



**DECISION OF THE  
GENERAL MANAGER**

**LIQUOR AND CANNABIS REGULATION BRANCH**

**IN THE MATTER OF AN APPLICATION FOR RECONSIDERATION**

A reconsideration pursuant to section 53.1 of  
*The Liquor Control and Licensing Act, S.B.C. 2015, c. 19*

Licensee: 1150197 B.C. Ltd.  
dba Boston Pizza Restaurant & Sports Bar  
300-2325 Ottawa Street  
Port Coquitlam, B.C. V3B 8A4

Case: REH19-110

For the Licensee: Bert Hick, Licensee's Advisor  
Danny MacEachern and Ryan MacEachern,  
Licensee's Representatives

For the Branch: Hugh Trenchard

General Manager's Delegate: R. John Rogers

Date of Decision: December 1, 2020

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**Liquor and Cannabis  
Regulation Branch**

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## INTRODUCTION

115097 B.C. Ltd. (the "Licensee") holds Food Primary Licence No. 308117 (the "Licence") pursuant to which it operates an establishment called the "Boston Pizza Restaurant & Sports Bar" (the "Establishment") located at 300-2325 Ottawa Street, Port Coquitlam, B.C. According to the terms of the Licence, the Licensee may sell liquor from 9:00 a.m. to 2:00 a.m. from Monday to Sunday.

The Licence is, as are all food primary liquor licences issued in the Province, subject to the terms and conditions contained in the publication "Food Primary Terms and Conditions" (the "Food Primary Terms and Conditions Handbook").

### **The NOEA**

The Liquor and Cannabis Regulation Branch (the "Branch") in a Notice of Enforcement Action dated December 17, 2019 (the "NOEA") alleged that on October 28, 2019 the Licensee contravened section 77(1)(a) of the *Liquor Control and Licensing Act* S.B.C. 2015 c. 19 (the "Act") by selling, giving or otherwise supplying liquor to a minor. On October 28, 2019, the Branch's liquor inspector issued contravention notice B021730 (the "Contravention Notice") for this alleged contravention by an employee of the Licensee.

### **The Hearing and the Decision**

Following the issuance of the NOEA, an in-person hearing was held on September 2, 2020 (the "Hearing") and, following the Hearing, on October 15, 2020 the General Manager's Delegate (the "Hearing Delegate") rendered her decision (the "Decision") in which she found the Licensee liable for the contravention of the *Act* as alleged in the NOEA. The Decision included an order (the "Section 51 Order") that the Licensee pay a monetary penalty in the sum of \$7,000 to the General Manager on or before November 16, 2020.

### **The Application for Reconsideration and Stay Order**

By letter dated November 16, 2020, the Branch advised the Licensee that the Branch had accepted the Licensee's application for reconsideration of the Decision, which application was filed on November 13, 2020 (the "Application"), and by a second letter dated November 16, 2020, the Branch advised the Licensee that the implementation of

the Section 51 Order was stayed until the earlier of January 13, 2021 or until a decision on the Application was rendered.

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 53.1 of the *Act* for the purposes of holding a review on the record to consider the Application, and, following such review, to make a reconsideration order (the "Reconsideration Order").

### **THE APPLICATION**

The essence of the Application is a request by the Licensee to have the penalty imposed upon the Licensee in the Section 51 Order made by the Hearing Delegate under the Decision changed from a monetary penalty to a suspension of the Licence.

In the Application, the Licensee notes that towards the end of the Hearing on September 2, 2020, the Hearing Delegate asked the Licensee about the Licensee's choice of penalty. Specifically, the Hearing Delegate asked that if the Hearing Delegate were to find that the Licensee had contravened the *Act* as alleged in the NOEA and if she were to determine to impose a penalty on the Licensee, would the Licensee's preference be that the Hearing Delegate impose a monetary penalty or a suspension of the Licence.

Given this choice, the Licensee submits in the Application that it chose a monetary penalty. It states that it made this choice based upon the operating provisions which were applicable at the date of the Hearing for restaurants operating in British Columbia as stipulated by the British Columbia Provincial Health Officer (PHO) as a result of the COVID-19 pandemic.

However, the Licensee further submits, since the Licensee made its choice at the Hearing, the PHO has issued several new orders for such operating provisions, including:

- the order on October 9, 2020 requiring that liquor sales for onsite consumption at the Establishment cease by 10:00 p.m.; and
- the order on November 7, 2020 that social interactions at the Establishment be limited to immediate households and core personal bubbles.

As the Licensee's sales at the Establishment are highly dependent upon it being the venue for larger groups of patrons to gather for such purposes as watching sporting events and attending large birthday parties, the Licensee submits that these orders by the PHO have severely restricted the Licensee's operations to the extent that the operations of the Establishment are no longer economically viable.

The Licensee submits that when it made the election for the monetary penalty at the Hearing, that the Establishment was operating on a profitable basis and that the Licensee was, therefore, in a position to have paid a monetary penalty if one were to have been imposed. However, since the imposition of these and other PHO orders resulting from the COVID-19 pandemic, the Licensee submits that such is no longer the case.

The Licensee notes in the Application that since the occurrence of the contravention identified in the NOEA, it has accepted full responsibility therefor and has put in place additional policies to ensure that liquor is not sold to minors in the Establishment.

Based upon the extremely adverse effects on its business at the Establishment as a result of the COVID-19 pandemic and the resulting PHO orders, the Licensee requests in the Application that a Reconsideration Order be made amending the Section 51 Order to stipulate that the penalty assessed against the Licensee be a seven-day suspension of the Licence rather than a \$7,000 monetary penalty.

## **RELEVANT STATUTORY PROVISIONS**

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

#### **Reconsiderations**

##### **53.1**

(3) A reconsideration is, subject to subsection (4), a review on the record and may be based on only one or more of the prescribed grounds.

(4) The general manager may, in a reconsideration of a section 51 order, consider new evidence only if the general manager is satisfied that the new evidence

(a) is substantial and material to the reconsideration, and

(b) did not exist when the section 51 order was given or did exist at that time but was not discovered and could not, through the exercise of reasonable diligence, have been discovered.

(5) The general manager must not accept an application for a reconsideration of a section 51 order unless the following requirements are met:

(b) the application identifies one or more of the prescribed grounds on which the application is based;

(9) The general manager may, in a reconsideration order, confirm, vary or rescind the section 51 order that is the subject of the reconsideration, and a reconsideration order that confirms or varies a section 51 order replaces the section 51 order.

(10) Section 51 (1) to (6) applies to a reconsideration of a section 51 order.

(11) The general manager must, in a reconsideration order given to the applicant,

(a) set out the reasons for making the order, and

(b) when the order confirms or varies the actions of the section 51 order that is the subject of the reconsideration, set out the details of the action under the reconsideration order, including,

(i) if a monetary penalty is imposed, the amount of the penalty and the date by which the penalty must be paid, and

(ii) if a licence suspension is imposed, the period of the suspension and the dates on which the suspension must be served.

***Liquor Control and Licensing Regulation, B.C. Reg. 241/2016***

**Prescribed grounds relating to reconsideration orders**

**152**

(2) For the purposes of section 53.1(3) of the Act, an application for a reconsideration of a section 51 order may be based on the following:

- (a) a failure to observe the rules of procedural fairness;
- (b) an error of law;
- (c) subject to section 53.1(4) of the Act, new evidence.

## REASONS AND DECISION

### The Licensee's Obligation

As above set out, section 53.1 of the *Act* permits a party against which a section 51 order has been issued to apply for a reconsideration of this order. This reconsideration is not a trial *de novo* of the allegation for which the section 51 order was issued. Rather, as provided in subsection 4 of section 53.1, such a reconsideration is a review on the record and may be based on only one or more of the prescribed grounds as set out in section 152 of the *Liquor Control and Licensing Regulation*, B.C. Reg. 241/2016 (the "*Regulation*"). As also above set out, section 152 of the *Regulation* provides for three such prescribed grounds upon which an application for reconsideration might be based. In the matter at hand the Licensee is relying upon the third of the prescribed grounds as set out in subsection 152(2)(c), namely, new evidence.

To be successful in the Application, as provided for in section 53.1(4) of the *Act* as above set out, the onus is on the Licensee to establish that this new evidence is substantial and material to the reconsideration and that this new evidence either did not exist when the Hearing Delegate issued the Section 51 Order, or it did exist, but was not discovered and could not, through the exercise of reasonable diligence, have been discovered at that time.

### The Licensee's Submissions in the Application

In the Application, the Licensee submitted that when during the Hearing it made its choice of penalty to be a monetary penalty rather than a suspension of the Licence, it based its choice upon the business conditions affecting the Establishment at the date of the Hearing on September 2, 2020. However, by October 15, 2020, the date that the Hearing Delegate issued the Section 51 Order, these business conditions had deteriorated markedly as a result of the COVID-19 pandemic and the PHO orders resulting therefrom.

### The Licensee Has Met the Section 53.1 (4) Onus

Similar to the determination made in *Italian Tomato Restaurant Inc.* REH19-088 based upon a similar fact situation, I am satisfied that the Licensee has established that the extremely adverse impact on the Establishment's business caused by the COVID-19 pandemic and the resulting PHO orders is evidence substantial and material to the reconsideration and, further, that this evidence had not manifested itself when the Licensee made its choice on September 2, 2020. Therefore, I find that the Licensee has met the onus placed upon it by section 53.1(4) and that the Order 51 made by the Hearing Delegate should be reconsidered.

### Decision on the Application

#### *Compliance History*

Section 53(10) as above set out requires that when considering an application for a reconsideration order, I am to include consideration of the items set out in subsections 1 to 6 of section 51 of the *Act*. For the matter at hand, the relevant item for consideration is contained in section 51(3)(a) requiring reference to the relevant licensee's compliance history.

As part of the evidence presented by the Branch in its submissions at the Hearing, the Branch's book of documents contained a compliance history report on the Licensee (Ex 1, tab 5). This compliance history demonstrated that from the period from October 31, 2018 to June 25, 2020, the Licensee, apart from the contravention referenced in the Contravention Notice, has no history of a lack of compliance. In other words, a clean record.

#### *The Purpose of Enforcement Provisions*

The Branch is clear in its communications with licensees that the purpose of its enforcement policies is not to punish the licensee which has been found to have contravened a provision of the *Act*, the *Regulation*, or the licensee's licence terms and conditions, but is rather to ensure that a climate of compliance exists within the operations of that licensee going forward and to provide for consequences if such a climate is not achieved and maintained.

In the Application, the Licensee has accepted full responsibility for the contravention referenced in the NOEA and has accepted and acknowledged the responsibility to ensure that liquor is not sold to minors. In addition, the Licensee has not requested that as a result of the impact of COVID-19 on its business that the penalty contained in the Order 51 be waived, but rather that it be varied. In other words, that a penalty still be imposed, but because of the more severe impact of a monetary penalty on its operations which it could not have possibly contemplated when it made its choice on September 2, 2020, that the penalty be varied to being one of a seven day suspension of the Licence.

Item 7 of schedule 2 of the *Regulation* sets out the minimum penalty for a first contravention of section 77(1)(a) of the *Act* to be either a monetary fine or a licence suspension. At the Hearing, the Licensee was given a choice of which of these two penalties it preferred, and it chose the fine. Due to circumstances beyond its control which were not anticipated at the time it made its choice, it now seeks to change its choice to the alternate penalty provided for in item 7 schedule 2 of the *Regulation*, namely a suspension of the Licence.

### *Finding*

I find that given the compliance history of the Licensee, its acknowledgement of the contravention and commitment to secure the requisite level of compliance, and its assertion of the impact of COVID-19 on its operations, that the Licensee's request for the Reconsideration Order resulting in a variation of the Section 51 Order should be granted.

### **RECONSIDERATION ORDER**

In accordance with the provisions of section 53.1(9) and section 53.1(11)(b)(ii) of the *Act*, I hereby order that the Section 51 Order be varied to be as follows:

Pursuant to section 51(2)(b) of the *Act*, I order that the Licence be suspended for a period of seven days to commence on Monday, December 7, 2020 and to continue until the suspension is completed.

To ensure that the above order is effective, I direct that the Licence be held by the Branch or the Port Coquitlam RCMP detachment from December 7, 2020 until the Licensee has demonstrated to the Branch's satisfaction that the suspension has been served.

*Original signed by*

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R. John Rogers  
General Manager's Delegate

Date: December 1, 2020

cc: Liquor and Cannabis Regulation Branch, Surrey Office  
Attn: McKenzie Castle, Regional Manager  
Liquor and Cannabis Regulation Branch, Victoria Office  
Attn: Hugh Trenchard, Branch Advocate