



**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:	Tea Hut Enterprises Ltd., dba Tea Hut 2000-8580 Alexandra Road Richmond, BC V6X 4B3
Case:	EH06-146
For the Licensee:	Derrick Yeung, Yeung & Company Law Corporation
Enforcement Hearing Adjudicator:	K. McIsaac
Hearing:	Written Submissions
Date of Decision:	January 4, 2007

INTRODUCTION

The licensee, Tea Hut Enterprises Ltd., operates an establishment in Richmond, known as the Tea Hut under Food Primary Licence No. 301923.

According to the terms of the licence, Tea Hut may operate from 9 a.m. to midnight every day. Its licensed capacity is 48 persons.

The licensee and general manager agreed to conduct the hearing by way of written submissions.

ALLEGED CONTRAVENTIONS

The Liquor Control and Licensing Branch (branch) by a Notice of Enforcement Action (NOEA) dated October 3, 2006, alleges that on September 15, 2006, at 1:50 a.m. the licensee contravened section 44(1)(b) of the *Liquor Control and Licensing Regulation* (Regulation), B.C. Reg. 244/2002 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 branch proposes a penalty of \$5,000 (*Regulation*, Schedule 4, Item 25).

RELEVANT STATUTORY PROVISIONS

Liquor Control and Licensing Regulation, B.C. 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)

ISSUES

The licensee admits that the contravention took place as alleged but disputes the branch's proposed penalty and requests a temporary suspension of its liquor licence rather than the proposed \$5,000. Therefore, the only issue to be decided is what penalty, if any, is appropriate.

EXHIBITS

Exhibit No. 1 The branch's Book of Documents dated November 30, 2006, which includes:

- Registrar's October 25, 2006, letter summarizing the pre-hearing conference
- Notice of Enforcement action dated October 3, 2006
- Contravention Notice B005270 dated September 15, 2006
- Inspector Dyck's notes dated September 15, 2006
- Photos of Tea Hut at 01:50 am, dated September 15, 2006
- Food Primary Licence No.301923
- Floor plan for establishment dated March 23, 2006
- Pages 3, 6, 9 from the 'Guide to Liquor Licensees'

Exhibit No. 2 The licensee's two-page letter of submission dated November 10, 2006 and including 14 copies of case summaries

FACTS

On September 15, 2006, at approximately 01:50 hours (business day of September 14, 2006), an inspection team consisting of two Liquor Inspectors, the LCLB Regional Manager and six R.C.M.P. members arrived at the Tea Hut to conduct a routine inspection. They observed seventeen patrons inside and counted five pitchers and short glasses containing Chivas Regal Whiskey and Green Tea on the tables. The licensee of Tea Hut confirmed the contents of the

pitchers and glasses. The team also observed dice games on the tables used for drinking games. The licensee, who was present with his brother, informed the officers that the patrons arrived at 10:30 p.m. and the explanation he gave for serving liquor after hours was that it was a friend's going away party.

Thirteen photos were taken during the inspection (Exhibit 1).

The officer issued the licensee a Contravention Notice for failing to clear liquor within ½ hour after liquor service hours. The team left at 02:20 hours.

PENALTY

As the licensee admits to the contravention of section 44(1)(b) of the *Regulation*, I find the contravention to have occurred.

Pursuant to section 20(2) of the *Liquor Control and Licensing Act (Act)*, having found that the Licensee has contravened the *Act*, the *Regulation* and/or the terms and conditions of the licence, I have 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*. 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.

SUBMISSIONS

Branch

The Liquor Inspector submits the following:

- The hours during which a licensed establishment is open for the sale of liquor are determined, in part, by community standards. In particular, hours of liquor sale affect the surrounding residents and businesses in the community. The failure by the licensee to take liquor from patrons in a food-primary licensed establishment gives patrons the opportunity to continue consuming liquor while the restaurant remains open, even though the hours of liquor service have ended. This, in turn, can result in a shift in focus in the establishment's operation.

The inspector states this was the first inspection conducted at this establishment. He states the licensee was issued a liquor licence on March 24, 2006, and in less than six months has been found in contravention for failing to clear liquor well after their liquor hours. The inspector submits the licensee attended the Food Primary Terms and Conditions seminar less than six months ago and therefore, the terms and conditions of his licence should be fresh in his mind. He says the licensee's brother, who was present during the inspection, has been a licensee for both liquor primary and food primary establishments and recently signed a waiver to cancel his restaurant food primary licence due to enforcement action including failing to clear liquor.

The inspector states that after hours service of liquor is a safety issue for Inspectors, as patrons who attend such establishments and consume liquor after hours can be very unpredictable. He therefore recommends enforcement action to "show the licensee that operating his liquor licence after hours will not be tolerated by the branch." The inspector further submits that suspensions for failing to clear liquor have never been successful in achieving voluntary

compliance with establishments in the Richmond area. Five thousand (\$5000) is the minimum monetary penalty for a first contravention and will hopefully persuade this licensee to comply in the future.

Licensee

In a letter, dated November 10, 2006, counsel for the licensee submits that the licensee admits and acknowledges that the contravention took place as alleged and requests a temporary suspension of the liquor licence rather than the proposed \$5,000 penalty.

He states:

- The shop was opened recently and business has been difficult with intensive competition in the Richmond-Alexandra Road area. There have been new restaurants opening in this surrounding area every single week since February 2006. This also makes customers extremely difficult to control and manage because they feel they can always go to another restaurant nearby. The financial capability of my client is very limited, and he definitely cannot afford a \$5,000 penalty. Revenue generates from the business can barely survive basic operation costs, and the current business climate does not enable [the licensee] to take any profit out of the restaurant. Nevertheless, my client TRULY UNDERSTAND that this is absolutely no excuse for [the licensee] for committing the offence alleged.
 - In order to seriously co-operate with the Board more effectively, as of today, my client has imposed a number of strict measures to better manage its customers, and has also COMPLETELY re-educate its staff and employees with respect to the rules of serving alcohol beverages to patrons of the restaurant.
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Counsel, referring to a number of case summaries, writes that the majority of restaurants with similar contraventions, especially first time offenders, have been given a temporary suspension of their licence rather than a heavy monetary fine.

ANALYSIS AND DECISION

The range of penalties for a first contravention of section 44(1)(b) of the *Regulation*, and in accordance with Schedule 4, Item 25, is a 4 - 7 day licence suspension and a \$5,000 to \$7,000 monetary penalty.

The branch's primary goal in bringing enforcement action and in determining the appropriate penalty is to encourage voluntary compliance. Considerations in determining an appropriate penalty include the past history of compliance, the seriousness of the contravention, the threat to public safety and the well being of the community.

The Tea Hut has no history of past contraventions or warnings. However, I find the contravention serious in that after only six months of operation, the licensee knowingly allowed liquor to be served after midnight and well beyond the ½ hour limit for taking liquor from patrons. The licensee had recently attended the Food Primary Terms and Conditions seminar where he would have been informed of his responsibilities as well as the consequences of contravening the *Act* and *Regulations*. The licensee's brother, who was present at the time of the inspection, was also aware of the potential consequence as he, as a licensee, had contravened the same section of the *Regulation*.

The licensee seeks a suspension rather than a fine because of the financial burden. However, he was fully aware that his actions could incur a financial penalty and admits that his financial situation is no excuse for committing the contravention. Although the licensee submits he has taken steps to re-educate his employees regarding the serving of liquor, I find it was his decision, not his employees' to serve liquor after hours.

In the circumstances, I find the proposed minimum penalty of \$5,000 appropriate to ensure future voluntary compliance. In coming to this conclusion, I have taken into account the range of penalties imposed in previous cases for the same contravention.

ORDER

Pursuant to section 20(2) of the *Act*, I order Tea Hut Enterprises Ltd., Liquor Primary Licence No. 301923, to pay a monetary penalty of Five Thousand Dollars (\$5,000) to the Liquor Control and Licensing Branch no later than February 5, 2007.

[ORIGINAL SIGNED]

K. McIsaac
Enforcement Hearing Adjudicator

Date: January 4, 2007

cc: Richmond RCMP Detachment

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

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