



**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:	The Grateful Fed Pub 509 Bernard Avenue Kelowna, BC V1Y 6N9
Case:	EH10-143
For the Licensee:	No participant
For the Branch:	Peter Mior
Enforcement Hearing Adjudicator:	Sheldon M. Seigel
Date of Hearing:	March 10, 2011
Place of Hearing:	Teleconference Call
Date of Decision:	March 22, 2011

INTRODUCTION

Christine and Kamel Abougoush (the Licensee) hold Liquor Primary Licence 303467 under which they operate the Grateful Fed Pub located in Kelowna. The licence indicates that liquor may be sold from 10:00 a.m. to 1:00 a.m. seven days per week.

The liquor primary licence specifies a patron capacity of 49, with an additional 41 patrons permitted in a patio area. The terms and conditions on the face of the licence include the following condition: "Patio must be closed and locked at 12, Midnight daily."

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*" ("*Guide*").

ALLEGED CONTRAVENTION(S) AND PROPOSED PENALTY

The branch's allegations and proposed penalty are set out in a Notice of Enforcement Action (NOEA) EH10-143, dated January 4, 2011.

The branch alleges that on October 7, 2010, at approximately 12:20 a.m. the licensee contravened section 12 of the *Liquor Control and Licensing Act* (the *Act*) and the terms and conditions of its licence by failing to ensure that the patio is closed and locked by 12:00 midnight. The branch proposes a \$2,000 monetary penalty in accordance with item 46 of Schedule 4 of the *Liquor Control & Licensing Regulation* (the *Regulation*).

RELEVANT STATUTORY PROVISIONS***Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267*****Licences**

12 (1) The general manager, having regard for the public interest, may, on application, issue a licence for the sale of liquor.

(2) The general manager may, in respect of any licence that is being or has been issued, impose, in the public interest, terms and conditions

(a) that vary the terms and conditions to which the licence is subject under the regulations, or

(b) that are in addition to those referred to in paragraph (a).

(3) Without limiting subsection (2), the terms and conditions referred to in that subsection may

(a) limit the type of liquor to be offered for sale,

(b) designate the areas of an establishment, both indoor and outdoor, where liquor may be sold and served,

(c) limit the days and hours that an establishment is permitted to be open for the sale of liquor,

(d) designate the areas within an establishment where minors are permitted,

(e) approve, prohibit or restrict games and entertainment in an establishment,

(f) exempt a class or category of licensee from requirements with respect to serving food and non-alcoholic beverages in an establishment,

(g) vary seating requirements in the dining area of an establishment,

(h) vary requirements with respect to the location of an establishment,

(i) exempt a class of licensee from requirements with respect to marine facilities where liquor is sold,

(j) specify the manner in which sponsorship by a liquor manufacturer or an agent under section 52 may be conducted and place restrictions on the types of events, activities or organizations that may be sponsored,

(k) specify requirements for reporting and record keeping, and

(l) control signs used in or for an establishment.

ISSUES

1. Did the licensee contravene the *Act* as alleged?
2. If so, what penalty, if any, is appropriate?

EXHIBITS

Exhibit No.1: The branch's book of documents.

EVIDENCE

The hearing was held by teleconference call. The branch advocate and the liquor inspector appeared as expected, but the licensee did not. I delayed the start of the hearing by 15 minutes to allow the licensee to join. When he did not, I telephoned the licensee at the phone number provided to the branch. The call was answered by an answering service that identified it as that of the licensee. I did not leave a message. I reviewed the documents and correspondence shared between the branch and the licensee and I am satisfied that the licensee had adequate and proper notice of the teleconference call. Further, I note that the licensee had expressed to the Registrar of the branch, his interest in delaying the enforcement process by whatever means available (confirmation in branch email February 24, 2011). I proceeded with the hearing in the licensee's absence on the basis that the branch has an obligation to the public to proceed with enforcement action on allegations of contraventions of the *Act* and/or *Regulation* in an expeditious manner. The licensee had a reasonable opportunity to attend the teleconference call and did not do so.

The branch advocate presented the liquor inspector as a witness. The inspector testified that he is the author of the NOEA in Exhibit No.1, and he identified the relevant documents in that exhibit. The inspector pointed to the term and condition indicated on the licence that requires the patio to be closed and locked by 12:00 midnight daily. The inspector indicated that on October 7, 2011, the business day of October 6, 2011, he personally noted the patio was open and occupied by patrons at 12:20 and 12:39 a.m.

The inspector contacted the licensee on October 14, 2010, and advised of his observations and reminded the licensee that the patio had to be closed and locked by midnight. The inspector said that the licensee claimed that he thought the only restriction was that liquor could not be served after midnight. The licensee did not deny that the patio was open and not locked on the occasion in issue. The liquor inspector added that the licensee had a challenging demeanour and was difficult to deal with on this occasion.

The inspector also testified that he has known the licensee through contact with the establishment for more than a year and he was confident that there were no barriers, language or otherwise, that would have rendered what was being communicated unintelligible.

Finally, the liquor inspector testified that although he did not personally conduct the pre-licence inspection, in the normal course of operations the licensee would have had all of the terms and conditions of the licence discussed with him at the time that this licence was granted for the establishment.

SUBMISSIONS

The branch advocate submitted that the *branch* had to repeatedly focus the licensee's attention on issues surrounding the patio.

The advocate also submitted that there was nothing to prevent the licensee from reading the liquor licence, and he has an obligation to know the terms and conditions of his licence and to operate within those terms and conditions.

Finally, the advocate submitted that the recommended monetary penalty is reasonable for a first contravention of this offence.

REASONS AND DECISION

I find that the correspondence makes it plain that the licensee knew of the teleconference hearing. The evidence is clear that the licensee did not disclose any reason why he could not participate in the teleconference hearing.

I find that the licensee did contravene s.12 of the *Act* by failing to comply with the terms and conditions of the licence. The licence plainly states on its face that the patio must be closed and locked by 12:00 midnight daily. The evidence of the liquor inspector is uncontroverted and clear that there were patrons occupying the patio beyond 12:00 midnight on October 7, 2010 (business day of October 6, 2010). The licensee failed to dispute this information when faced with the allegation in the pre-hearing process. I accept the liquor inspector's evidence that the licensee claimed not to be aware of the condition, but I find this claim to be incredible.

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 may do any one or more of the following:

- 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 or this establishment within the year preceding this incident. The range of penalties for a first contravention of section 12 of the *Act* pursuant to the *Regulation*, Schedule 4, item 46, is a licence suspension of one (1) to three (3) days and/or a monetary penalty of \$1,000 - \$3,000.

The branch has recommended a monetary penalty of \$2,000, a mid-range monetary penalty as a result of the contravention.

The establishment has a history of contraventions particularly including reference to the patio that belies the short existence of The Grateful Fed Pub as a liquor primary establishment. The licensee seems to have difficulty managing the patio in the manner in which it must be managed. I find this mid-range monetary penalty to be reasonable in the circumstances.

ORDER

Pursuant to Section 20(2) of the *Act*, I order that the licensee pay a monetary penalty of Two Thousand Dollars (\$2,000) to the general manager of the Liquor Control and Licensing Branch on or before April 22, 2011.

Original signed by

Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: March 22, 2011

cc: Liquor Control and Licensing Branch, Victoria Office
Attn: Gary Barker, Regional Manager

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