



**DECISION OF THE
GENERAL MANAGER
LIQUOR AND CANNABIS REGULATION BRANCH**

IN THE MATTER OF

A hearing held by videoconference pursuant to Section 51 of
The Liquor Control and Licensing Act, S.B.C. 2015, c. 19

Licensee: Ikura Japanese Restaurant Ltd.
c/o Yan Lin and Andrew Lin
8646 Granville Street
Vancouver, BC V6P 5A1

Case: EH21-028

For the Licensee: Andrew Lin
(the "Licensee's Representative")

For the Branch: Hugh Trenchard

General Manager's Delegate: R. John Rogers

Date of Hearing: January 12 and 19, 2022

Date of Decision: January 27, 2022

**Liquor and Cannabis
Regulation Branch**

Mailing Address:
PO Box 9292 Stn Prov Govt
Victoria, BC V8W 9J8
Telephone: 250 952-5787
Facsimile: 250 952-7066

Location:
Fourth Floor, 645 Tye Road
Victoria BC

www.gov.bc.ca/liquorregulationandlicensing

INTRODUCTION

[1] Ikura Japanese Restaurant Ltd. (the "Licensee") holds Food Primary Licence No. 305873 (the "Licence"), pursuant to which it operates the establishment called "Ikura Japanese Restaurant" (the "Establishment"), located at 8646 Granville Street, Vancouver, BC V6P 5A1.

[2] According to the terms of the Licence, the Licensee may sell liquor from 11:00 a.m. to 10:00 p.m. on Monday and Tuesday, from 11:00 a.m. to 11:00 p.m. Wednesday to Saturday, and from 11:00 a.m. to 9:00 p.m. on Sunday.

[3] The Licence is, as are all food primary licences issued in the province, subject to the terms and conditions contained in the publication "Food Primary Terms and Conditions".

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

[4] The Liquor and Cannabis Regulation Branch's (the "Branch") allegations and proposed penalty are set out in the Notice of Enforcement Action dated November 2, 2021 (the "NOEA") (Exhibit 1 tab 1).

[5] The Branch alleges that the Licensee contravened the Licence by failing to abide by the terms and conditions of the Licence.

[6] The Branch seeks the cancellation of the Licence.

[7] The Licensee has admitted that it has operated in contravention of the terms and conditions of the Licence but maintains that these provisions were unreasonable in the restrictions that it placed upon the Licensee to effectively operate the Establishment. However, the Licensee submits that it would be willing to work with the Branch to agree upon a modification of the terms and conditions of the Licence to enable it to continue to operate the Establishment.

[8] For the purposes of this hearing and in accordance with Section 5 of the *Liquor Control and Licensing Act*, S.B.C. 2015, c. 19 (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

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

Terms and conditions on licence

15 (1) Subject to this Act and the regulations, the general manager may, in the public interest,

(a) impose terms and conditions on a licence or endorsement that is being or has been issued,

Action against licensee

51 (1) In addition to other powers the general manager has under this Act, the general manager may take action against a licensee for one or more of the following reasons:

(c) the licensee's failure to comply with a term or condition imposed by the general manager.

(2) If the general manager has the right under subsection (1) to take action against a licensee, the general manager may take one or more of the following actions:

(c) subject to subsection (4), suspend all or part of the licensee's licence in accordance with the prescribed schedule of licence suspensions;

(d) cancel all or part of the licensee's licence.

(4) The general manager may, if the general manager is satisfied that it is in the public interest to do so,

(b) suspend a licensee's licence under subsection (2) (c) for a period longer than that provided for in the prescribed schedule of licence suspensions.

Liquor Control and Licensing Regulation, B.C. Reg. 241/2016 (the "Regulation")

Schedule 2
Monetary Penalties and Licence Suspensions
Minors

Item	Contravention	Monetary Penalty			Period of Suspension (Days)		
		First Contravention	Second Contravention	Subsequent Contraventions	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	\$1,000 - \$3,000	\$3,000 - \$7,000	\$7,000 - \$11,000	1-3	3-7	7-11

ISSUES

1. Did the contravention occur?
2. If so, has the Licensee established a defence to the contravention?
3. If the contravention is proven, what penalty is appropriate?

EXHIBITS

- Exhibit #1: Branch book of documents, tabs 1 to 25
- Exhibit #2: Renewal of Licence Documentation
- Exhibit #3: Inspection Reports of Establishment from 2014 to 2020
- Exhibit #4: The Licensee's submissions
- Exhibit #5: A copy of a letter from the Branch to the Licensee dated January 21, 2022

WITNESSES

[9] The Branch called Liquor and Cannabis Inspector A ("Inspector A"), the author of the NOEA.

[10] The Licensee's Representative gave evidence on behalf of the Licensee.

ONLINE HEARING PROTOCOL

[11] The Enforcement Hearing to deal with the contraventions alleged in the NOEA was held by video conference at 9:30 a.m. on January 12, 2022, being the time and the date for the hearing to be held as specified in the Notice of Enforcement hearing dated December 3, 2021. In order to carry out the Enforcement Hearing online, an email invitation was sent by the Branch on January 7, 2022, inviting the participants in the Enforcement Hearing to join the Enforcement Hearing online.

[12] At the appointed date and time for the video conference, the Branch Advocate and the Licensee's Representative were present online with the Hearing Delegate. The Branch Advocate identified Inspector A who was online as the Branch's witness whom he would be calling to testify. The Licensee's Representative identified the party who was in the room with him as the owner of the Licensee.

[13] Before proceeding further with the Enforcement Hearing, as the hearing was being conducted online, the Hearing Delegate took the parties present through a protocol to ensure that each of the parties was comfortable with the online format and then polled each of the parties to receive that party's confirmation to that effect.

EVIDENCE – BRANCH

Evidence of Inspector A

[14] Inspector A identified Exhibits #1, #2, and #3 and testified as to her inspection of the Establishment on October 20, 2021. The evidence of Inspector A might be put in a historical perspective and summarized as follows:

- The Licensee originally applied for the Licence in an application to the Branch dated November 26, 2012.
- The Branch rejected this application on the basis that the Branch determined that the owner of the Licensee at that time (the "Manager"), was a person who was "found to be not fit and proper to hold a liquor licence" and that the Manager was not a suitable party to "act in the capacity as a resident manager, licensee or third-party operator" of the Licensee.

- Ownership of the Licensee was subsequently transferred to the Manager's father, the current owner of the Licensee, and, following this transfer, the Licence was issued to the Licensee on April 14, 2014.
- The Licence was issued containing the express terms and conditions that the Manager must not involve himself in the operations of the Establishment or in the ownership of the Licensee, and, specifically, must not act in the capacity with respect to the Licensee as above described.
- Upon the issuance of the Licence, the Licensee confirmed in writing these terms and conditions attaching to the Licence and that the Manager had and would in the future have no involvement either directly or indirectly, and either financially or operationally with the management or ownership of the Licensee.
- Inspections of the Establishment were conducted by the Branch's inspectors on seven occasions from September 17, 2015, to February 2, 2020, and no contraventions were recorded by these inspectors against the Licensee (Exhibit #3).
- On March 26, 2019, the Licensee submitted its liquor licence renewal application to the Branch and such submission included the Manager's credit card information.
- As set out in the NOEA, on October 20, 2021, Inspector A conducted an inspection of the Establishment and spoke with the Manager. When Inspector A questioned the Manager as to his role in the operation of the Establishment, she was advised that he was the manager.
- During this inspection, the Manager questioned Inspector A as to whether or not a person who has a drinking under the influence reference on his or her criminal record was able to be part of an organization applying for a liquor licence and Inspector A advised the Manager to contact the Branch for an answer to this question.
- Inspector A then reviewed with the Manager the terms and conditions in the Licence and observed that it appeared that the Licensee was in contravention of the terms and conditions of its Licence by permitting the Manager to carry out what appeared to be his current role within the Establishment.
- On October 28, 2021, Inspector A telephoned the Establishment and asked to speak to the Licensee's owner and the phone was passed to the Manager.

EVIDENCE – LICENSEE

Evidence of the Licensee's Representative

[15] The evidence of the Licensee's Representative might be summarized as follows:

- The Licensee admits that it breached the terms and conditions of the Licence as referenced by Inspector A in her evidence and in the NOEA.
- Apart from this contravention, the Licensee has had no issues of compliance with the Act, the Regulation, or the Licence since the issuance of the Licence in 2014.
- As the owner of the Licensee does not speak English, the Manager is essential to the operation of the Establishment and the Licensee submits that the provisions originally imposed upon it in 2014 as part of the terms and conditions included in the Licence are unreasonable and makes it impossible for the Licensee to operate the Establishment in compliance with the terms and conditions of the Licence.
- The criminal charges against the Manager which are of concern to the Branch occurred over a decade ago.
- Since the original issuance of the Licence, the Manager has no further incidents involving drinking and driving and the Licensee and the Manager are very willing to work with the Branch to come to an agreement for a modification of the terms and conditions of the Licence in order to enable the Manager to be part of the operations of the Establishment and to enable the Licensee to continue to operate the Establishment in compliance with such modified terms and conditions.
- The Establishment is a family business which will not be able to continue to function if the Manager is not able to continue in its operations.

THE ADJOURNED HEARING

[16] Following the conclusion of the evidence of the Branch and the Licensee, the Enforcement Hearing was adjourned for a period of eight days for the purpose of enabling communications between the Branch and the Licensee.

[17] Upon the resumption of the Enforcement Hearing following its adjournment, the Branch Advocate and the Licensee's Representative were present online with the Hearing Delegate.

[18] As previously, the Hearing Delegate took the parties present through a protocol to ensure that each of the parties was comfortable with the online format and then polled each of the parties to receive that party's confirmation to that effect.

BRANCH COMMUNICATION

[19] The Branch, with the consent of the Licensee, submitted a copy of the letter dated January 20, 2022, from the Branch to the Licensee (Exhibit #5) and noted that this letter stated that if the Licensee wished to secure a modification of the terms and conditions of the Licence that it must apply under s.16 of the *Act* providing information and documentation in support of such a request.

SUBMISSIONS – BRANCH

[20] The Branch submitted that the Licensee had confirmed that it had operated the Establishment in contravention of the Licence ever since the Licence was issued. It noted that as the Manager was directly involved in this contravention, the due diligence defence does not apply.

[21] Due to this blatant contravention of its Licence, the Branch submitted that the Licence should be immediately cancelled.

SUBMISSIONS – LICENSEE

[22] The Licensee's Representative admitted that the Licensee had operated the Establishment in contravention of the terms and conditions of the Licence since the issuance of the Licence but submitted that it had no option to do otherwise as the Manager was essential to the operation of the Establishment and that, without his involvement, this family-run operation would not have been able to continue in existence.

[23] He noted that the Establishment had been inspected eight times since the issuance of the Licence, and, apart from the admitted contravention which had become an issue following the inspection on October 20, 2021, the Licensee had a contravention free record since the issuance of the Licence in 2014.

[24] The Licensee's Representative concluded by submitting that the Licensee had cooperated with the Branch by admitting to the contravention and that it was quite willing to work with the Branch to amend the terms and conditions attaching to the Licence with reference to the Manager to ensure that the Branch was able to accomplish its objectives of ensuring public safety, but at the same time enabling the Manager to continue in his present role at the Establishment.

REASONS AND DECISION

[25] The Licensee has admitted that since the issuance of the Licence in 2014, the Licensee has operated the Establishment in contravention of the terms and conditions of the Licence. The defence of due diligence not being applicable to the matter at hand, I find that as alleged in the NOEA, the Licensee has operated the Establishment in contravention of the terms and conditions of the Licence since the issuance of the Licence.

PENALTY

[26] Pursuant to section 51(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 one or more of the following:

- Impose terms and conditions on the Licence or rescind or amend its 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, or
- Order the Licensee to transfer the Licence.

[27] 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.

[28] The factors that I have considered in determining the appropriate penalty in this case include:

- whether there is a proven compliance history;
- 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.

[29] Licensees are obliged to comply with the legislation and the terms and conditions of their licenses. Enforcement action is intended to both redress the licensee's noncompliance, and to encourage future compliance by way of deterrence.

[30] There is no record of a proven contravention of the same type for this Licensee at this establishment within the 24-month period preceding this incident. In fact, there has been no history of a lack of compliance by the Licensee since the Licence was issued in 2014. This contravention is therefore properly treated as a first contravention for the purposes of the penalties set out in Schedule 2.

[31] The Branch has submitted that given the known blatant breach of the terms and conditions of the Licence by the Licensee since the issuance of the Licence, that I should use the authority provided by section 51(2)(d) as above set out and immediately cancel the Licence.

[32] I have considered the Branch's submission and, while I do not for a moment in any way excuse the actions of the Licensee, I am mindful of the following in the context of the factors above set out which are relevant in establishing a proper penalty:

- In the eight inspections of the Establishment by Branch inspectors since the issuance of the Licence in 2014, until the inspection on October 20, 2021, there have been no compliance issues.

- The contravention is serious in that notwithstanding the submissions of the Licensee that the involvement of the Manager is essential to the operation of the Establishment, his continued involvement in the operation of the Establishment constitutes a blatant breach of the terms and conditions of the Licence, and if his involvement was to be necessary in the operation of the Establishment, the Licensee should not have agreed to the inclusion of his exclusion from such operation in the terms and conditions of the Licence upon its original issuance and in each renewal of the Licence since its original issuance.
- One of the stated reasons for the Branch for including in the terms and conditions of the Licence the exclusion of the Manager from the operation of the Establishment was the Manager's history of offences involving drinking and driving and its concern for the public safety issue from having a person such as the Manager having a responsible role in the operation of the Establishment which is permitted to serve liquor to the public. It would appear from the submissions of the Licensee that the Manager has mended his ways and has not since the issuance of the Licence had any further difficulties with such offences.
- In the context of the well-being of the community, the Licensee has submitted that the Establishment is a family-run operation which supports at least two families and that it is very much a part of the local community. It submits that the blatant breach by the Licensee of the Licence has not in any manner affected the local community.

[33] In considering an appropriate penalty, I am mindful as well of the concept of individual as well as general deterrence. As has been stated many times in the past, the Branch's main objective is compliance and not punishment. Its aim is to encourage compliance by ensuring that an appropriate penalty is assessed against a party found to be in contravention of the Act, the Regulation or a licence term and condition and that such "appropriateness" is assessed in terms of deterring the particular offender from in the future committing such a contravention and in terms of encouraging future compliance by that offender. As well, such "appropriateness" must act as a general message to all licensees issued a licence by the Branch to encourage such compliance by them with the Act, the Regulation and their licence terms and conditions.

[34] In the matter at hand, I note:

- The fact that the Licensee has admitted to the contravention in the face of a possible cancellation of the Licence and has cooperated with the Branch in addressing this matter,
- The clean compliance record of the Licensee, and
- The Licensee's stated intention to work with the Branch to agree upon terms and conditions for the Licence acceptable to both parties.

[35] Based upon the above, I find that a suspension of the Licence rather than its cancellation is an appropriate penalty.

[36] As this is a first offence, it would appear that as above set out, the provisions of Item 54 of Schedule 2 of the Regulation are applicable and that a one to a three-day suspension of the Licence is a possible penalty. However, I do not find that this length of suspension meets the test of appropriateness as I above set out.

[37] Rather, I find that the authority granted the General Manager in section 51(4)(c) is appropriate to the matter at hand and that pursuant to this authority it is in the public interest to order a suspension of the Licence until its expiry on March 31, 2022. During this period of suspension, the Licensee will have an opportunity to apply to the Branch pursuant to section 16 of the Act for an amendment to the Licence terms and conditions, and to provide to the Branch the information and documentation necessary to support such amendment, all as provided for in the January 20, 2022, letter (Exhibit #5) from the Branch to the Licensee.

ORDER

[38] Pursuant to section 51(4)(c) of the *Act*, I order that the Licence be suspended for a period to commence on Tuesday, February 8, 2022, and to continue until the expiry of the Licence on Thursday, March 31, 2022.

[39] To ensure that the above order is effective, I direct that the Licence be held by the Branch from February 8, 2022, until the suspension is concluded.

[40] Signs satisfactory to the General Manager notifying the public that the Licence is suspended 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: January 27, 2022

cc: Liquor and Cannabis Regulation Branch, Vancouver Office
Attn: Peter Mior, Regional Manager

Liquor and Cannabis Regulation Branch, Victoria Office
Attn: Hugh Trenchard , Branch Advocate