



**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:	Dot 23 Restaurant Ltd., dba Station 23 Bistro 130-8291 Westminster Hwy Richmond, BC V6X 1A7
Case:	EH06-154
For the Licensee:	Tony Chang, licensee
For the Branch:	James Macdonnell, Advocate
Enforcement Hearing Adjudicator:	M. G. Taylor
Date of Hearing:	December 5, 2006
Place of Hearing:	By teleconference
Date of Decision:	December 12, 2006

## INTRODUCTION

The licensee, Dot 23 Restaurant Ltd., has operated Station 23 Bistro (“the restaurant”) under Food Primary Licence (FP) No. 300074 since March 2004. The licence was formally transferred in June 2004.

In accordance with the terms of the licence the permitted hours of operation are 9:00 a.m. to midnight every day. The licensed capacity is 55 persons. The licence permits the sale of liquor with the primary focus on the service of food. The licence is subject to terms and conditions listed on the face of the Food Primary Liquor Licence and those contained in the Liquor Control and Licensing Branch’s (the “branch”) Guide for Liquor Licensees (the ‘Guide’).

## ALLEGED CONTRAVENTIONS

By Notice of Enforcement Action (NOEA) dated October 5, 2006, the Liquor Control and Licensing Branch alleged that on October 1, 2006, the licensee contravened Section 44(1)(b) of the *Liquor Control and Licensing Regulation* by failing to ensure that liquor is taken from patrons within ½ hour after the time stated on the licence for the hours of liquor service.

The branch’s recommended enforcement action is a \$5000 penalty (item 25 of Schedule 4, *Liquor Control and Licensing Regulation*).

## RELEVANT STATUTORY PROVISIONS

*Liquor Control and Licensing Regulation*, B.C. Reg. 244/2002 (the “Regulation”)

### Time

- 44** (1) Unless otherwise authorized by the general manager,
- (a) liquor primary licensees and liquor primary club licensees must ensure that patrons are cleared from the licensed establishment within
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1/2 hour after the time stated on the licence for the hours of liquor service, and

(b) food primary licensees must ensure that liquor is taken from patrons within 1/2 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).

(2) Unless otherwise authorized by the general manager, if a licensee has been issued a licence, other than a food primary licence, in respect of an establishment, the licensee must not allow patrons to enter the licensed establishment during the hours when liquor service is not allowed by the licence.

(3) Unless otherwise authorized by the general manager, a licensee must not allow a person to consume liquor in the licensed establishment beyond 1/2 hour after the time stated on the licence for the hours of liquor service.

(4) A person must not consume liquor in a licensed establishment beyond the time allowed for consumption under subsection (3) in that licensed establishment.

(5) A reference to time in this regulation or in a licence is a reference to the local time observed at the place of the licensed establishment.

## **ISSUES**

The licensee admitted that the contravention occurred as alleged but contested the branch's proposed penalty arguing that a licence suspension would be more appropriate.

The only issue, therefore, is the determination of the appropriate penalty.

## **EXHIBITS**

Exhibit No. 1          Branch's Documents, items 1 – 11

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## **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 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;
- 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.

There is no record of prior proven contraventions, offences or enforcement actions of the same type for this licensee or this establishment within the year preceding these incidents (“compliance history”). Pursuant to *Liquor Control and Licensing Regulation*, Schedule 4, Section 1(1)(b), the branch has treated the allegations as first contraventions. The range for a first contravention is 4 to 7 day licence suspension, and \$5,000 to \$7,000 monetary penalty (Schedule 4, Item 26).

## **FACTS**

At approximately 1:00 a.m. on October 1, 2006 (business day of September 30), the Richmond joint inspection team consisting of two LCLB Officers and the

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Regional Manager Murphy, plus four RCMP officers attended the Station 23 Bistro to conduct a routine inspection. They observed that there were 21 patrons inside occupying 2 tables. The officers counted five jugs of Chivas Regal Whiskey mixed with green tea, 13 bottles and glasses of beer and a 1.5 litre bottle of champagne. The contents of the jugs were confirmed by the licensee who was present and working with his wife during the inspection. They also observed dice games on the tables used for drinking games. The licensee told the officers that the patrons were celebrating a birthday.

One of the officers took photographs, included in Exhibit No. 1.

The officers issued a Contravention Notice for Fail to Clear Liquor within ½ hour after liquor service hours. The team departed at 02:30 hours.

The licensee admitted this statement of the facts.

One of the officers testified at the hearing to the branch's history with the licensee. On May 1, 2004, the branch conducted an inspection at the restaurant which resulted in a Contravention Notice for allowing patrons to consume liquor after hours. This was the first occasion on which the regional branch office encountered the current licensee; he was in the process of transferring the liquor licence. On May 19, 2006, the branch attended the restaurant after hours and issued a Contravention Notice for failure to clear liquor within one-half hour after liquor service. Following each of these incidents, the branch conducted a compliance meeting with the licensee.

On September 19, 2006, the branch received a complaint from a member of the public that the restaurant was operating after hours and was causing a noise disturbance. As a result, the officer and the inspection team attended on September 30/October 1, 2006.

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The officer testified that he personally has attended the restaurant about five times in the past year and on two occasions he found after-hours service of liquor. He also testified that after-hours service is one the most pervasive problems the branch encounters in Richmond. It is a public policy concern because licensed premises are frequently in residential areas. He testified that the branch has tended to issue licence suspensions for these contraventions but has found that those have not been successful in achieving voluntary compliance. Therefore, in this instance, he determined that a monetary penalty would be the more appropriate penalty to meet the goal of achieving voluntary compliance.

The licensee did not present any evidence during the hearing.

## **SUBMISSIONS**

The licensee submitted that the business only brings in sufficient income to meet the cost of the rent and that it would be very hard to pay a \$5,000 monetary penalty. He submitted that since this incident, he now closes the restaurant every night at 11:30 p.m. He had not communicated this information to the branch prior to this hearing. Since this is a first contravention, and given that other restaurants in Richmond have been issued licence suspensions for similar contraventions, the licensee submitted that the appropriate penalty would be a licence suspension.

## **ANALYSIS AND DECISION**

The branch's primary goal in bringing enforcement action and in determining the appropriate penalty is to encourage voluntary compliance. The record indicates that this licensee attended a compliance meeting on similar issues in 2004 and 2006. I have given weight to this history not as proof of previous contraventions,

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but as proof that the branch has told the licensee in the past of its concerns and has attempted to assist the licensee in achieving compliance.

I find that the licensee's contention that he has shortened the hours of service to be 'too little, too late' to affect the penalty for this incident. I note that the licensee did not mention this change of procedure during the branch's pre-hearing telephone conference and did not bring it to the attention of the regional office. I find that the submission is self serving and is not corroborated by independent evidence, and I do not place great weight on it.

The evidence suggests a pattern of operation that the licensee has not corrected despite the branch's Contravention Notice and compliance meetings. The branch officer testified that, generally, licence suspensions have not been successful in achieving voluntary compliance. I acknowledge that is the experience with other licensees and should not be imputed to this licensee. However, it is a factor to consider in determining the appropriate penalty. These contraventions arise because licensees continue to sell liquor after the time stipulated in their liquor licences. The branch has a mandate to ensure that licensees are complying with the liquor licences and, therefore, the branch has to have consideration to what penalties act as effective deterrents to achieve the goal of voluntary compliance.

The evidence in this instance, including the photographs, shows that there were large quantities of liquor still on the tables. There is nothing in the evidence to suggest that the licensee had taken steps to clear liquor prior to the inspection team arriving, which was a full half hour after the licensee was legally required to clear all liquor from the tables.

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In my view, the licensee requires a strong message that it must alter its operation to bring it into conformity with the terms of the food primary licence. Having considered the evidence, I am satisfied that a penalty for the contravention is necessary to ensure future voluntary compliance and given the totality of the evidence I am satisfied that the minimum monetary penalty is the most appropriate penalty. I order that the licensee pay a monetary penalty of \$5,000.

## **ORDER**

Pursuant to Section 20(2) of the *Act*, respecting Food Primary Licence (FP), No. 300074, I order the licensee Dot 23 Restaurant Ltd., to pay a monetary penalty of Five Thousand Dollars (\$5,000) to the Liquor Control and Licensing Branch no later than January 12, 2007.

*Original signed by*

M.G. Taylor  
Enforcement Hearing Adjudicator

Date: December 12, 2006

cc: Richmond RCMP

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

Liquor Control and Licensing Branch  
Attn: James Macdonnell, Branch Advocate

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