



**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:	Deroye Enterprises Ltd. dba Green Element Dining & Lounge 2170 – 8788 McKim Way Richmond, BC V6X 4E2
Case:	EH06-072, EH06-110 and EH06-113
For the Licensee:	Roger Chen
For the Branch:	James Macdonnell
Enforcement Hearing Adjudicator:	Sheldon M. Seigel
Date of Hearing:	September 13, 2006
Place of Hearing:	Vancouver
Date of Decision:	September 27, 2006

**Ministry of Public
Safety and Solicitor
General**

Liquor Control and
Licensing Branch

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INTRODUCTION

The licensee operates a food primary licensed establishment in Richmond (Liquor Licence No. 301770). The establishment is known as Green Element Dining & Lounge. The licensed hours of sale are 9:00 a.m. to 12:00 midnight seven days per week.

In the early morning of Saturday, May 13, 2006, (the business day of May 12, 2006) the Richmond Joint Inspection Team, consisting of two uniformed R.C.M.Police members, two plain-clothes R.C.M.Police members, two Compliance and Enforcement officers (C & E officer) and the Richmond Business License Inspector gained entry to the establishment and conducted a licence inspection check and a search for illicit liquor. The team found no illicit liquor but observed a large number of patrons in the establishment and considerable liquor on the tables. The team also observed only small quantities of "appetizers" on the tables, and ascertained that the kitchen was closed.

In the early morning of Friday, May 19, 2006, (the business day of May 18, 2006) four uniformed R.C.M.Police members, including a Corporal and three Constables, gained entry to the establishment and conducted a licence inspection check. The R.C.M.Police members observed a large number of patrons in the establishment and considerable liquor on the tables.

In the early morning of Sunday, June 18, 2006, (the business day of June 17, 2006) four uniformed R.C.M.Police members, including a Corporal and three Constables, gained entry to the establishment and conducted a licence inspection check. The R.C.M.Police members observed a large number of patrons in the establishment and considerable liquor on the tables.

As a result of these inspections, the Liquor Control and Licensing Branch (the branch) issued three Notices of Enforcement Action (NOEAs) to the licensee.

ALLEGED CONTRAVENTIONS

The branch alleged that on May 13, 2006, the licensee contravened Section 44(1)(b) of the *Regulation* by failing to clear liquor within ½ hour after liquor service hours, and contravened Section 20(1)(d) of the *Act* and Section 11(1) of the *Regulation* by operating a licensed premises contrary to the primary purpose.

The branch alleged that on May 19, 2006, the licensee contravened Section 44(1)(b) of the *Regulation* by failing to clear liquor within ½ hour after liquor service hours.

The branch alleged that on June 18, 2006, the licensee contravened Section 44(1)(b) of the *Regulation* by failing to clear liquor within ½ hour after liquor service hours.

RELEVANT STATUTORY PROVISIONS

See Schedule "A"

PRELIMINARY MATTERS

Notice

By the original Notices of Enforcement Action, the branch sought the following proposed penalties:

May 13, 2006:	Section 44(1)(b) <i>Regulation</i> - \$5,000 penalty Section 20(1)(d) <i>Act</i> and Section 11(1) <i>Regulation</i> - \$7,500 penalty
May 19, 2006:	Section 44(1)(b) <i>Regulation</i> - Cancel Licence
June 18, 2006	Section 44(1)(b) <i>Regulation</i> - Cancel Licence

On September 11, 2006, the branch amended the NOEAs by changing the proposed penalties as follows:

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|---------------|---|
| May 13, 2006: | Section 44(1)(b) <i>Regulation</i> - \$5,000 penalty
Section 20(1)(d) Act and Section 11(1) <i>Regulation</i>
- \$7,500 penalty |
| May 19, 2006: | Section 44(1)(b) <i>Regulation</i> - \$7,000 penalty |
| June 18, 2006 | Section 44(1)(b) <i>Regulation</i> - \$10,000 penalty |

These changes, added \$17,000 to the proposed total penalty recommended and eliminated the proposed licence cancellation. The amendment was forwarded to my attention, but there was no indication that the licensee had notice of the changes. The amendment is dated September 11, 2006, two days before the hearing occurred.

In a more typical administrative tribunal setting, this potential lack of notice would be fatal to the process. A party appearing before an administrative tribunal in an enforcement hearing should have knowledge of the breadth and scale of the potential penalties that may be levied upon it. This would allow the party to have adequate information on which to make decisions regarding executing a waiver, attendance, representation, and generally how much of its resources to commit to disputing the issues.

In a liquor enforcement hearing, this potential oversight is an irregularity, but may not be fatal to the process. The unique legislative scheme provides that the general manager of the branch may take enforcement action against a licensee with or without a hearing, and may impose a monetary penalty or cancel a licence at her discretion (Section 20 Act). The Act, read as a whole, clearly establishes the general manager's right to summary process in the interest of public safety. I find that this process may include acting without advance notice to the licensee.

Further, the adjudicator, sitting as general manager for the purpose of the enforcement hearing is not bound to follow the proposed penalties put forth by the branch. Though it would be preferable for this to be more clearly communicated to the licensee in the NOEA or otherwise during the enforcement hearing process, I find that the late amendment is not fatal to the process.

I find that the licensee was aware of the significance of the potential penalties to be awarded. Accordingly, I find the licensee had adequate notice of the scale of the potential penalty to meet the requirement of administrative fairness.

Admissions

The branch file contains a letter confirming the results of a pre-hearing conference, at which the licensee's representative was present. The correspondence indicates that the licensee admitted that both of the contraventions alleged to have occurred on May 13, 2006, did occur as alleged.

The letter also indicates that the licensee disputed the occurrence of the alleged contraventions of May 19, 2006, and June 18, 2006.

It is noteworthy that the two contraventions, to which the licensee was prepared to admit, were the contraventions that (then) had monetary penalties proposed. The licensee disputed the two contraventions that carried proposed licence cancellation.

At the commencement of the hearing, following disclosure of the proposed penalty amendment, the licensee changed his position. He admitted that the establishment contravened Section 44(1)(b) on May 13, 2006, but denied the Section 20(1)(d) *Act* and Section 11(1) *Regulation* allegation relating to that date. He stated that he continued to dispute the May 19, 2006, allegation, but admitted to the contravention as alleged, relating to June 18, 2006.

At the hearing, the licensee presented no evidence disputing the two allegations of failure to clear under Section 44(1)(b), relating to May 13, 2006, and June 18, 2006.

Language

The licensee's principal appeared at the hearing with the manager of the Green Element. The manager stated at the commencement of the hearing that he was attending as a representative of the licensee along with the licensee's principal. He stated that although he would be a witness, he was asked by the licensee to be present through the hearing as a representative of the licensee in part because of language difficulties. The manager indicated that they had expected a translator to attend, to translate for both the licensee's principal and the manager, but the translator had not appeared. The manager stated that the licensee's principal did not speak English very well, but that he would translate for the licensee.

I asked if they required a short adjournment to attempt to locate the translator. The manager declined the offer. I engaged the manager in conversation in order to gauge his command of the English language. I also spoke to the licensee's principal, though he did not verbally reply to me.

I decided that the manager had a good working understanding of English, that he was able to communicate effortlessly with the licensee, and that he had no trouble communicating with me in English. Accordingly, I felt language was not an impediment to conducting the hearing. I decided to proceed.

Throughout the six hour hearing the licensee's principal spoke only rarely, and only to the manager. He did not converse in English. He did appear to follow the entirety of the proceeding with understanding, and pointed out notes and written

passages to the manager at appropriate times. I believe he understood everything that was said.

The manager conversed in English with a degree of sophistication. He questioned witnesses appropriately and was able, with some effort, to make comprehensive submissions to me and answer questions put to him. He translated to the licensee's principal where necessary.

I believe comprehension of English was not an issue in this hearing. I believe that the licensee's principal on his own accord or with the assistance of his manager understood and was able to communicate all relevant ideas for the duration of the hearing. I find the licensee was afforded all procedural fairness with respect to having the opportunity to hear and understand the case against him and to have his position and evidence heard.

ISSUES

1. Did the licensee contravene Section 44(1)(b) of the *Regulation* on May 13, 2006, May 19, 2006, and June 18, 2006, by failing to clear liquor within ½ hour after liquor service hours?
 2. Did the licensee contravene Section 20(1)(d) of the *Act* and Section 11(1) of the *Regulation* on May 13, 2006, by operating the licensed establishment contrary to its primary purpose?
 3. If contraventions are found, is a penalty warranted and if so, what is the appropriate penalty to be imposed?
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EXHIBITS

- Exhibit No. 1: Book of Documents (the branch)
- Exhibit No. 2: Two pages of photographs provided by R.C.M.Police (the branch)
- Exhibit No. 3: Two pages of cash receipts (the branch)

EVIDENCE

The branch called an R.C.M.Police Corporal, an R.C.M.Police Constable, the Richmond Business Licence Inspector, and two C & E officers.

The R.C.M.Police members, the Municipal Business inspector, and the two C & E officers were present on May 13, 2006.

The R.C.M.Police Corporal was present on May 19, 2006. The two C & E officers were responsible for case management of the files relating to both May 13 and May 19, 2006, and were familiar with the R.C.M.Police files relating to all relevant dates.

No evidence was tendered relating to the admitted contravention of June 18, 2006.

The corroborated evidence of the branch witnesses regarding May 13, 2006, was as follows:

- The main entrance to the courtyard, through which the front door of the establishment is reached, was locked when the party arrived at
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approximately 1:00 a.m. They entered the courtyard through a side door and gained access to the establishment through the kitchen exit.

- An unidentified male noticed the team enter through the side door and ran into the establishment.
 - Inside the establishment there were several dozen patrons seated at tables. There were considerable quantities of whiskey on the tables, in addition to mix, beer - both opened cans and unopened cans, cigarette packages, and few plates of appetizers.
 - One of the R.C.M. Police members smelled the whiskey glasses to confirm the contents.
 - Patrons and employees were smoking in the establishment.
 - Patrons were playing dice games, which are known to be drinking/gambling games.
 - Photographs were taken of the tables. Copies were identified in Exhibit No. 1.
 - The manager was asked to produce some receipts, which confirmed most of the purchases after 10:00 p.m. that evening were liquor with very little food purchased. Copies of these were identified as Exhibit No. 3.
 - The manager said that the Green Element operates like a bar after 11:00 p.m.
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The corroborated evidence of the branch witnesses regarding May 19, 2006, was as follows:

- The inspection was carried out at approximately 1:00 a.m.
- The music was loud and the lights were dim in the establishment.
- Patrons were observed drinking and playing dice games in the establishment.
- There were many glasses of whiskey and jugs of mix on the tables, as well as cigarette boxes.
- There were a few plates of appetizers on the tables.
- Photographs were taken of the tables. Copies were identified as Exhibit No. 2.

The witnesses also testified:

- The establishment has a history of violence, including a reported near fatal stabbing.
 - The establishment is well known to police and the inspection team for operating outside of its licence hours, failing to comply with municipal smoking bylaws, failing to pay its municipal fines, failing to comply with licence requirements, failing to implement policies and procedures suggested by the branch at compliance meetings, failing to allow easy access to police and inspection teams, having an overall negative impact on the immediate businesses and generating significant complaints, and
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employing staff who are either not trained or do not demonstrate that they are trained in liquor service.

- It is very unlikely that the branch will obtain voluntary compliance with the licence requirements from this licensee. It will likely continue to operate as it has, outside of the licence rules until they are shut down.

Finally, a C & E officer indicated that the branch had received a letter signed by 11 businesses that operate in the complex in which the Green Element is situated. He testified that the letter complained about the noise and disruption caused by the Green Element, the damage caused to the complex by the patrons of the Green Element on a regular basis, and the fear that the business owners had of retribution for complaining. He said that the letter was dated, and identified the unit location and names of the complainants. The C & E officer indicated that he had not shared the correspondence with the licensee, but that he wanted the correspondence to be a part of the evidence.

The licensee called the establishment's manager, and the licensee's principal.

Their evidence was as follows:

- A review of the floor plan shows that a portion of the establishment is a lounge. That area does not serve food to the extent that the food primary area does.
 - All of the round tables in the photos are in the lounge area.
 - The appetizers that are shown in the photos are not just small individual orders. They are large plates of food to be shared by customers. This is a cultural tradition. The French fries are a huge portion and can cost \$18. The salty chicken in one photo is for six people and cost almost \$50.
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- Nobody orders a big meal or a steak at 11:00 p.m. That is why it looks like a bar at that time. It is part of the normal daily routine that late nights are a time when people order more liquor.
 - A full review of all receipts would show that the Green Element operates like a restaurant with large food sales. Total sales in the establishment are approximately 80% food and 20% liquor. The distinction is the time and day: On Friday and Saturday the patrons drink. It is hard to control.
 - The male who ran in from the outside was not an employee.
 - They don't lock the gate at the front of the complex. They do not have a key. Another business operator in the complex is responsible for locking the gate.
 - There were no bottles of whiskey on the tables on the nights in question.
 - The liquid in the glasses in the photos is not whiskey, but green tea. Whiskey is darker in colour.
 - In Exhibit No. 2 there are no patrons in the photos. That is because the patrons were waiting to pay at the cash desk. They had been told they could not drink any more because of the time, and the licensee had to give them a 10% discount because of that. The discount is shown on the receipt in Exhibit No. 3.
 - The dice game is a cultural tradition. The loser drinks. It is not gambling.
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SUBMISSIONS

The branch submitted the following:

The Green Element was operating as a liquor primary bar at the time of the inspection on May 13, 2006. It is a requirement of the food primary licence that the establishment operate as a food primary restaurant during all business hours.

The manager admitted that the Green Element operates as a bar after 11:00 p.m.

The only documentary evidence of the sales of the establishment indicates that it operates as a bar, with little in the way of food sales.

The food primary licence requires that all service terminate at 12:00 a.m. Even after that time, the evidence shows that the establishment was operating as a bar.

The evidence is clear that the contraventions of failure to clear within ½ hour have occurred, and that the Green Element operates outside its business hours regularly.

The penalties should reflect that the contraventions are having a direct impact on the surrounding community. The history of allegations and the evidence of the municipal business licence inspector confirm this.

The evidence of the witnesses is that the licensee will continue to operate contrary to the terms of the licence and will not comply voluntarily.

The licensee admitted to the contravention of failing to clear liquor within ½ hour after service hours on May 13, 2006, and June 18, 2006, and submitted the following with respect to the remaining allegation of May 13, 2006, and May 19, 2006:

The inspection team only asked for receipts relating to a short period of time. The licensee provided what was requested. The receipts for the rest of the day would show that the percentage of food served in a given day is much higher than the late night receipts indicated.

The ratio of food sales to liquor sales, dollar-for-dollar is not a fair comparison. A patron might order a \$200 bottle of wine with \$20 steak. This is typical in a restaurant.

On May 19, 2006, the patrons were asked to leave on time. They were lined up to pay, which is why they were not at the tables in the photographs in Exhibit No. 2. The photos were taken at 1:00 a.m., thirty minutes after the licensee was to clear the tables. They were trying to do what was required, but there were many patrons and it took a little too long.

The photos in Exhibit No. 1 show people with liquor at the tables, but they had already eaten their food and were sitting with only the liquor remaining. Food plates had been removed earlier.

The comment that the manager made about the Green Element operating as a bar after 11:00 p.m. was misinterpreted due to his lack of command of the English language. He meant that after 11:00 p.m. more people drink because most of the patrons have already eaten by then.

ANALYSIS AND DECISION

The letter from business operators in the complex

It is well established that a party appearing before a tribunal is entitled to know the case it has to meet. This is a fundamental tenet of procedural fairness. This would, in the first instance, require that the letter of complaint from the business operators be disclosed with enough notice that the licensee would have an opportunity to marshal evidence to answer it. In a typical administrative hearing, the letter could not be used without proper disclosure.

There are two factors weighing upon me which I find operate to modify the process in this instance: I have been appointed by statute as the general manager of the branch for the purpose of this hearing, and as such I have a primary obligation to act in the interest of public safety. Accordingly, this is not a typical tribunal hearing

As general manager, I am deemed to have control and knowledge of the entirety of the branch's file relating to the licensee. This is confirmed by the regulatory direction that as adjudicator I may consider past allegations of contraventions when deciding upon a penalty for a licensee, notwithstanding that those allegations have not been proven. Therefore, as general manager, I am technically already in possession of the said correspondence and aware of its contents. It would, therefore, be an untenable fiction for me to decide this matter without having considered the relevance of its contents to the allegations before me and the determination of a penalty, if any is warranted.

In order to discharge my duty to act in the interest of public safety, it was required that I review the letter before allowing it to be shared with the licensee. I therefore reviewed the letter.

I found that the letter was significant. It was quite specific in identifying complaints against the Green Element. The complaints were of nuisance, and property damage, and most notably a threat made by the Green Element's management to a business owner operating nearby. The 11 complainants were clearly identified. I decided that my mandate to act in the interest of public safety required that I refuse to allow the letter to be shared with the licensee.

I therefore rejected the letter as an exhibit, and directed that the letter not be provided to the licensee during the course of the hearing.

I find that the overriding obligation to act in the interest of public safety demanded that I consider the letter of complaint (with which I was technically already seized) without allowing the licensee access to it. In doing so I considered that the licensee had no opportunity to respond to the content of the letter, to cross-examine the authors of the letter, or to marshal any evidence to defend against the allegations made in the letter.

I made no determination based solely upon the evidence contained in the letter, but I did consider that evidence in determining an appropriate penalty for the contraventions found.

Primary Purpose

The primary purpose of an establishment with a food primary licence must be the service of food during all hours of its operation.

I find on the evidence that the Green Element did operate on a frequent if not regular basis, contrary to this requirement. I find that the establishment has been operating on Fridays and Saturdays, and late night during business hours, with the service of liquor as its primary purpose. I find that during these times, food was served as an accompaniment to the liquor.

The correct allegation

The branch argued the Green Element was operating as a bar outside of the hours of operation specified on the food primary licence, and that this was contrary to the primary purpose (Section 11(1) *Regulation*). This is problematic.

The branch must be clear as to whether the contravention alleged is *operating contrary to primary purpose*, or *operating outside of the hours of operation*. It is insufficient for the branch to submit that the licensee was doing both together. The danger is that the wrong contravention may be alleged.

In this case, I find the branch is saved by overwhelming evidence that the licensee was operating as a liquor primary bar *during* its hours of operation. I find that the evidence establishes on the balance of probabilities that the Green Element was so operating on a frequent if not regular basis.

This cures what might otherwise be fatal to the allegation. If the evidence supported a narrow conclusion that after hours on May 13, 2006, only, the licensee was operating as a bar, the allegation of breaching Section 11(1) and 20(1)(d) would fail. The evidence in that situation would not speak to the operation of the establishment during its hours of operation. Therefore, the correct allegation would be that the establishment was operating beyond its hours of operation contrary to the licence.

The Licensee's submissions

While I accept the submissions of the licensee that the cultural pattern of the establishment's patrons dictates the service of large plates of food for sharing, I find that the quantity of food relative to the quantity of liquor served does not meet with the requirement of the *Regulation*. I also agree with the licensee that the ratio of dollars spent on liquor to dollars spent on food is not necessarily

determinative of the contravention. I find, however, that this is an appropriate factor to consider when weighing all of the evidence with respect to such an allegation.

I accept the evidence of the manager that he may have been misinterpreted with respect to his statement that the establishment operated as a bar after 11:00 p.m. I find, however, that the content of the statement is true, and I was able to make this finding of fact without relying on the statement itself. There was no evidence from the licensee that anything was different at 11:00 p.m. from what the inspection team saw at 1:00 a.m. The licensee provided evidence that at other times the establishment operated with a food primary purpose, but that same evidence supported a liquor focus in the late evening.

The licensee submitted that he has control over receipts that would prove that the Green Element relies on food sales, rather than liquor sales for the bulk of its revenues. The licensee did not produce any receipts to substantiate this claim. I cannot accept the licensee's submission in this regard without those receipts. Further, the total food and liquor receipts would not be determinative of operating pursuant to the primary purpose of the licence for the same reason that the ratio of dollars spent on liquor to dollars spent on food is not necessarily determinative of the contravention.

The licensee pointed to Exhibit No. 2 as an indication that the branch's witnesses failed to take into account the lounge licence identified in the red-lined plan of the establishment, in regard to the allegation of operating contrary to primary purpose. The photographs in Exhibit No. 2 were taken on May 19, 2006, and therefore, refer to the allegation of failure to clear, made on that date. The photographs in Exhibit No. 1, taken on May 13, 2006, show a similar state of affairs on the rectangular tables in the food primary area as well as the round tables in the lounge area. The licensee's argument therefore, must fail.

I find that the contravention of operating contrary to primary purpose Section 11(1) of the *Regulation* and Section 20(1)(d) of the *Act* has been proven.

Failure to clear:

The evidence as supported by the photographs in Exhibit No. 1 and Exhibit No. 2 is clear that on May 19, 2006, the licensee did fail to clear liquor off of the tables within ½ hour after liquor service hours. I do not accept the licensee's submissions that patrons left the tables to pay at the cash desk and the staff was therefore delayed in clearing the tables by the inspection team or otherwise. I find that the tables were not cleared of liquor in a timely fashion on May 13, 2006, May 19, 2006, or June 18, 2006. I find that the evidence discloses the failure to clear in a timely fashion represents the norm for the Green Element.

The licensee admitted to the contravention of failure to clear on May 13, 2006, and June 18, 2006.

I find the contraventions of Section 44(1)(b) of the *Regulation* did occur on all three dates.

PENALTY

Pursuant to Section 20(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 have the discretion to order one or more of the following enforcement actions:

- 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;
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- 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 or monetary penalty is warranted, I am bound to follow the minimums 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.

This establishment was issued a new licence in November 2005. The representative and his manager have since attended an information session and a compliance meeting. They have each signed a commitment to comply with the rules of liquor service. Notwithstanding the efforts of the branch, the licensee has been issued 12 contravention notices in the first eight months of operation. The contraventions alleged include:

- Failure to clear liquor within ½ hour after hours of liquor service (five times)
- Allow patrons to consume liquor after hours of liquor service
- Licensee or employee consuming liquor during hours of liquor service
- Sale of bottles of spirits

The evidence discloses that the licensee has also been issued tickets for municipal violations - including those for permitting smoking in the establishment. I note that the photographs in Exhibits No. 1 and No. 2 show cigarette boxes on the tables. The evidence also discloses - that the City of Richmond has had difficulty obtaining payment for those tickets.

I find that the licensee is not likely to voluntarily comply with the liquor rules at any time in the near future. I find that the licensee is likely an adverse influence on the surrounding community. I find that the licensee is causing an exceptional

drain on municipal and provincial resources utilized in the cause of enforcement. I find that consideration of the short time that this licensee has been operating, and during which it has amassed this considerable history, is critical to the determination of an appropriate penalty.

The branch recommended a \$5,000 penalty for the contravention of Section 44(1)(b) of the *Regulation* relating to May 13, 2006.

The range of penalty for a first contravention of this section of the *Regulation* in accordance with Schedule 4 of the *Regulation* is four (4) to seven (7) days suspension and/or a monetary penalty of \$4,000-\$7,000.

I find a \$5,000 penalty is appropriate.

The branch recommended a \$7,000 penalty for the contravention of Section 44(1)(b) of the *Regulation* relating to May 19, 2006.

This is the maximum amount specified in range of penalties in the *Regulation* for a first contravention of this section. Under the circumstances of this case, I find a \$7,000 penalty appropriate.

The branch recommended a \$10,000 penalty for the contravention of Section 44(1)(b) of the *Regulation* relating to June 18, 2006.

This is beyond the maximum amount specified in range of penalties in the *Regulation* for a first contravention of this section. An adjudicator does have the jurisdiction to exceed the range of penalties for a first contravention specified in the *Regulation*. The branch is proposing that I exercise this authority. Although technically, this is a first contravention, this is the third finding of a contravention in terms of chronology. These findings follow numerous previous allegations of contraventions of the same section of the *Regulation*. I note for reference that a

second contravention of this section carries a recommended range of suspension of twice the days indicated for a first contravention. I find this information helpful in determining that a \$10,000 penalty is appropriate in this case.

The branch recommended a \$7,500 penalty for the contravention of Section 20(1)(d) of the *Act* and Section 11(1) of the *Regulation* relating to May 13, 2006.

The range of penalty for a first contravention of this section of the *Regulation* in accordance with Schedule 4 of the *Regulation* is ten (10) to fifteen (15) days suspension and/or a monetary penalty of \$7,500-\$10,000.

I find a \$7,500 penalty is appropriate.

The total monetary penalty is considerable but reflects the severity of the contraventions, and particularly the licensee's lack of demonstrated effort to reform the policies of the Green Element.

It is a term of this penalty award that failure to pay within the time specified will result in an expedited process for the cancellation of the food primary licence as directed in the Order below. This is consistent with the authority given me by the legislation to exceed the penalties recommended by the branch and to cancel a licence in my discretion. I find this to be an appropriate exercise of that discretion.

ORDER

I order the licensee to pay a monetary penalty of twenty-nine thousand five hundred dollars (\$29,500) relating to Food Primary Licence No. 301770. The monetary penalty must be paid no later than the close of business on Tuesday, October 17, 2006. In the event that the full amount of the monetary penalty has not been paid to the branch by the close of business on Tuesday, October 17, 2006, the branch may cancel Food Primary Licence No. 301770 any time thereafter without further notice to the licensee.

[ORIGINAL SIGNED]

Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: September 27, 2006

cc: R.C.M.Police Richmond Detachment

Liquor Control and Licensing Branch, Vancouver Regional Office
Attn: Lee Murphy, Regional Manager

Liquor Control and Licensing Branch, Vancouver Regional Office
Attn: James Macdonnell, Branch Advocate

SCHEDULE "A"***Liquor Control and Licensing Regulation, BC Reg. 244/2002***

11(1) A food primary licence in respect of an establishment may be issued, renewed or transferred if the primary purpose of the business carried on in the establishment is the service of food during all hours of its operation.

44 (1) Unless otherwise authorized by the general manager,

(b) food primary licensees must ensure that liquor is taken from patrons within ½ hour after the time stated on the licence for the hours of liquor service, unless the liquor is a bottle of wine that is sealed in accordance with section 42(4)(a).

Liquor Control and Licensing Act, RSBC 1996 Chapter 267

s. 20(1) In addition to any other powers the general manager has under this Act, the general manager may, on the general manager's own motion or on receiving a complaint, take action against a licensee for any of the following reasons:

(d) the existence of a circumstance that, under section 16 would prevent the issue of a license;

Issue of licence prohibited

16 (1) A licence must not be issued, renewed or transferred if, in the general manager's opinion, the applicant

(a) is not a fit and proper person,

(b) is not the owner of the business carried on at the establishment or the portion of the establishment to be licensed,

(c) is not the owner or lessee of the establishment or the portion of the establishment to be licensed, or

- (d) is disqualified under this Act or the regulations or has not complied with the requirements of this Act or the regulations.

 - (2) In deciding if a person is fit and proper for the purposes of subsection (1) (a), consideration must be given to convictions in the preceding 3 years under the laws of Canada or any province or the bylaws of a municipality or regional district in British Columbia.

 - (3) A licence must not be issued, renewed or transferred if, in the general manager's opinion, it would be contrary to the public interest.

 - (4) Without limiting subsection (3), the general manager must consider whether
 - (a) the applicant is the holder of, has an interest in or is applying for another licence under this Act, or
 - (b) the applicant is qualified under this Act or the regulations or has complied with the requirements of this Act or the regulations.

 - (5) A licence, other than a special occasion licence under section 7, must not be issued, renewed or transferred except to
 - (a) a person who is a resident, normally resides in British Columbia and is not a minor,
 - (b) a partnership, of which each member is a resident, normally resides in British Columbia and is not a minor, or
 - (c) a corporation whose agent or manager selected by the corporation to carry on its business in the licensed establishment is a resident, normally resides in British Columbia and is not a minor.

 - (6) A special occasion licence must not be issued except to a person who is not a minor and who
 - (a) is a resident of and normally resides in British Columbia, or
 - (b) although not a resident of British Columbia is approved for a special occasion licence by the general manager.
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