



**DECISION OF THE
GENERAL MANAGER
LIQUOR CONTROL AND LICENCING BRANCH
IN THE MATTER OF**

A hearing pursuant to Section 20 of
The Liquor Control and Licensing Act RSBC c. 267

Licensee:	Space Lounge Inc. dba Space Restaurant 1149 Granville Street Vancouver, BC V2Z 1M1
Cases:	EH09-086 and EH09-094
For the Licensee:	Hamid Babaei Sam Babaei
For the Branch:	Peter Mior
Enforcement Hearing Adjudicator:	Sheldon M. Seigel
Date of Hearing:	December 9, 10, 2009
Place of Hearing:	Vancouver, B.C.
Date of Decision:	January 12, 2010

INTRODUCTION

The Licensee operates a food primary establishment in the downtown Vancouver entertainment district under food primary licence 302928. The licence indicates that liquor may be sold from 9:00 a.m. to midnight, seven days per week.

The Branch's allegations and proposed penalty are set out in two Notices of Enforcement Action (NOEAs): EH09-086, dated August 25, 2009 and EH09-094, dated September 15, 2009.

The food primary licence specifies a person capacity of 85, with an additional 21 persons permitted in an area designated by a lounge endorsement. The licence is, as are all liquor licences issued in the province, subject to the terms and conditions contained in the publication *Guide for Liquor Licensees in British Columbia (Guide)*.

Appearing for the corporate licensee was the primary shareholder and operating executive of the company (Licensee), as well as the manager of the establishment. The manager was present during all testimony in accordance with the will of the Licensee.

THE ALLEGED CONTRAVENTIONS

EH09-086

1. The branch alleges that on July 31, 2009, at approximately 10:47 p.m. the licensee contravened section 20(1)(d) of the *Liquor Control and Licensing Act* (the *Act*) and section 11(1) of the *Liquor Control and Licensing Regulation* (the *Regulation*) by operating the licensed establishment in a manner that was contrary to the primary purpose of the business as stated on the license. The proposed penalty is a ten (10) day suspension of the liquor licence (item 1 of Schedule 4, *Regulation*).

2. The branch also alleges that on August 1, 2009 at approximately 12:47 a.m. (the business day of Friday July 31, 2009), 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. The proposed penalty is a six (6) day suspension of the liquor licence (item 25 of Schedule 4, *Regulation*).

EH09-094

3. The branch alleges that on August 15, 2009 at approximately 12:50 a.m. (the business day of Friday, August 14, 2009), 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. The proposed penalty is a ten (10) day suspension of the liquor licence (item 25 of Schedule 4, *Regulation*).

RELEVANT STATUTORY PROVISIONS***Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267*****Action against a licensee**

20 (1) In addition to any other powers the general manager has under this Act, the general manager may, on the general manager's own motion or on receiving a complaint, take action against a licensee for any of the following reasons:

- (a) the licensee's contravention of this Act or the regulations or the licensee's failure to comply with a term or condition of the licence;

Liquor Control and Licensing Regulation

[includes amendments up to B.C. Reg. 289/2009, December 2, 2009]

Food primary licences

11 (1) A food primary licence in respect of an establishment may be issued, renewed or transferred if the primary purpose of the business carried on in the establishment is the service of food during all hours of its operation.

(2) The following terms and conditions apply to a food primary licence:

(a) minors are allowed in the establishment;

(b) liquor must not be served unless the establishment is open for service of a varied selection of food items, including both appetizers and main courses, or their equivalent;

(c) subject to limitation by the general manager, hours of liquor service must start no earlier than 9:00 a.m. and end no later than 4:00 a.m. the next day.

(3) The general manager may consider, in determining whether the primary purpose of the business carried on in the establishment is or will be the service of food during all hours of its operation, any or all of the following:

(a) kitchen equipment;

(b) furnishings and lighting;

(c) menu;

(d) type and hours of entertainment and games offered by the licensee;

(e) advertising;

(f) hours of operation;

(g) financial records;

(h) the ratio of receipts from food sales to receipts from liquor sales in the establishment;

(i) any other relevant consideration that may assist in the determination.

Time

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

Did the Licensee contravene the *Act* and *Regulation* as alleged?

If any or all of the contraventions occurred, is a penalty required under the circumstances of this case, and if so, what penalty is appropriate?

EVIDENCEExhibits:

Exhibit #1: The Branch's Book of Documents

Exhibit #2: The Licensee's sales receipt record for July 31, 2009, and August 1, 2009

Exhibit #3: The Licensee's sales receipt record for August 15, 2009

Witnesses:

The Branch called two police constables, a Branch Regional Manager, and a liquor inspector, with respect to the allegations described in EH09-086, and two police constables and a liquor inspector with respect to the allegations described in EH09-094.

The Licensee testified and called the establishment's manager, a server, and a patron as additional witnesses.

Police constable #1

This witness testified that she attended at the establishment as part of an undercover operation on July 31-August 1, 2009. She described her previous police experience as including 17 years with the Vancouver Police Department (VPD) and the conduct of hundreds of Licensed Premise Checks (LPCs). She is the liquor coordinator for the VPD and as such spends much of her time on liquor enforcement related matters and liaising with the Branch.

On July 31, 2009 she participated in a meeting at the police station before joining another undercover member and a back-up team. She and the other undercover officer arrived at the establishment at approximately 10:45 p.m. She observed several doorpersons. Her partner paid a \$10 cover charge for each of them. Inside the establishment the witness noted the environment to be dark with flashing lights, and loud enough that conversing with her partner was very difficult. There were balloons scattered throughout the establishment. Her impression was of a bar rather than a restaurant. She observed no food or empty dishware and no patrons eating. She and her partner sat at a table and were attended to by a server who asked for a drink order. The server did not mention food. The officers ordered one highball drink each. The officer found it easier to communicate with her partner opposite her by text message rather than oral communication due to the high noise level in the establishment.

She went to the washroom twice during her stay and each time she made a point of observing the kitchen. She saw no food preparation or food waiting in the kitchen but for one occasion on which she saw an employee in the kitchen chopping up some greens she described as parsley or mint. She said there was no smell of food, and no dirty dishes apparent from the entrance to the kitchen.

The witness testified that at approximately 11:30 p.m. the establishment started getting busier and patrons began to dance in the middle of the establishment. She described many patrons standing around with drinks and a single patron eating a salad at one table. The salad was the only food, but for some candy, that the officer saw on the tables during more than two hours in the establishment.

At just before midnight, the officers ordered a pitcher of Sangria. The server suggested some shooters and the officers ordered two. The officers also offered to buy one for the server. The server returned with the Sangria and shooters for the officers. The server also had a drink for himself. The witness testified that at approximately 12:14 a.m. she ordered a second pitcher of Sangria. The officer said she was not advised that it was after liquor service hours, and the server provided the second pitcher. She and her partner paid for their drinks and left the establishment between 12:42 and 12:48 a.m.

Police constable #2

This witness testified that she attended at the establishment as part of an undercover operation on July 31-August 1, 2009. She described her previous policing experience as including many years with the VPD and she has conducted many LPCs.

She arrived at the establishment in plain-clothes with her partner at approximately 10:45 p.m. and paid \$20 in cover charges for the two of them. She said the music was loud and there appeared to be a party atmosphere in the establishment. Some people were dancing. She counted approximately twenty patrons in the room, none of whom had any food in front of them. She testified that she and her partner sat at a table and were looking at menus, but when a server approached they only ordered two highballs. The server made no mention of food. After a period of time she walked to the kitchen to make

observations. She noted no aroma of food, no dirty dishes, no food being prepared, and no food waiting to be brought out of the kitchen.

At approximately 11:52, she and her partner ordered a pitcher of Sangria, and it was after midnight when the server provided the pitcher. At eighteen minutes past midnight the officers ordered another pitcher of Sangria and some shooters. She said the server brought the drinks to them at 12:30 a.m. She testified that the liquor inspectors arrived at approximately 1:00 and it was approximately that time that the two officers left.

Liquor inspector #1

This inspector testified that he has conducted approximately 300 licensed premise inspections including three at this specific establishment. He participated in the undercover operation with the VPD. He and the Branch Regional Manager attended at the establishment on August 1, 2009 at approximately 12:45 a.m. He said the music was loud, and it was so dark that it was difficult to read his notes in the establishment.

On entering he observed three males in the main area of the restaurant, each of whom appeared to have a glass of liquor in hand. He described the drinks as being contained in short clear glasses with clear liquid and ice. He did not check to see what the drinks were. He observed seven people dancing in an isle. He also observed a pitcher of reddish liquid that he described as "later proven to be Sangria" at a table with two female patrons. He later learned the two patrons were the undercover police officers. He said he also saw a patron with a full Corona beer, a patron with an "almost full" glass of white wine, and a patron with a rye and seven drink that he confirmed was such by asking the patron.

He described walking to the kitchen, having a clear and unobstructed view through the food preparation area, and observing no evidence of food or food

preparation, no dirty dishes or utensils, and no pots or pans in use. He said he could not see the dishwasher from his vantage point.

He testified that inside the restaurant he observed no food or evidence of any patrons consuming anything other than candy from small candy dishes that were on most tables. The inspector testified that he found the manager and asked him to turn the music down so they could converse. The manager did so. The inspector asked the manager what time it was and the manager said: 12:50 a.m. The inspector confirmed the time by checking his own watch. He said the conversation did not go well, and he exited the premises at approximately 1:10 a.m.

The inspector identified the documents in Exhibit #1. He also said that the recommended penalty is appropriate because a liquor license suspension would allow the Licensee to continue deal with the service of food while liquor was unavailable, which is supposed to be the establishment's primary focus. He said that as the Licensee advised him that the establishment was having financial difficulty, the inspector thought a monetary penalty inappropriate. He said that consumption of liquor without food in a food primary establishment is of concern for the VPD and the Branch. It is known that a bar requires more resources allocated to it than a restaurant in the context of public safety. The community is not anticipating the same issues from an establishment known to be, or expected to be, a restaurant. He added that food primary license applications are not subject to the same rigorous public input processes as are liquor primary licenses, therefore operating a food primary establishment as if it had a liquor primary license circumvents a public scrutiny process that is critical to liquor licensing in British Columbia. The witness also testified that the Licensee has been to education and compliance meetings with the Branch and should know the terms and conditions of his license well.

Branch Regional Manager

A Regional Manager testified that she attended the pre-inspection meeting with the police and then attended at the establishment with the liquor inspector on August 1, 2009 at approximately 12:47. Her observations of the establishment were of a loud, dimly lit environment in which it was hard to communicate effectively with the inspector. She testified that she did not know that the Licensee had applied for, and been denied, a special occasion license for the business day of July 31, 2009. She did note that night was part of Gay Pride Week.

She was not in the establishment for very long when a difference of opinion seemed to occur between the inspector and the Licensee, which she described as being unpleasant. As a result of the tenor of the Licensee's remarks, a party of male patrons approached her and caused her to feel unsafe. She therefore sent a text to the police constables positioned outside the establishment for support. The police arrived promptly and the Regional manager and the liquor inspector left without incident.

Police constable #3

This witness testified that he has been a member of the VPD for more than ten years and has done a dozen LPCs. He was working as part of the Granville Mall squad in uniform on August 14/15, 2009 and attended at the establishment at 12:50 am on August 15. He was familiar with the establishment as he had been there for the purpose of conducting LPCs on at least two previous occasions. He was aware of the terms of the Licensee's food primary license and in particular that liquor hours ended at midnight and all liquor had to be cleared from the tables and patrons by 12:30 a.m. He said he saw two patrons with glasses in hand and he approached them and asked what they were drinking. The patrons replied that they were drinking vodka and water. He smelled one of the drinks and confirmed that it smelled like vodka and water. He checked the patrons' ID. The officer then ascertained the identity of the establishment's manager and

issued him a ticket for failing to clear liquor within a half hour of the hours of liquor service.

Police constable #4

This witness testified that he has been a member of the VPD for 11 years and has conducted between 100 and 200 LPCs. He said that he was working the night of August 14/15, 2009 and that he entered the establishment at approximately 12:50 a.m. He was in uniform. He said the establishment appeared to be open and was operating. Inside, he noted that there were less than a dozen patrons present. He observed his partner approach two individuals who were drinking by the bar. He watched his partner converse with the patrons and then smell one of the two visible drinks. His partner advised him that the drink was vodka and water.

Liquor inspector #2

This witness was not present at the establishment on either date on which the contraventions were alleged to have occurred. He testified that he is the inspector primarily responsible for the establishment and he is the author of the NOEAs. He confirmed the food primary nature of the license and the hours of operation. He identified the applicability of the *Guide* and the terms and conditions of the license shown on its face. He received the police LPC and the police general occurrence report for each allegation. He produced the NOEAs as a result of receipt of those documents. He testified that he prepared the contravention notices and mailed them to the Licensee.

The inspector also identified the food primary licensee interview sheet and compliance meeting forms in Exhibit #1 at tabs 14, 15, and 16. He said he recalled going through the forms with the Licensee on November 26, 2008 and September 21, 2009. He recalls that at the time he completed the compliance meeting forms, he had concerns about staff consuming liquor, about the Licensee failing to clear liquor as required by the license and about whether the

Licensee was intending on operating the establishment as a food primary licensed establishment. The inspector had the Licensee sign commitments to operate as the license was intended and to follow the rules.

The inspector was not present at the June 18, 2009 compliance meeting. He asked the inspector who conducted the meeting to emphasize the need to clear liquor in a timely fashion and to operate the establishment in accordance with food primary rules and objectives. He followed-up with the inspector and confirmed that these concerns were addressed in the meeting.

This witness testified that the recommended suspensions represent the minimum suspensions for the corresponding contraventions, and the implementation of those suspensions would allow the establishment to remain open and serve food. He said the imposed focus on food service would allow the Licensee to change its outlook on how it needs to operate the facility.

Manager

The Licensee's manager testified that for July 31, 2009 the establishment had applied for a special occasion license to allow for extended hours as it was Gay Pride week and they were planning to host a fundraising event. The special occasion license was denied. He said it was therefore "business as usual" on that night and he so advised his staff. He said that at 12:40 am (August 1, 2009) liquor inspectors were in attendance and told him that there was liquor still on the tables. He told the inspectors that the staff was performing their closing duties and there was no liquor on the tables.

The manager also testified that in his opinion the Branch was targeting the establishment because the Branch thought the establishment was providing a hangout for gang members.

Server

The server testified that he had been working at the establishment for nine months at the time of the first alleged contravention. He said his most important duty was to make sure that anyone ordering a drink was of age. He said he does not specifically remember the nights of the alleged contraventions but he is sure he did not take any drink orders after midnight because he never takes drink orders after hours. He said that is his usual practice. He also said that he never drinks while on duty.

Patron

A patron testified that he was present at the establishment on August 15, 2009. He said that when last call was announced at 11:45, he and his friend each ordered one glass of water and one glass of vodka and water. He said each of the drinks had a slice of lime and a straw and looked identical. He said at some time, the server told them the alcohol had to be cleared away. He did not want to give up his drink so he told the bartender that his vodka drink was just water. He testified that shortly after that a police officer approached him and asked what he was drinking. He told the officer the truth, that it was vodka and water. The officer smelled the drink and confirmed that it was a vodka drink.

Licensee

The Licensee testified that at 12:30 am on August 1, 2009, he was upstairs in the office with the establishment's manager when he heard that Branch representatives were in the building. He said that ten minutes later he went downstairs and he encountered liquor inspectors telling his staff to clear the tables of liquor.

He said he had applied and was denied a special occasion license for that night. He said he believes that the license was denied, and the inspection planned, in order to trap him with liquor on the tables. He said that the special occasion license was not denied until July 31, 2009 and that confirms the inspection was a

“set up”. He said that even though the special occasion license was denied, all of the cover charge money collected went to AIDS research.

The Licensee said that August 14, 2009 was a normal day and at “12:30 I was downstairs and the staff was cleaning and getting ready to close down.” He said that a patron had clearly lied to the server about the contents of his drink by saying it was water only. He does not think the establishment should be responsible for failing to clear that drink because it was reasonable to conclude that it was just water. He testified that he did not ask the server to come in to testify at the hearing.

SUBMISSIONS

The Licensee submits that he believes the establishment was targeted by the branch and subject to unfair enforcement of the rules. He said that ten percent of all of the inspections his liquor inspector does is at his establishment. He also said that he does not know who is a gang member and who is not. He only has customers and if they are well behaved he has no problem serving them. He also said that his staff has no control over a patron who lies to the server about the contents of a drink and should not be held responsible for that. He knows liquor has to be off the tables by 12:30 a.m., and he enforces that rule.

The Branch submits that the allegations are supported by the evidence, that there is no evidence that the Licensee has adequate policies and procedures to ensure compliance with the *Act* and *Regulations*, and that the recommended penalties are reasonable and appropriate.

ANALYSIS AND DECISION

The first allegation against the licensee is that on July 31-August 1, 2009, it was operating contrary to the primary purpose noted on its food primary liquor

licence. The service of food, during all hours of operation, is a term and condition of all food primary liquor licences. The licensing process for a liquor primary licence is much more stringent and lengthy than it is for a food primary licence. A food primary establishment that acts as a bar circumvents this licensing process, and in doing so commits a serious contravention.

The Licensee is also alleged to have failed to clear liquor from patrons within ½ hour after liquor service hours on two separate occasions: the business days of July 31 and August 14, 2009. The hours for liquor service are found on the licence at tab 9 of Exhibit 1 and clearly show that liquor service ends at midnight. The hours when a licensed establishment may sell liquor reflect community standards. Hours of liquor sales affect the surrounding residents and businesses in the community. If a licensee fails to take liquor from patrons, patrons may continue to consume liquor while the restaurant remains open, even though the hours of liquor service have ended. This can also result in the establishment shifting its primary focus.

The Licensee has been operating this establishment since the beginning of 2008. Since then the branch has raised concerns with him regarding how the establishment is operating. This is confirmed by the compliance meeting records in Exhibit #1 at tabs 14, 15, and 16. Inspector #2 described multiple compliance meetings he has had with the Licensee since the establishment began operation in 2008. He reviewed the terms and conditions with the Licensee, specifically the differences between a food primary and a liquor primary licence. Further, a compliance meeting was conducted just two months prior to the July 31, 2009 inspection wherein commitments were made by the Licensee to ensure liquor was removed from patrons by the time required by the liquor licence.

I find that Police Constables #1 and #2 were candid and straightforward in their testimony. Their testimony leads to a conclusion that the establishment was operating contrary to its primary purpose as a food primary establishment on the

business day of July 31, 2009. The evidence shows that the level of music playing was at a level that would make normal conversation difficult. The volume of music is not background music but music that requires that one raise one's voice to be heard. Patrons were wandering with drinks and some patrons were dancing. Although patron participation entertainment is not an allegation before me, the dancing did contribute to the atmosphere that the establishment was not being operated as a restaurant. Patrons were greeted at the door by staff and asked for a cover charge. Again, I find this fact contributes to the overall nature of the bar-like environment provided by the Licensee.

While in attendance for approximately two hours, Police Constables #1 and #2 observed the kitchen was staffed, but not operating at the level that one would expect for a food primary establishment. Evidence also discloses that servers were observed carrying trays of liquor to and fro, but there are few observations attesting to food service. In contrast, the officers observed patrons, both at tables and standing, who appeared to be consuming liquor.

I also note that although the Licensee has control of liquor and food sales records, it did not present sufficient evidence of food to liquor sales ratios or records of the volume of food sold during relevant periods. To the extent that some records were provided as Exhibit #2, the licensee did not use the exhibit to demonstrate either favourable ratios or the total food sales on July 31/August 1. I find it appropriate to make an adverse inference in this regard and determine that the food to liquor sales ratio and the volume of food sales evidence do not support the Licensee's defence that it was operating a food primary establishment.

Police Constables #1 and #2 also testified that at no time did a staff member advise them that liquor service had ended or that the staff member would have to clear the liquor from their table after 12:30 a.m. Indeed, I heard corroborated testimony that a server poured more Sangria into the officer's glasses beyond the

time for liquor service as defined on the license. I found this evidence to be credible and reliable.

Police Constable #3 and #4, who attended the establishment at approximately 12:50 a.m. on August 15 testified that they noted two patrons in the establishment with liquor in front of them. One patron testified that this was so. Although the patron said that he lied to the server about his drink consisting of only water, I find that server had an obligation to remove that drink from the patron if there was any doubt about its contents, and I find that there should have been such doubt based on the uncontested fact that the patron had ordered two similar looking drinks, one alcohol and one not. I note also that the police officers had no difficulty ascertaining the contents of the drink. The server could have removed the drink and replaced it with a fresh glass of water to ensure compliance with the *Act* and simultaneously provide appropriate service to the patron.

Liquor Inspector #2 testified as to the Branch's concerns with restaurants operating outside of class and continuing to serve liquor past the permitted hours of liquor service. The inspector also testified as to concerns with establishments not requiring patrons to eat with the service of liquor and how this could lead to intoxication. He explained that this establishment is located on Granville Street in the downtown entertainment district in close proximity to other licensed establishments who share the responsibility of operating in accordance with license terms. It is also near residential buildings.

The Licensee testified that he believes the Branch and/or the police have an alternative agenda, which causes them to focus unduly on the compliance of this particular establishment. I find insufficient evidence of unfair or targeted inspections. The Licensee must comply with its obligations, as must all licensed establishments in British Columbia.

There is insufficient evidence before me that demonstrates that the licensee provides liquor service staff with adequate training and then checks on the efficacy of the training, through testing or other means. There is no evidence of any policy manual. There is no evidence of instruction provided to staff as to how to ensure that the establishment's primary focus is on the service of food during all hours or how to ensure that liquor is taken from patrons within ½ hour after liquor service hours end.

The testimony of Inspector #2 confirms that the Branch provided the Licensee with ample briefings and opportunities to learn about, and comply with, the food primary liquor licence rules. There is no acceptable explanation for the Licensee failing to comply with rules on which it had clear and repetitive instruction.

The testimony of the Licensee indicates that at 12:40 on August 1, 2009 (business day of July 31, 2009) his staff was being advised to clear liquor from the tables by Branch representatives. He did not deny that there was liquor on the tables at that point. It was already ten minutes past the time at which liquor had to be cleared. The licensee also said that on August 15, 2009, the staff was getting ready to close down at 12:30. This is the time at which all alcohol should have been cleared from the tables. It is not the time to begin to clear the tables of liquor. I find that this testimony confirms that the establishment operates without a definite deadline as to the moment that liquor must be cleared in order to comply with the *Act*.

Based on the evidence presented in the exhibits and the oral testimony of the witnesses, I find that all three contraventions occurred as alleged. Further, having turned my mind to the issue of potential due diligence by the Licensee, I find that the evidence discloses insufficient evidence of policies and procedures, or effective practices of education, training and testing that would support a finding that the Licensee was duly diligent with respect to any of the contraventions.

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 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 by the minimums set out in Schedule 4 of the *Regulations*. However, 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 penalties proposed in the Notices of Enforcement Action.

The terms of the license are fixed and enforceable, and include compliance with the *Act* and *Regulation*. It is the sole responsibility of the Licensee to ensure compliance with these terms while operating the establishment.

While the Branch wishes to have voluntary compliance, it has the mandate to assure compliance through enforcement action if required to do so.

For the purposes of this adjudication, I must consider past contraventions proven and alleged as a whole and in the context of this enforcement action. The licensee has no proven compliance history. The contraventions I found to have

occurred on the business day of July 31, 2009 are therefore first contraventions for the purpose of assessing a penalty in accordance with the *Regulation*.

My finding of a contravention of s. 44(1)(b) of the *Regulation* on August 15, 2009, however, is a second contravention of its type as a result of my findings relating to the business day of July 31, 2009.

Schedule 4 of the *Regulation* provides the range of penalties for contraventions of the *Act* and *Regulation*. The penalty range for a first contravention of operating contrary to primary purpose is ten (10) to fifteen (15) days suspension of the liquor licence and/or a monetary penalty of \$7,500-\$10,000.

The penalty range for a first contravention of failing to clear within ½ hour is four (4) to seven (7) days suspension of the liquor licence and/or a monetary penalty of \$5,000-\$7,000. The range for a second contravention of this type is ten (10) to fourteen (14) days suspension.

Typically, the only situation in which no penalty is assessed is when the adjudicator is satisfied that voluntary compliance with the Licensee's obligations will be obtained without a penalty. In this case, I have insufficient evidence that voluntary compliance would be so obtained. The evidence disclosed previous Branch concerns and irregularities in practice that suggest that the Licensee is unable or unwilling to control the operation of the establishment in accordance with the required regulatory scheme. I am therefore not persuaded by the Licensee's plea that it should be excused from a penalty for these contraventions. As to the nature and extent of the penalty, I find that suspensions are warranted.

I find the appropriate penalty for the contraventions to be as follows:

July 31/August 1, 2009 contraventions (EH09-086)

- Operating contrary to the primary purpose of the licence -Ten (10) day licence suspension.
- Failing to clear liquor within ½ hour of liquor service hours - Six (6) day licence suspension. Although Inspector #2 was incorrect in testifying that only the minimum suspensions have been sought (the minimum suspension indicated by the rules for a first contravention is four days, not six), I find that the recommended suspension for this contravention is reasonable in light of the frequency with which the Licensee was advised and reminded of his obligations in that regard and his repeated commitment to honouring that obligation.

August 15, 2009 contravention (EH09-094)

- Failing to clear liquor within ½ hour of liquor service hours – Ten (10) day licence suspension.

ORDER

Pursuant to section 20(2) of the Act, I order a suspension of the food primary licence 302928 for a period of twenty-six (26) days to commence at the close of business on Thursday, March 4, 2010, and to continue each succeeding business day until the suspension is completed. "Business day" means a day on which the Licensee's establishment would normally be open for business (section 67 of the *Regulations*). I direct that liquor licence 302928 be held by the branch or the Vancouver Police Department from the close of business on Thursday

March 4, 2010 until the Licensee has demonstrated to the Branch's satisfaction that the Licensed establishment has been closed for twenty-six (26) days.

Original signed by

Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: January 12, 2010

cc: Vancouver Police Department

Liquor Control and Licensing Branch, Vancouver office
Attn: Donna Lister, Regional Manager

Liquor Control and Licensing Branch, Vancouver office
Attn : Peter Mior, Branch Advocate