

A Hearing Under Section 6 of the *Tobacco Control Act* R.S.B.C. 1996, c. 451
as amended

Regarding an alleged Contravention of Section 2(2) of the
Tobacco Control Act R.S.B.C. 1996, c.451

- by -

Kelland Foods Ltd (sometime doing business as Quality Foods),
(the “Respondent”)

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| Administrator’s Delegate under Section 5 of the <i>Tobacco Control Act</i> : | Hugh McCall |
| Date of Hearing: | October 15 and 16, 2012 |
| Final submissions completed: | November 5, 2012 |
| Place of Hearing: | Nanaimo, British Columbia |
| Date of Decision: | December 2, 2012 |
| Decision re dates of prohibition period: | December 13, 2012 |
| Appearing: | |
| For Kelland Foods Ltd | David Perry, Counsel |
| For Tracey Benisch | Self-represented |
| For the Vancouver Island Health Authority: | Kathryn Stuart, Counsel Ryan Bortolin, Counsel |

Decision

Background

1. On October 15 and 16, 2012, I conducted a hearing into whether or not Kelland Foods Ltd (sometime doing business as Quality Foods) and Tracey Benisch, employee of Kelland Foods Ltd, had contravened Section 2(2) of the *Tobacco Control Act* (the “Act”) by selling tobacco to a minor. The Regulation provides, in section 2, that “[T]he age for the purposes of section S.2 (2) of the Act is 19 years.”

2. Following the presentation of the evidence and submissions at the hearing scheduled for October 15 and 16, 2012, final submissions were made by the parties on November 5, 2012.
3. On December 2, 2012, I issued a decision concluding that Kelland Foods Ltd and Tracey Benisch had contravened s. 2(2) of the *Act*. The decision contained the penalty decided upon by me for both parties.

Law

4. Section 6.1 of the *Act* provides that, if the administrator is satisfied that a person has contravened the *Act*, the administrator may a) make an order imposing a monetary penalty on the person, in accordance with the prescribed schedule of penalties and b) prohibit the person, in accordance with the prescribed schedule of prohibition periods, from selling tobacco or offering to sell tobacco.
5. Section 13 of the *Tobacco Control Regulation* sets out a number of factors the administrator must consider in imposing an administrative penalty.

PENALTY

6. The Administrator's delegate, Hugh McCall, gave the following penalty for Kelland Foods Ltd:
 - a) A monetary penalty in the amount of \$1,000; and
 - b) A 28 day license suspension, effective from December 21, 2012 until January 17, 2013.

For Tracey Benisch:

- a) A monetary penalty in the amount of \$150.

7. I am satisfied that the penalty is both in compliance with the *Act* and *Regulations*, and is appropriate in the circumstances.

ORDER

8. Pursuant to Section 6.1(2) of the *Act*, I **ORDER** that Kelland Foods Ltd pay a monetary penalty in the amount of **\$1,000**, which is due and payable upon service of this Order. I **FURTHER ORDER** that Kelland Foods Ltd be prohibited from selling tobacco or offering to sell tobacco at Unit 1 – 2443 Collins Crescent, Nanoose Bay, B.C. for the period December 21, 2012 until January 17, 2013, inclusive. I, **ORDER** that Tracey Bensich pay a monetary penalty in the amount of \$150.



Hugh McCall, Administrator's Delegate