



**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: Jan Dirk Langereis
Dba, TJ's Vegetarian Plus
630 Kingsway
Vancouver, BC V5T 3K4

Case: EH09-060

For the Licensee: Jan Langereis

For the Branch: Peter Mior

Enforcement Hearing Adjudicator: Edward Owsianski

Date of Hearing: Written Submissions

Date of Decision: October 20, 2009

**Ministry of Housing
& Social
Development**

Liquor Control and
Licensing Branch

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INTRODUCTION

The licensee, Jan Dirk Langereis, holds Food Primary Licence No. 302491 for the operation of a food primary establishment, a restaurant at 630 Kingsway, Vancouver BC. It has a licensed capacity of 30 persons. The hours for the sale and service of liquor are 11:00 a.m. to midnight seven days a week. The licence is, as are all liquor licenses issued in the province, subject to the terms and conditions contained in the publication "Guide for Liquor Licensees in British Columbia." The licence contains the following term and condition: "For the sale and consumption of all types of liquor in establishments with a primary focus on food."

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The branch's allegations and proposed penalty are set out in the Notice of Enforcement Action (the "NOEA") dated July 24, 2009.

The branch alleges that on June 21, 2009, the licensee contravened Section 44(1)(b) of the *Liquor Control and Licensing 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 a \$5,000 monetary penalty (item 25 of Schedule 4 of the *Regulation*).

Item 25 of Schedule 4 of *the Regulation* provides a range of penalties for a first contravention of a licence suspension for 4 - 7 days and/or a monetary penalty of \$5,000 - \$7,000.

The licensee does not dispute that the contravention took place, just the penalty proposed. It was agreed that this hearing would take place by way of written submissions.

RELEVANT REGULATORY PROVISIONS

LIQUOR CONTROL AND LICENSING REGULATION

44 (1) Unless otherwise authorized by the general manager,
(b) food primary licensees must ensure that liquor is taken from patrons within 1/2 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 contravention occur?
2. If so, what penalty, if any, is warranted?

EXHIBITS

1. Branch registrar's letter of September 1, 2009 summarizing the pre-hearing process.
2. Branch's package of disclosure to the licensee dated September 25, 2009, tabs 1 – 11.
3. Licensee's submission dated October 8, 2009.

EVIDENCE & SUBMISSIONS

The branch's evidence and submissions are summarized as follows:

On June 21, 2009 at approximately 1:00 a.m. two liquor inspectors attended at TJ's Vegetarian Plus restaurant in Vancouver for the purpose of performing a routine inspection of the licensed establishment. While their view was partially block by a screen partition at the front door, they were able to observe that the lights were on and several males were seated at a table drinking what appeared to be beer and smoking cigarettes. Entering the establishment, they were approached by one of the males and told that the restaurant was closed. Identifying themselves

as liquor inspectors they observed that the table was occupied by four males. In front of each was a glass containing an amber coloured liquid that they confirmed to be beer by smelling the contents. There was an opened can of beer in front of each person and also additional four unopened cans of beer on the table. One on of the males was drinking from a glass of beer. The inspectors advised them that it was past the time allowed by the license for liquor consumption. The male set the glass down and one of the males removed the unopened cans of beer from the table.

The inspectors spoke with a female employee identified as the manager/server. The owner/licensee was not present. The employee produced the liquor licence, which indicated that the hours for the sale of liquor ceased at midnight. She advised the inspectors that the males were drinking beer as it was a Father's Day celebration and she realized that it was past the time of service. The employee was advised that the establishment had contravened the provisions of the regulations requiring that all liquor be removed from the tables and all consumption of liquor cease within one-half hour after the hours of sale. She was advised that enforcement action may be initiated.

The lead inspector issued a Contravention Notice for 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. He prepared a Notice of Enforcement Action (NOEA). In making the recommendation for enforcement action the inspector reviewed the branch's file for the licensed establishment. The licensee had attended a compliance meeting at branch offices on March 26, 2009 as a result of prohibited entertainment occurring in the establishment the night of February 28, 2009. The licensee committed to complying with the terms and conditions of his liquor licence. No enforcement action was initiated on that matter. The inspector was concerned that by not removing liquor from the tables as required allows patrons to continue consuming liquor past the hours permitted which can have an adverse effect on community standards.

The inspector recommended a \$5,000 monetary penalty which is the minimum monetary penalty for a first contravention of this type. The inspector was concerned that the contravention

was deliberate and that a monetary penalty was necessary to bring the licensee into voluntary compliance with the requirements of the liquor licence.

The licensee's evidence and submissions are summarized as follows:

The licensee does not dispute the contravention. He was away on holidays at the time and he had a friend taking care of the restaurant. The friend knew the hours of operation but did not think that it was imperative that he stopped serving customers right at that time as they were enjoying themselves in their celebration and he did not want to ask them to leave. The purpose of the screen is not to block the view of liquor consumption but to provide an entry into the restaurant and to stop vagrants from peering in at customers.

He takes responsibility for the incident. He should have ensured that his friend knew the importance of stopping liquor service at midnight. It does not occur when he, the licensee, is present and he will ensure that when he is not there the person in charge knows the time for liquor service and the consequences of a contravention. He is in the process of making application for extended hours of liquor service.

He requests leniency on the penalty and assures that it will not happen again.

REASONS AND DECISION

The licensee has admitted the contravention. Having considered all of the evidence, I find that on June 21, 2009, the licensee contravened Section 44(1)(b) of the *Liquor Control and Licensing 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.

DUE DILIGENCE

The licensee is entitled to a defence to the allegations of the contravention, if it can be shown that he was duly diligent in taking reasonable steps to prevent the contravention from occurring. The licensee must not only establish procedures to identify and deal with problems, he must ensure that those procedures are consistently acted upon and problems dealt with.

Here, there is little evidence upon which I can find that the licensee was duly diligent. The licensee was not present at the time of the contravention. He left a friend in charge of the licensed establishment. The friend was, in a strict legal sense, the directing mind of the licensee. He had not been properly trained or instructed on his responsibilities. He did not take sufficient action to prevent the contravention from occurring or continuing until required to do so by the liquor inspectors.

In conclusion, I find that the licensee has not been duly diligent.

PENALTY

Pursuant to section 20(2) of the *Act*, having found that the licensee has contravened the *Act*, the *Regulations* 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, and I am not bound to order the penalty proposed in the Notice of Enforcement Action.

The branch's primary goal in bringing enforcement action and imposing penalties is achieving voluntary compliance. Among the factors that are considered in determining the appropriate penalty is whether there is a past history of warnings by the branch and/or the police, the seriousness of the contravention, the threat to the public safety and the well being of the community.

There is no record of prior proven contraventions, offences or enforcement actions of the same type for this licensee for this license within the year preceding this incident. I therefore find this to be a first contravention.

The evidence is that the licensee received his liquor licence in April 2007 after attending an educational session in branch offices that outlined his responsibilities under the *Act* and *Regulations* (exhibit 2, tab 7). He received documentation specific to the terms and conditions of his licence (exhibit 2, tabs 5 & 7). He attended a compliance meeting in March 2009 where the need for compliance with the requirements of the licence and the consequences of a contravention were brought to his attention (exhibit 2, tabs 1 & 10).

In the circumstances of this case I am satisfied that the licensee has not successfully or sufficiently stressed upon the person he leaves in charge of the establishment when he is not present the need to fully and conscientiously carry out their duties. I find that a penalty is necessary to ensure future compliance.

Any penalty imposed must be sufficient to ensure compliance in the future. Schedule 4, item 25 of the *Regulations* provides a range of penalties for a first contravention of this type of a licence

suspension for 4 - 7 days and/or a monetary penalty of \$5,000 - \$7,000. In the circumstances of this case I find that the minimum monetary penalty of \$5,000 is appropriate, reasonable and necessary.

ORDER

Pursuant to Section 20 (2) of the *Act*, I order the payment of a five thousand dollar (\$5,000) monetary penalty by the licensee to the general manager on or before Monday, November 30, 2009.

Original signed by

Edward W. Owsianski
Enforcement Hearing Adjudicator

Date: October 20, 2009

cc: Vancouver Police Department

Liquor Control and Licensing Branch, Vancouver Office
Attention: Donna Lister, Regional Manager

Liquor Control and Licensing Branch, Vancouver Office
Attention: Peter Mior, Branch Advocate