



**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: Koto Japanese Restaurants (2012) Ltd.,
dba Koto Japanese Restaurant (Victoria)
510 Fort Street
Victoria, BC V8W 1E6

Case: EH14-011

For the Licensee: Tinh Hon Truong

For the Branch: Cristal Scheer

General Manager's Delegate: George C.E. Fuller

Date of Hearing: Written Submissions

Date of Decision: September 11, 2014

Ministry of Justice

Liquor Control and
Licensing Branch

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INTRODUCTION

The Licensee, Koto Japanese Restaurants (2012) Ltd., (the "Licensee") owns and operates an establishment known as the Koto Japanese Restaurant (Victoria), in Victoria, BC. The Licensee holds Food Primary Licence number 145766 (the "Licence"). The authorized representative of the Licensee is Tinh Hon Truong.

According to the terms of its Licence, the Licensee may sell liquor from 11:30 a.m. to 1:30 a.m., Monday through Saturday and 11:00 a.m. to midnight on Sunday. 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" (the "Guide").

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Liquor Control and Licensing Branch's (the "Branch") allegations and proposed penalty are set out in the Notice of Enforcement Action (the "NOEA") dated April 2, 2014.

The Branch alleges that on January 24, 2014, the Licensee contravened section 13(3) of the *Liquor Control and Licensing Act* (the "Act") and section 43 of the *Liquor Control and Licensing Regulation* (the "Regulation") by not providing proof of Serving It Right certification for staff.

The proposed enforcement action outlined in the NOEA is a \$1,000 monetary penalty. This proposed monetary penalty falls within the penalty range set out in item 23, Schedule 4 of the Regulation for a first contravention of this type.

The Licensee does not dispute that the contravention occurred as alleged, nor is the Licensee pursuing a defence of due diligence. The Licensee disputes the proposed enforcement action and requests that, if any penalty is to be imposed, that it simply be a warning.

RELEVANT STATUTORY PROVISIONS***Liquor Control and Licensing Act [RSBC 1996] Chapter 267*****Training**

13(3) A person must not manage a licensed establishment unless the person has successfully completed a prescribed training program.

Liquor Control and Licensing Regulation**Beverage service training**

43(1) for the purposes of this regulation and section 13 of the Act, "training program" means the training program entitled "Serving It Right" The Responsible Beverage Service Program, delivered under the auspices of a person or organization approved by the general manager.

ISSUES

1. Did the contravention occur?
2. Was the Licensee duly diligent?
3. If the Licensee was not duly diligent, is a penalty warranted under the circumstances?
4. If a penalty is warranted, what is the appropriate penalty?

EXHIBITS

The following documents were submitted for consideration:

- Exhibit 1:** The Branch's book of documents, tabs 1 to 11 inclusive.
- Exhibit 2:** Email letter to the Branch from the Licensee dated July 31, 2014, setting out the Licensee's position with respect to an appropriate penalty.

EVIDENCE – BRANCH

As previously noted, the Licensee does not dispute that the contravention occurred as alleged, nor does it seek the benefit of the defence of due diligence. It is deemed, therefore, to accept the facts as put forward by the Branch with respect to the issue of whether the contravention occurred. The Licensee has, however, made submissions in respect to the appropriateness and fairness of the penalty which the Branch has recommended. Accordingly, the evidence may be summarized as set out below.

On Friday, January 24, 2014, at approximately 1:55 p.m., liquor inspectors A and B were conducting routine liquor licence inspections in the Victoria area. At that time, the liquor inspectors attended the Licensee's establishment to follow up on a previous contravention notice where no staff on duty had their Serving It Right certification.

When the inspectors entered the restaurant they were approached by a male server. Inspector A identified herself as a liquor inspector and asked to speak to the owner. The server stated that the owner was not in the establishment as he had gone to pick up some supplies for the restaurant. Inspector A asked the server if there was anyone working who had their Serving It Right. The male replied that no one working had their Serving It Right certificate. The restaurant was open for regular business at this time and had some customers.

While conducting the inspection the owner spoke with inspector A over the phone and confirmed that he had his Serving It Right certificate but, clearly, he was not at the restaurant.

SUBMISSIONS – BRANCH

The Branch submits that it has demonstrated on the evidence that, on January 24, 2014, at approximately 1:55 p.m., the Licensee contravened section 13(3) of the Act and Section 43 of the Regulation, by not providing proof of Serving It Right certification for staff when requested.

SUBMISSIONS—LICENSEE

The Licensee stated that, in August the previous year, he did not understand Serving It Right to be an issue. He thought that the liquor inspector was concerned about a patio table and happy hour. The Licensee changed these things right away because he complies with the law.

The Licensee said that he had told all his staff to get Serving It Right but they were slow in doing so. After the Licensee found out about the January 24, 2014 contravention notice, he had a meeting with all staff and told them that if they didn't obtain their Serving It Right they would be fired. The Licensee said that all the staff obtained their Serving It Right within a week.

Since he is now in compliance, and it was always his intention to follow the rules, the Licensee feels that he should only get a warning instead of a monetary penalty of \$1,000.

ANALYSIS AND DECISION

Contravention

The Licensee has admitted to the contravention. Having considered all of the evidence and the submissions filed in these proceedings, I find that on January 24, 2014 the Licensee contravened the Act and the Regulation by not providing proof of Serving It Right certification for staff.

Due Diligence

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

The onus is upon the Licensee to provide this defence on a balance of probabilities. The Licensee here did not present the defence of due diligence. I find, therefore, that the Licensee has not established the defence of due diligence.

Accordingly, I find that the Licensee contravened Section 13(3) of the Act and Section 43 of the Regulation by not providing proof of Serving It Right certification for staff.

PENALTY

Pursuant to Section 20(2) of the Act, having found that the Licensee has contravened the Act, the Regulation or the terms and conditions of the Licence, I have discretion to order one or more of the following enforcement actions:

- Take no enforcement action
- 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 and/or a monetary penalty is warranted, I am bound by the minimum 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.

The Branch's primary goal in bringing enforcement action and imposing penalties is to achieve compliance with the Act, Regulation, and the terms and conditions of the licence. Among the factors that I have considered in determining the appropriate penalty in this case are: whether there was a past history of warnings by the Branch and/or the police, the seriousness of the contravention, the threat to public safety, and the well-being of the community.

There are no proven contraventions of the same type for this Licensee within the year preceding this incident. Schedule 4 item 23 of the Regulation sets out penalties for first contraventions of section 13(3) of the Act: a Licence suspension of between one to three days and/or a monetary penalty of between \$1,000 and \$3,000. The Branch has recommended a \$1,000 monetary penalty, which is the minimum monetary penalty for this particular contravention.

Licensees are obligated to comply with the Act, Regulation, and the terms and conditions of their licenses. Enforcement actions are intended to both address the Licensee's non-compliance, and to encourage future compliance by way of deterrents.

In considering the Licensee's plea for leniency, by way of a warning only, I have reviewed the totality of the Licensee's compliance record. That record discloses that this Licensee has had some difficulty in the past with regard to the need to fully comply with the requirements of the Act, Regulation, and the terms and conditions of its licence. For example:

- On July 23, 2013, during a routine inspection, the inspector found that no staff on shift had their Serving It Right certificate. The inspector provided a verbal warning to the Licensee on this occasion.
- On August 6, 2013, this Licensee was, again, operating with no staff on shift with a Serving It Right certificate. On this occasion, no enforcement action was recommended but the Licensee was advised that compliance was expected in the future.

In light of all of the above, I find that a \$1,000 monetary penalty is appropriate in the circumstances, in order to encourage compliance with section 13(3) of the Act, and section 43 of the Regulation by this Licensee.

ORDER

Pursuant to section 20(2) of the Act, I order that the Licensee pay a monetary penalty in the sum of \$1,000 to the General Manager of the Liquor Control and Licensing Branch, and I direct that this monetary penalty be paid to the General Manager on or before October 15, 2014.

Signs satisfactory to the General Manager showing that a monetary penalty has been imposed will be placed in a prominent location in the establishment by a Liquor Control and Licensing Branch inspector, or a police officer.

Original signed by

George C.E. Fuller
Enforcement Hearing Adjudicator

Date: September 11, 2014

cc: Liquor Control and Licensing Branch, Victoria Regional Office
Attn: Jay Blackwell, A/Regional Manager

Liquor Control and Licensing Branch, Vancouver Regional Office
Attn: Cristal Scheer, Branch Advocate