



September 10, 2009

James O'Connell
2603 Kingsway
Vancouver, BC V5R 5H4

**Via Registered Mail
and Hand Delivered**

Dear Mr. O'Connell:

**Re: James Bradley O'Connell, dba Beyond the Grape Wineworks, Vancouver BC
UBrew/UVin Licence No. 203691 Case: EH09-069**

This letter constitutes a decision by the General Manager of the Liquor Control and Licensing Branch pursuant to Section 20 of the *Liquor Control and Licensing Act* regarding Notice of Enforcement Action ("NOEA") EH09-069 issued to you as the licensee and sole proprietor of the establishment.

Alleged Contravention and Proposed Penalty

The NOEA was sent on July 24, 2009 to inform you that the General Manager was taking enforcement action for the following alleged contravention:

That on June 19, 2009 the licensee contravened section 73 (2)(b) of the *Liquor Control & Licensing Act* by failing to allow an inspection of the licensed establishment immediately upon being requested to do so by a branch liquor inspector. The proposed penalty is the cancellation of the liquor licence (item 45 of Schedule 4 of the *Liquor Control & Licensing Regulation*).

Background

In a letter dated July 24, 2009, mailed to the establishment, the branch informed you that there would be a pre-hearing conference on August 5 at 1:30pm. That letter also advised that should the licensee fail to participate in the pre-hearing conference, the general manager may make a decision without conducting an enforcement hearing. The pre-hearing conference could not proceed because you failed to participate. The Branch Registrar's attempts to reach you by phone at the establishment were unsuccessful, and the messages that were left were not returned.

On August 6, 2009, the Branch Registrar sent a registered letter advising that due to your lack of participation in the pre-hearing conference, a decision regarding the alleged contravention and the proposed cancellation of the licence would be made without an oral hearing. The letter invited you to provide a written response to the Branch's allegation prior to a decision being made. The registered letter included a copy of the NOEA, the liquor licence, the compliance

**Ministry of Housing and
Social Development**

Liquor Control and
Licensing Branch

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documents listed on page 7 of the NOEA, and the July 24 letter informing you of the pre-hearing conference. Canada Post's attempts to deliver the registered letter were unsuccessful and on August 28, it was returned to the Branch as unclaimed.

To date, you have not contacted the branch to explain the failure to participate in the pre-hearing conference or to respond to the allegations contained in the NOEA.

Applicable Statutory Provisions

Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267

- 73** (2) Without limiting any other provision of this section, a licensee must ...
- (b) allow the licensed establishment to be inspected under this section, immediately upon being requested to do so by a person acting under the authority of this section,
 - (i) at any time provided for in the terms and conditions of the licence, and
 - (ii) without limiting subparagraph (i), at all reasonable times.

Liquor Control & Licensing Regulation, B.C. Reg 244/2002
Schedule 4

Item	Contravention	Suspension (days)
45	A breach of section 73 (2) (b) of the Act by neglecting or refusing to allow premises to be inspected	If the licence is not cancelled or transferred in accordance with section 69 of this regulation, at least 15 days

- 69** (1) Subject to subsection (2), the general manager must cancel the licence of a licensee if
- ...
- (c) contrary to section 73 (2) (b) of the Act, the licensee neglects or refuses to allow premises to be inspected when and as required under section 73 (2) (b) of the Act.
- (2) The general manager need not cancel a licence in a circumstance referred to in subsection (1) of this section if
- (a) the licence is transferred in accordance with subsection (3), or
 - (b) subsection (4) applies.
- (3) The general manager may refrain from cancelling a licence if
- (a) the general manager notifies the licensee that the general manager is prepared to consider a transfer of the licence during a specified period,
 - (b) the general manager suspends the licence until the earlier of
 - (i) the end of the specified period, and
 - (ii) the date on which the licence is transferred by way of a transfer approved by the general manager, and
 - (c) the licence is transferred within the specified period by way of a transfer approved by the general manager.
- (4) The general manager may refrain from cancelling a licence if the general manager is satisfied that it is in the public interest to refrain from cancelling the licence and the general manager

- (a) suspends the licensee's licence in accordance with Schedule 4, and
- (b) imposes any other enforcement actions referred to in section 20 (2) of the Act that the general manager considers appropriate.

Issues

1. Did the licensee contravene section 73(2)(b) of the Act?
2. If so, what penalty, if any, is warranted?

Particulars of Allegation

On June 18, 2009, at approximately 2:00 pm liquor inspector Edward Osei-Appiah conducted a routine inspection of Beyond the Grape Wineworks. He identified himself to James Bradley O'Connell, the licensee. Mr. O'Connell was assisting a customer, so the inspector said that he would remain inside to observe the premises. The customer then informed the inspector that Mr. O'Connell was going to load product into her car (parked directly in front of the entrance) and that the store was going to be locked. The inspector exited and after a few minutes of observing from across the street, he saw Mr. O'Connell return to the shop. When the inspector followed and attempted to reenter, the doors were locked. The customer informed him that Mr. O'Connell had asked her to tell the inspector that he had to leave suddenly as his father was ill.

On June 19, 2009, at 11:16 am, inspectors Osei-Appiah and Bruce Clark returned to the establishment. It was locked and there was a sign on the door that the business was closed for the day. Through the glass door, they could see Mr. O'Connell dealing with a customer. Mr. O'Connell was looking at the inspectors but despite their knocking and gesturing, he did not open the door to them. They saw him move into the back area with the customer. The inspectors went around to the rear exterior of the establishment where they observed Mr. O'Connell in conversation with another customer.

The inspectors identified themselves to Mr. O'Connell and requested entry into the establishment. Mr. O'Connell refused. The inspectors explained the importance of permitting inspection and the consequences for refusing entry to an inspector. Mr. O'Connell told them that he was not going to allow the inspectors entry for the purposes of inspection. When asked to provide a copy of his licence, he went around to the front of the establishment, unlocked and entered by the front door and returned with an expired liquor licence. He used his body to block the doorway leading into the back area of the establishment. When the inspectors asked again if they could enter into the back area of the establishment to conduct a routine inspection, he refused. The inspectors departed at 11:25 am.

On June 19, 2009 Contravention Notice B005819 was mailed to the licensee, and on July 24, 2009 Notice of Enforcement Action EH09-069 was sent to the licensee.

Licensee's Response

The licensee has provided no information to dispute what the Branch alleges took place. I have reviewed the branch's means of communicating the allegations to the licensee. I am satisfied that he is aware of the branch's allegations, has had the opportunity to respond and has chosen not to do so.

Decision and Reasons

I find, based on the information contained in the NOEA, and absent any response from the licensee, that on June 19, 2009, the licensee contravened section 73 (2)(b) of the Act by failing

to allow an inspection of the licensed establishment immediately upon being requested to do so by a branch liquor inspector.

Penalty

Having found that the contravention occurred, I have reviewed the branch's records for the licence and for the licensee. The licensee has held this licence since March 2000. The branch's records reveal the following information about non-compliance for which the branch did not pursue further enforcement action:

- Contravention Notice B200663 was issued for a July 13, 2007 failure to comply with invoice requirements (s. 22(2) of the *Regulation*), failure to ensure that bottled product is removed immediately (s. 28(1) of the *Regulation*) and failure to properly tag carboys (s. 25(1) of the *Regulation*).
- Compliance Meeting Report #C002762 was issued for an August 17, 2007 meeting held to discuss the three contraventions identified on July 13, 2007.

This contravention of section 73(2)(b) of the Act is a first contravention of this type for the purposes of the penalty schedule. Item 45 of Schedule 4 of the *Regulation* requires that if the licence is not cancelled or transferred in accordance with section 69 of the *Regulation*, the licence will be suspended for at least 15 days.

Section 69 of the Regulation provides that I must cancel the licence if the licensee refuses to allow the premises to be inspected.

Based on the uncontested evidence the licensee refused to allow the premises to be inspected. There are no mitigating circumstances that have been put before me for consideration. Based on the record, the licensee has attempted to avoid the consequences of his actions by ignoring all communications from the Branch.

Section 69 of the Regulation also provides that I need not cancel the licence if the licence is transferred in accordance with section 69 (3) of the Regulation. The branch has received no request for a transfer, and given the licensee's failure to acknowledge the Branch's attempts at communication, I see no reason to pursue this option.

Section 69 (4) of the Regulation also provides that I may refrain from cancelling the licence if I am satisfied that it is in the public interest to refrain from doing so. I see no public interest in refraining from cancellation. However, in order to mitigate the impact of the cancellation on the licensee's customers, I will delay the cancellation as per my order below to allow the licensee to contact his customers and provide them the opportunity to retrieve the product which they have paid for and which is already in production.

Failing to allow an inspection undermines the integrity of the licensing regime. I have considered the licensee's recent actions, as well as its past compliance history, and I find that cancellation of the licence is appropriate.

Order

Therefore, pursuant to s. 20(2) of the Act and s. 69 of the Regulation I order that the licence be cancelled as of the close of business on Thursday, September 24, 2009.

Further, pursuant to s. 20 (2) of the Act, I am suspending the licence from the date of this decision until the close of business on Thursday, September 24, 2009. During the suspension, you may allow existing customers to bottle and remove their product. However, you must not let anyone start a new batch. You may also oversee the fermentation, filtration, racking and aging of the product so that it can be bottled and removed from the premises by the close of business

September 24, 2009. Any remaining product that has not been bottled and removed by customers must be disposed of by the licensee.

The licensee will be mindful of any relevant provincial regulations or local government by-laws on the disposal of product.

Signs satisfactory to the general manager showing that the licence is suspended will be placed in a prominent location in the establishment by a liquor inspector and must remain in place until the close of business September 24, 2009. A liquor inspector will attend at your establishment to post the signs referenced above.

On the close of business Thursday, September 24, 2009, a liquor inspector will attend your place of business and remove the licence.

Yours truly,

Original signed by

Bruce Edmundson
Deputy General Manager
Compliance and Enforcement Division

cc Clerk/Secretary, City of Vancouver
Vancouver City Police
LCLB Vancouver Regional Manager
LCLB Manager, Licensing Administration