on track".

### **ANALYSIS AND DECISION**

The licensee has acknowledged that it had contravened the *Regulation*. The evidence of the branch is uncontroverted.

I find therefore, that the contravention occurred.

### **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.
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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*.

The range of penalty for a first contravention of Section 44(3) of the *Act* in accordance with item 26 of Schedule 4 of the *Regulation* is four (4) to seven (7) days suspension and/or a monetary penalty of \$5,000-\$7,000.

The licensee has a history of unproven allegations of contraventions of this section of the *Regulation*. The police targeted the establishment because of a reputation for late service. This reputation is confirmed by testimony of police constables and a newspaper article describing public complaints about the issue, which specifically names the establishment.

The licensee seeks leniency because it has allegedly remedied the situation by changing its hours of operation, and because a fine as recommended by the branch would be detrimental to the operation of the business.

While changes made by a licensee to address allegations of contravention may properly be considered when addressing penalty, I am not satisfied on the evidence that the licensee will voluntarily comply with the *Regulation*. The evidence suggests that the licensee has shown disregard for the terms and conditions of its licence in the past. The licensee has had multiple opportunities to modify its business practices to better comply with its operating obligations, and I find that those opportunities were squandered.

That a licensee would prefer not to be saddled with a fine is axiomatic and consistent with the intention of the Legislature. That the fine would be detrimental to the operation of the business is something that was at one time within the control of the licensee. The licensee has by his actions invited a fine,

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and I see no reason to award otherwise. The licensee indicated that over the past few years he let his policies slip. The fine is the predictable consequence of that activity or inactivity.

I find a penalty is warranted by the actions of the licensee.

The recommended penalty is a monetary penalty of \$5,000. I find that penalty to be appropriate and within the stipulations of schedule 4 of the *Regulation*.

## **ORDER**

Pursuant to Section 20(2) of the *Act*, I order the licensee to pay a monetary penalty of five thousand dollars (\$5,000) relating to Food Primary Licence No. 14872 for this contravention. The monetary penalty must be paid no later than the close of business August 15, 2006.

[ ORIGINAL SIGNED ]

Sheldon M. Seigel  
Enforcement Hearing Adjudicator

Date: July 18, 2006

cc: Vancouver Police Department

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

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

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