



April 17, 2007

Man Tat Cheung
c/o Moshi Moshi Tei
8171 Leslie Road
Richmond, BC V6X 1E4

REGISTERED MAIL

Dear Man Tat Cheung:

Re: Man Tat CHEUNG, doing business as Moshi Moshi Tei, Richmond, BC
Food Primary Licence No. 300950 Case: EH07-012

This letter constitutes a decision by the General Manager of the Liquor Control and Licensing Branch pursuant to Section 20 of the *Liquor Control and Licensing Act* (the *Act*), regarding Notice of Enforcement Action ("NOEA") EH07-012 issued to the above named licensee.

Alleged Contravention and Recommended Penalty

The Branch alleges that on January 20, 2007, the licensee contravened section 44 (1)(b) of the *Liquor Control and Licensing Regulation* (the *Regulation*) by failing to ensure that liquor is taken from patrons within ½ hour after the time stated on the licence for the hours of liquor service. The proposed penalty is cancellation of the liquor licence (section 20(2) of the *Act*).

Background

On January 20, 2007, the Branch issued contravention notice B005276 regarding the alleged contravention, and the licensee signed to acknowledge receipt. A NOEA dated January 31, 2007, was subsequently delivered to the licensee to inform him that the general manager was taking further enforcement action regarding the allegation.

In a letter dated February 15, 2007, which was mailed to the establishment and contained a copy of the NOEA, the branch informed the licensee that there would be a pre-hearing telephone conference on February 23. The letter advised the licensee that should he fail to participate in the prehearing conference, the general manager may make a decision without conducting an enforcement hearing. The pre-hearing conference could not proceed because the licensee failed to participate. The branch registrar left a telephone message for the licensee that afternoon. On February 27, the branch registrar sent the licensee a registered letter (including another copy of the NOEA) advising that due to his failure to participate in the pre-hearing conference a decision regarding the alleged contravention would be made without an oral hearing.

**Ministry of Public Safety
and Solicitor General**

Liquor Control and
Licensing Branch

Mailing Address:
PO Box 9292 Stn Prov Govt
Victoria BC V8W 9J8

Telephone: 250 387-1254
Facsimile: 250 387-9184

Location:
Second Floor, 1019 Wharf Street
Victoria BC

[http:// www.pssg.gov.bc.ca/lclb](http://www.pssg.gov.bc.ca/lclb)

On March 1, the licensee left the branch registrar a voice message indicating that he had just received the letter informing him of the prehearing conference. On March 6, and again on March 9, the registrar left telephone messages for the licensee at the number he provided. She informed him that a registered letter from the branch was waiting for pickup at the post office and that he had until March 9 to respond. Post office records show that the licensee picked up the letter on March 9, 2007.

On March 13, having heard nothing further from the licensee, the branch registrar called him once again. He confirmed that he had received the registered letter. The registrar suggested that the licensee find someone to assist him with understanding the letter as his first language is not English. He agreed to do so, and he was given another week to respond.

On March 16, the licensee faxed a one page reply to the allegation. The registrar telephoned the licensee to ask if he had anything further to add, and he said that he did not. She encouraged him to find someone to assist with translating their telephone conversation and offered to hold off processing the matter until he could arrange that. The licensee said that he would call the registrar on March 20 at 2:00 p.m. and would have someone on the line to help him with the translation. The licensee did not call as promised. On March 29, the registrar called the licensee and spoke with him and with his friend who assisted with translation. It was agreed that the licensee would provide a second written submission. On April 3, the branch received the licensee's letter which is dated March 29.

In light of the above information, I conclude that the licensee has received notice of the allegation, has been provided with several opportunities to respond, and that he has done so by way of his March 16 and 29 letters, received by fax.

Applicable Statutory Provisions

Section 44 of the *Regulation*

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).

Issues

1. Did the licensee contravene section 44(1)(b) of the *Regulation*?
2. If so, what penalty, if any, is warranted?

Particulars of Allegation

The hours of liquor sale permitted for Food Primary Licence No.300950 are noon to midnight, Monday through Sunday. The terms and conditions of the licence require that all liquor in bottles or glasses must be removed by 12:30 a.m.

The particulars of the alleged contravention are contained in the NOEA.

Licensee's Response

The licensee writes that he understands the actions proposed in the branch's correspondence. He explains that on the night of January 20, the establishment was short staffed by one waitress and the dishwasher was broken. As a result, when the inspector arrived the staff was busy cashing out and had not yet cleared away the dishes and glasses. The licensee writes in his March 29 submission, "The patrons had their last call, and left immediately thereafter, in which the cash out was next. This was being done, to almost finished, when the inspector had arrived."

Decision

I am satisfied that the licensee understands the allegation and the proposed penalty contained in the NOEA. I am also satisfied that he has had the opportunity to respond and has done by way of his two March letters.

The licensee has not denied that at 2:56 a.m., seven patrons were in the main dining area at a table on which were two pitchers of Chivas Regal Whiskey mixed with green tea, thirteen glasses with various amounts of this mix in them and one can of Coors Light beer, and that upstairs a further ten patrons were seated and that there were glasses containing the same Chivas and green tea mix. The licensee explains, "The patrons had their last call, and left *immediately thereafter*" [emphasis added]. Given this explanation and that fact that the licensee does not dispute that when the inspector arrived at 2:56 a.m. seventeen patrons were still seated at tables on which liquor remained, I find that not only had liquor not been cleared by 12:30 a.m. but that liquor service did not end until well after midnight.

Having considered all the evidence before me, including the licensee's submissions, I find that on January 20, 2007, the licensee contravened Section 44(1)(b) of the *Regulation* by failing to ensure that liquor is taken from patrons within ½ hour after the time stated on the licence for the hours of liquor service.

Penalty

Having found that the contravention is proven, section 20(2) of the *Act* gives me 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 minimum set out in Schedule 4 of the *Regulation*. I am not bound by the maximum 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 NOEA.

This contravention is the second of this type to have been committed in a twelve month period. Schedule 4 of the *Regulation* provides for a 10-14 day suspension of the liquor licence for a second contravention of this type. The liquor inspector has recommended cancellation of the licence as the appropriate enforcement action.

The licensee has held this licence since May 2004 and since then has accumulated the following proven contravention history:

- At an enforcement hearing, the licensee was found to have contravened s. 44(1)(b) *Act* on September 15, 2006, and a \$7500 penalty was imposed (EH06-153).
- The licensee signed a waiver for a July 29, 2005, contravention of s. 44(1)(b) *Act* and served a seven day suspension (EH05-104).
- The licensee signed a waiver for a May 20, 2005, contravention of refusing to permit entry to a peace officer and served a fifteen (15) day suspension. The branch alleged that the licensee refused entry in order to hide the fact that it had failed to clear liquor within ½ hour after liquor service hours (EH05-081).

The branch's records also reveal the following information about non-compliance for which the branch did not pursue enforcement action:

- March 17, 2005 - Contravention No. B000769 – Licensee or employee consuming liquor in premises, s. 42(3) *Regulation*.
- January 30, 2005 - Contravention No. B000765 – Fail to clear liquor within ½ hour of liquor service hours, s. 44(1)(b) *Regulation*.

In addition, on June 1, 2005, the branch held a compliance meeting with the licensee which included a discussion of its obligations regarding clearing liquor within ½ hour of liquor service hours.

The hours during which a licensed establishment is permitted to sell and serve liquor can affect the surrounding residents and businesses in the community. The licensee's failure to abide by the hours of sale set out in its licence demonstrates a disregard for the community's standards and wishes. It can also shift the focus of the establishment away from the stated primary purpose of serving food rather than liquor. Furthermore, after hours service of liquor is a safety issue as the patrons attending such "after hours" establishments can be unpredictable and may not abide by community standards. This can endanger the police, liquor inspectors and the public. The liquor inspector has explained to the licensee on more than one occasion that allowing after hours service of liquor is a safety concern.

Significant resources have been expended by both the branch and police to regulate this establishment and to try and bring it into voluntary compliance. I find that the licensee has failed to come into voluntary compliance despite education provided by the branch, a monetary penalty and suspensions. The licensee's disregard for the hours of service under its licence is amply illustrated by the fact that the penalty for EH06-153 was paid on December 27, 2006, and within three weeks, the licensee had committed the contravention that is the subject of this decision.

Having considered the licensee's recent behaviour as well as their past compliance history, I conclude that this licensee cannot be brought into compliance through the mechanisms of the legislation and I am canceling the licence.

Order

Pursuant to Section 20(2) of the *Act*, I order the cancellation of Food Primary Licence No. 300950 effective the date of this decision. To ensure this order is effective, I direct that the liquor licence be taken into possession by a liquor inspector or a police officer and returned to the branch.

Yours truly,

[ORIGINAL SIGNED]

Gary Barker
A/Deputy General Manager
Compliance and Enforcement Division
Liquor Control and Licensing Branch

cc: RCMP Richmond Detachment
Donna Lister, A/Regional Manager, Vancouver Office
Shahid Noorani, Branch Advocate, Surrey Office