



**DECISION OF THE
GENERAL MANAGER
LIQUOR CONTROL AND LICENSING BRANCH**

**IN THE MATTER OF
A hearing pursuant to Section 51 of
*The Liquor Control and Licensing Act, S.B.C. 2015, c. 19***

Licensee:	1001673 B.C. Ltd. dba Peachland Sushi 16-5500 Clements Crescent V0H 1X5
Case:	EH17-026
For the Branch:	Hugh Trenchard
General Manager's Delegate:	R. John Rogers
Date of Hearing:	June 19, 2017
Date of Decision:	September 12, 2017

INTRODUCTION

1001673 B.C. Ltd. (the "Licensee") holds Food Primary Licence No. 306424 (the "Licence"), pursuant to which it operates a restaurant called "Peachland Sushi" at 16-5500 Clements Crescent, Peachland, B.C., V0H 1X5 (the "Establishment").

According to the terms of the Licence, the Licensee may sell liquor from 10:00 a.m. to 10:00 p.m. Monday through Sunday.

The Licence is, as are all liquor licences issued in the Province, subject to the terms and conditions contained in the publication "Licensee Retail Store Licence, Terms and Conditions, A Guide for Liquor Licensees in British Columbia" (the "Terms and Conditions Handbook").

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Liquor Control and Licensing Branch's (the "Branch") allegations and proposed penalties are set out in the Notice of Enforcement Action dated April 6, 2017 (the "NOEA") (Exhibit 1 tab 1).

In the NOEA, the Branch alleges that the Licensee is in breach of Section 60(1) of the *Liquor Control and Licensing Act* S.B.C. 2015 c. 19 (the "Act") by permitting a person to operate the Establishment without the prescribed training or recertification.

In addition, the NOEA notes that the Licence contains certain terms and conditions which include the following:

Liquor may only be sold, served and consumed within the areas outlined in red on the official plan, unless otherwise endorsed or approved by the LCLB.

As well, the NOEA references the fact that the terms and conditions included in the Terms and Conditions Handbook are incorporated into and form part of the terms and conditions of the Licence.

In the NOEA, the Branch further alleges that the Licensee was in breach of these terms and conditions contained in the Licence in that the Licensee:

- Failed to provide access to an approved floor plan for the Establishment when asked by the liquor inspector to do so; and
- Failed to properly display the social responsibility poster.

Item 54, Schedule 2 of the *Liquor Control and Licensing Regulation*, B.C. Reg. 291/2016 (the "Regulation") sets out the range of penalties for a first contravention of these types of contraventions as being a 1 to 3 day licence suspension and/or a \$1,000 to \$3,000 monetary penalty. The Branch proposes either a one day suspension or a \$1,000 monetary penalty for each of these three alleged contraventions.

For the purposes of this hearing and in accordance with Section 5 of the Act, the General Manager has delegated to me the powers, duties and functions provided to the General Manager by Section 51 of the Act.

RELEVANT STATUTORY PROVISIONS OF THE ACT AND REGULATION

Liquor Control and Licensing Act S.B.C. 2015 c. 19

Training and recertification

60 (1) A licensee or permittee with a licence or permit of a prescribed class of licences or permits, or a person who, in accordance with section 18, uses a licence of a prescribed class of licences, must not operate an establishment or event site without first having successfully completed a prescribed training program or recertification as required by the regulations.

Liquor Control and Licensing Regulation, B.C. Reg. 291/2016

Schedule 2
Monetary Penalties and Licence Suspensions

General

Item	Contravention	Period of Suspension (Days)			Monetary Penalty
		First Contravention	Second Contravention	Subsequent Contraventions	
54	Contravention of any provision of the Act or this regulation or failure to comply with a term or condition not specifically referred to in this Schedule	1-3	3-6	6-9	\$1,000- \$3,000

ISSUES

1. Did the contraventions occur?
2. If so, has the Licensee established a defence to the contraventions?
3. If the contraventions are proven, what penalties, if any, are appropriate?

EXHIBITS

- Exhibit 1: Branch book of documents, tabs 1 to 16.
- Exhibit 2: Copies of documents purporting to reflect the delivery status of documents sent to the Licensee.
- Exhibit 3: A copy of Branch records from the Branch's Posse system noting the attendance of liquor inspectors at the Establishment.
- Exhibit 4: A copy of a print out of the liquor purchases by the Licensee over the term of the Licence.

THE LICENSEE'S NON-APPEARANCE

This hearing was scheduled to commence at 9:30 a.m. on June 19, 2017. When a representative of the Licensee had not appeared by that time, the hearing was adjourned and the Branch Advocate was instructed to attempt to contact the Licensee's representative. This he attempted to do by telephone.

The Branch Advocate called the telephone number given to the Branch by the Licensee and by which the Branch's representative had in past communicated with the Licensee's representative. When no one answered the phone, the Branch Advocate left a voicemail message asking the recipient of the message to contact the Branch Advocate as soon as possible.

When there had been no such contact after an hour's wait, the Branch Advocate at 10:25 a.m. again called this telephone number and again left a voicemail message requesting that the recipient of the message return the Branch Advocate's call. In this second voicemail message, the Branch Advocate further advised the recipient of the message that if he had received no response to his voicemail message by 11:00 a.m., that the hearing would proceed in the absence of a representative of the Licensee.

When there had been no response to the Branch Advocate's telephone calls by 11:00 a.m., I elected to proceed with the hearing in the absence of the Licensee's representative.

WITNESSES

The Branch called the liquor inspector ("Inspector A") who issued the NOEA.

The Licensee was not represented at the hearing.

EVIDENCE—BRANCH

Inspector A

In his testimony, Inspector A stated that he had worked for the Branch since 2008 and is currently responsible for the Kelowna area. As part of his duties, he stated that he attempts to inspect every licensee in his area of responsibility at least every two years.

On February 28, 2017, he testified, he conducted a routine inspection at the Establishment and noted that the Establishment was not busy. During this inspection, he requested that the Licensee's representative produce the approved floor plan detailing in red the area within which liquor could be sold, served and consumed within the Establishment pursuant to the Licence. The Licensee's representative was unable to do so.

Inspector A then asked this person if he had the required social responsible poster or tent card, and the Licensee's representative produced the poster from a drawer behind the counter. Inspector A noted in his testimony that this poster was not on display in the Establishment as required by the Terms and Conditions Handbook.

When Inspector A then asked the representative of the Licensee for his Serving It Right Certificate, Inspector A was told that a female in the kitchen area of the Establishment had this document. Inspector A testified that the Licensee's representative then began looking through some documents and after failing to produce a Serving It Right Certificate said to Inspector A "Why do you ask for it every year?".

When Inspector A explained to the Licensee's representative that having a Serving It Right Certificate was part of the terms and conditions of the Licence and that the Licensee's representative was required to produce documents such as these upon request, Inspector A confirmed that this person appeared to be agitated and upset.

Inspector A then advised the Licensee's representative that Inspector A believed that the Licensee was in contravention of its Licence and that Inspector A would be issuing a contravention notice and intended to schedule a compliance meeting to address the outstanding issues.

In his testimony before me, Inspector A expressed concern that there was a bit of a language barrier between him and the Licensee's representative. However, Inspector A testified that he was confident that the Licensee's representative fully understood what was occurring and what Inspector A had asked of him.

On Thursday, March 2, 2017, Inspector A testified that he had issued Contravention Notice B 015442 (Ex 1 tab 2) ("Contravention Notice") and had sent the same by registered mail to the Licensee together with a letter of the same date (Ex 1 tab 8). In this letter, Inspector A noted that he had confirmed that the Branch's policy was to achieve voluntary compliance with the terms and conditions of the Licence. To this end, Inspector A testified, in the letter he had provided his telephone number and had asked the Licensee to have its representative contact Inspector A to discuss the contents of the Contravention Notice in further detail.

When Inspector A had received no response to the letter of March 2, 2017, he testified that he had sent a further letter dated March 17, 2017 (Ex 1 tab 7) to the Licensee by registered mail. In this second letter, Inspector A noted:

- The letter of March 2, 2017 containing the Contravention Notice was delivered on March 3, 2017 and signed for by a representative of the Licensee;
- The Licensee had not responded to Inspector A's request to schedule a compliance meeting to address the outstanding contraventions; and
- If the compliance meeting was not held, then the Branch would proceed with an enforcement action.

The letter of March 17, 2017, Inspector A testified, was delivered to the Licensee and signed for on March 21, 2017.

When there was no response to the letter of March 17, 2017, Inspector A testified that he prepared the NOEA and arranged for it to be delivered to the Licensee. Thereafter there was an exchange of voicemails between him and the representative of the Licensee, but he was unable to secure agreement on the part of the Licensee to schedule the compliance meeting.

In his testimony, Inspector A noted:

- The Terms and Conditions Handbook (Ex 1 tab 13) at page 5 confirmed that a licensee is responsible for ensuring that its employees had taken the Serving It Right certification and that the Licensee was responsible for keeping records for at least six years that showed the name of each employee, their Serving It Right certificate number and the expiry date, if applicable;
- Similarly, at page 5 the Terms and Conditions Handbook requires a licensee to display at least one social responsibility poster or tent card; and
- Page 9 of the Terms and Conditions Handbook specifies that a licensee's floor plans must be immediately accessible.

Inspector A identified a copy of the compliance history of the Establishment (Ex 1 tab 6) confirming that the Licence was first issued on May 15, 2015 and that since this date, apart from the allegations in the NOEA, there were no recorded infractions. In addition, Inspector A produced a copy the Branch's records of inspections of the Establishment by Branch liquor inspectors and noted that he had inspected the Establishment on two previous occasions and at that time had noted deficiencies which, he believed, the Licensee had corrected.

Inspector A also produced a copy of a document detailing the liquor purchased by the Licensee for the Establishment over the term of the Licence, noting that since its issuance on May 15, 2015 over the almost 2 year period until February 28, 2017, the Licensee had purchased a total of \$4,946.95 of liquor for sale through the Establishment. He observed that it was obvious that very little liquor was sold through the Establishment over this time period.

Finally, Inspector A produced a copy of the initial interview sheet with the representatives of the Licensee which interview was conducted upon the issuance of the Licence in May 2015. He noted that the interview sheet which had been signed by representatives of the Licensee contained the statement that "Licensee viewed on-line education presentation (Korean)".

When recommending a penalty, Inspector A noted that the NOEA recommended the minimum penalties for the alleged offences. He testified that his intention was to

achieve voluntary compliance and not to penalize the Licensee, but that as he had had no response to his repeated attempts to communicate with the Licensee, he was left with no alternative but to proceed with the NOEA.

SUBMISSIONS – BRANCH

The Branch submitted that as the Licensee had not responded to the NOEA that the minimum penalties as set out in the NOEA were appropriate in the circumstances.

HEARING ADJOURNMENT

At the conclusion of the Branch's submissions, I adjourned the hearing until Tuesday, August 22, 2017 to deal with the very slight chance that the Licensee and its representative were unaware of the hearing's occurrence. To that end and in order to meet the Branch's goal of securing voluntary compliance with the terms and conditions of the Act, the Regulation and the Licence, I instructed Inspector A as the person responsible for the issuance of the NOEA to be in contact with the Licensee's representative, to advise this representative of the fact that the hearing had been adjourned until August 22, 2017, and to ensure that this representative was fully aware of the consequences of not participating in the hearing process.

My further instructions to the liquor inspector were that if prior to August 15, 2017 he was of the opinion that the Licensee had, in fact, come into compliance with the terms and conditions of its Licence, that he was to advise the Branch Advocate of this fact and that the Branch might at that point having achieved voluntary compliance, elect to discontinue the hearing process.

However, if, following his conversations with the representative of the Licensee, it appeared that the Licensee had elected to proceed with the hearing and that this representative confirmed that he would be in attendance on August 22, 2017, the adjourned hearing would resume on that date.

Finally, I instructed the liquor inspector and the Branch Advocate that as I had heard the Branch's evidence and submissions on this matter, that if either the Licensee elected

not to have its representative appear on August 22, 2017 or if such representative continued to fail to communicate with the Branch, that I would proceed with my decision based upon the Branch's presentation without further input from the Licensee.

The above instructions I included in a letter to the Branch dated June 21, 2017, a copy of which letter was emailed to the Licensee's representative on June 22, 2017 together with an email of that date.

The Branch then followed up with this email by further emails on July 13, 2017 and August 2, 2017 and received back no response.

On August 15, 2017, the Branch contacted a representative of the Licensee by telephone and asked to be advised if the Licensee wished to have its representative attend the hearing on August 22, 2017. When the Branch received no response from the Licensee to this telephone conversation, the Branch emailed the Licensee on August 16, 2017 advising the Licensee that as the Branch had received no advice as to whether or not the Licensee intended to have its representative attend the hearing on August 22, 2017, that in accordance with my letter of June 21, 2017, that I would proceed to decide this matter on the evidence and submissions of the Branch at the adjourned hearing on June 19, 2017.

REASONS AND DECISION

Contravention

As the Licensee, despite repeated attempts to encourage it to have its representative communicate with the Branch with respect to this matter, has chosen to refuse such communication, I have as I indicated in my letter of June 21, 2017, determined to proceed and determine this matter based upon the evidence of Inspector A and the submissions of the Branch at the hearing on June 19, 2017.

Based upon this evidence and these submissions, I find the Licensee as alleged in the NOEA to:

1. have acted in contravention of Section 60(1) of the *Liquor Control and Licensing Act* S.B.C. 2015 c. 19 (the "Act") by permitting a person to operate the Establishment without the prescribed training or recertification;
2. have breached a term and condition of the Licence by failing to provide access to an approved floor plan for the Establishment when asked by the liquor inspector to do so; and
3. have breached a term and condition of the Licence by failing to properly display the social responsibility poster.

As the Licensee, having been given ample opportunity to do so, has chosen not to participate in this proceeding, I find that the Licensee has not established a defence to these contraventions.

PENALTY

Pursuant to section 51(2)(b) 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 one or more of the following:

- Take no enforcement action
- Impose terms and conditions on the Licence or rescind or amend existing terms and conditions
- Impose a monetary penalty on the Licensee
- Suspend all or any part of the Licence
- Cancel all or any part of the Licence
- Order the Licensee to transfer the Licence

I am not bound to order the penalty proposed in the NOEA. However, if I find that either a Licence suspension or a monetary penalty is warranted, I am bound to follow the minimums set out in Schedule 2 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.

Above I have set out in some detail the repeated attempts by first Inspector A and subsequently by other members of the Branch to communicate with the representatives of the Licensee. In his testimony, Inspector A was quite candid in his observation that

there might be a language barrier causing this lack of communication. It was for this reason that when a representative of the Licensee failed to attend the hearing that Inspector A was instructed to take the additional steps to work around any such barrier, should the same exist. On the evidence before me, I am quite satisfied that the representatives of the Branch have taken more than reasonable steps to ensure that the Licensee's representatives were aware of what was occurring and the possible consequences should they choose not to participate.

The major factor that I have considered in determining the appropriate penalty in this case is how to secure the recognition by the Licensee that the issuance of the Licence to the Licensee is a privilege granted to the Licensee. It is not a right to which the Licensee is entitled. And with this privilege granted to the Licensee comes the corresponding obligation to comply with the Act, the Regulation and the terms and conditions of the Licence. Ideally, this compliance is voluntary. However, in cases such as the one at hand where the Licensee for its own reasons has chosen not only not to participate in this process, but to blatantly refuse any meaningful communication with the Branch, it is obvious that a deterrent in the form of penalties is required to encourage a change in attitude and behavior.

As there is no record of a proven contravention of the same type as dealt with here for the Licensee within the preceding 12 months of this incident, I find this to be a first contravention for the purposes of Schedule 2 and calculating a penalty. As noted above, Item 54 in Schedule 2 provides a range of penalties for a first contravention of these types of contraventions to be a 1 to 3 day suspension of the Licence and/or a \$1,000 to \$3,000 monetary penalty.

The Branch in its submissions have recommended either the minimum suspension of 1 day or a minimum monetary fine of \$1,000.

I find the following to be appropriate penalties for the respective contraventions:

1. Acting in contravention of Section 60(1) of the *Liquor Control and Licensing Act* S.B.C. 2015 c. 19 (the "Act") by permitting a person to operate the Establishment without the prescribed training or recertification – a monetary penalty of \$1,000;

2. Having breached a term and condition of the Licence by failing to provide access to an approved floor plan for the Establishment when asked by the liquor inspector to do so – a suspension of the Licence for 1 day; and
3. Having breached a term and condition of the Licence by failing to properly display the social responsibility poster – a suspension of the Licence for 1 day.

ORDER

Pursuant to section 51(2)(b) of the Act, I order that the Licensee pay a monetary penalty of \$1,000 to the General Manager of the Branch on or before October 11, 2017.

In addition, pursuant to section 51(2)(b) of the Act, I order a suspension of Food Primary Licence number 306424 for a period of two (2) days to commence at the close of business on September 25, 2017 and to continue each succeeding business day until the suspension is completed.

To ensure these orders are effective, I direct that the Licence be held by the Branch or the local police from the close of business on September 25, 2017 until the Licensee has demonstrated to the Branch's satisfaction that the suspension has been served.

Signs satisfactory to the General Manager notifying the public that such suspensions and a monetary penalty has been imposed will be placed in a prominent location in the Establishment by a Branch inspector or a police officer, and must remain in place during the period of suspension

Original signed by

R. John Rogers
General Manager's Delegate

Date: September 12, 2017

cc: Liquor Control and Licensing Branch, Victoria Regional Office
Attn: Stephen Hitchcock, Regional Manager

Liquor Control and Licensing Branch, Victoria Regional Office
Attn: Hugh Trenchard, Branch Advocate