



DECISION OF THE  
**GENERAL MANAGER**  
**LIQUOR CONTROL AND LICENCING 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:	Haoyen Enterprises Ltd., dba Hoko Japanese House Restaurant 362 Powell Street Vancouver, BC V6A 1G4
Case:	EH08-094
Appearances:	
For the Licensee	Douglas King
Advocate	Peter Mior
Enforcement Hearing Adjudicator	Sheldon M. Seigel
Date of Hearing	February 10 & 12, 2009
Place of Hearing	Vancouver, B.C.
Date of Decision	February 20, 2009

## INTRODUCTION

The Licensee operates a restaurant in the downtown east side of Vancouver with a food primary licence. The hours of operation indicated on Food Primary Licence # 173285 are 11:00 a.m. to 1:00 am Monday through Saturday and 11:00 am to midnight Sunday.

The establishment is a small family-run sushi restaurant. The licence has an endorsement allowing karaoke-style entertainment subject to city permits.

The licence is, as are all liquor licences issued in the province, subject to the terms and conditions contained in the publication *Food Primary Licence Terms and Conditions: Guide for Liquor Licensees in British Columbia (the Guide)*.

## PRELIMINARY MATTER

The Licensee appeared at the hearing with an individual who was planning to videotape the proceedings. The Branch advocate objected to having the proceedings videotaped. The Licensee had intended to apply in advance for permission to tape the proceedings but due to a communication failure between her and her counsel, this application was not made.

I indicated that this request was not likely to meet with my approval. The Licensee then withdrew her request and instead asked if she could audiotape the proceedings. The Branch advocate had no objection to that request.

I find that video-taping the proceedings without good reason and without advance notice is a significant interference with the process and flow of the proceedings and should not be allowed. As the Branch hearings are open to the public and no advance notice of public attendance is usually expected, permission for a

discreet audio-taping is not an unreasonable request and should be allowed providing it will not interfere with the proceedings.

I find the Licensee may audio-tape the process.

## **ALLEGED CONTRAVENTIONS**

The Branch made allegations and recommended enforcement action as set out in the Notice of Enforcement Action (NOEA) dated January 13, 2009. The Branch alleges that on June 16, 2008, the Licensee contravened s. 20 of the *Liquor Control & Licensing Act* (*Act*) and s. 11 of the *Liquor Control & Licensing Regulation* (*Regulation*) by operating the establishment contrary to the establishment's primary purpose. The proposed penalty is \$7500 (item 1, Schedule 4 of the *Regulation*).

## **RELEVANT STATUTORY PROVISIONS**

See Appendix "A"

## **ISSUES**

Was the establishment operated contrary to its primary purpose in contravention of s. 20 of the *Act* and s.11 of the *Regulation* at any time on June 16, 2008?

If so, is a penalty warranted, and what is the appropriate penalty?

## **EXHIBITS**

- Exhibit #1 is the Branch's Book of Documents.
- Exhibit #2 is a package of documents submitted by the Licensee.
- Exhibit #3 is hand written note taped to a cash register-type tape.

## **EVIDENCE**

The Branch presented two police constables and a sergeant from the Vancouver Police Department (VPD), and a Branch liquor inspector. The VPD members each testified that they attended at the establishment the night of June 16, 2008 and made observations. Their notes are contained in Exhibit #1. The inspector testified that he had control of the enforcement action process.

Constable #1 testified that he arrived at the establishment because of a call relating to a disturbance involving a loud party and people spilling into the street from the establishment. He arrived at 10:50 pm on June 16, 2008. He noted an intoxicated male who walked out and urinated five feet from the restaurant and a crowd of people blocking the sidewalk. He also saw people drinking from red plastic cups. He saw a sign by the front door indicating a cover charge for entry. He said there were two people acting as doormen. He asked them for identification and ascertained that they were 15 and 16 years old respectively. He believed that the doormen had open alcohol in front of them, but he did not observe them drink. There was a live band performing and patrons were dancing. He indicated that he observed lots of empty glasses, beer bottles, alcoholic beverages, and people drinking in the establishment. He did not see any dirty dishes or food in the restaurant. He could not smell any food either. He found a mature male behind the counter and wanted to talk to him, but found the music too loud. He asked if they could converse in the kitchen. In the kitchen the male indicated that he was the owner and manager of the establishment. The kitchen appeared to be clean- with stacked utensils, no kitchen staff working, and no food odours. It did not look as though the kitchen was being used at the time. The constable issued a licensed premise check (exhibit 1, tab 8).

Constable #2 testified that she attended with Constable #1. She observed that the music coming from the restaurant was loud and she could hear it from where they parked their car on the street. She immediately saw at least five patrons with beer bottles at the front of the establishment. She saw many patrons standing by the live band and a sign at the door indicating a cover charge was in effect. She indicated that the music was so loud that no dinner conversation could take place at any table in the restaurant. She said that she saw one small plate with food on it in the whole of the establishment. She also said there were many empty beer bottles and glasses on the tables but no remnants of food service or utensils. She opined that the establishment looked as though it was being operated as a bar.

The Sergeant testified that he attended in support of his constables who answered a call to the establishment. He saw people with red plastic cups outside of the restaurant, and could smell the beer in the cups. Inside, he saw a lot of people he thought were minors. He also saw lots of open bottles of beer, liquor containers, and drink cups. At one table he found three people whom he thought to be underage. He checked their respective identification and ascertained that one of them was indeed under-age. The under-age patron had open liquor in front of her, but the Sergeant did not issue a ticket because he did not actually see her drink the liquor. He said that in the whole of the restaurant he only saw one plate of food even though the establishment was full to capacity. He opined that the establishment looked as though it had been rented out for an event. It did not look like it was operating as a restaurant.

The liquor inspector testified that he spoke to the members of the VPD who attended on the night of the allegation and he reviewed the LPC issued by the officers. The inspector identified all of the contents of Exhibit #1 and explained the enforcement action procedure to the point of the hearing. The inspector indicated that he issued the contravention notice (Exhibit #1, tab 2) and the NOEA (Exhibit #1, tab 1). The inspector testified that he asked the Licensee for

proof of the ratio of liquor to food service for the night of the allegation and received only Exhibit #3, from which he could glean very little. He said the Licensee provided no further evidence in that regard.

The Licensee presented the owner and principle of the corporate licensee (Licensee), his wife, and three patrons. Each of these witnesses testified that they were present at the establishment on the night of June 16, 2008 and made observations.

The Licensee testified that he has owned and operated the establishment for twelve years and that it's primary purpose is a sushi restaurant. He says that for the year, the sales have been approximately half food and half liquor. He described the event as an unfortunate occurrence. He said a young music band from a high school approached his wife to rent the restaurant for a fundraiser. The band wanted to charge an admission fee and do a show for their friends. He told them the minors would not be served alcohol and if they brought in their own liquor they would be kicked out. He testified that there were many minors in attendance but that none of them were served liquor. He said the kitchen was open, though nobody was in it, and he and his wife were there to cook and make sushi if required. Food was always available, though not much of it was ordered. He confirmed that not many people ate food late in the evening, though some did eat early at around 8:00-8:30 p.m. and that most of the patrons stayed for the entire night. Some of the people, he said, ate before they arrived at the restaurant. He feels that he rented the restaurant to the wrong people. They didn't eat and they didn't spend any money. He said:

This is the first time we have ever had a charge to the Band. This is the first time we did that because they were under age. I thought we were going to have an under age crowd and they were not going to drink. They were not going to be buying food either so I

figured they had to pay me up front. They were not going to order food because they are young and have no buying power.

The Licensee indicated that he had been presenting live music shows at the establishment for many years. He said that the police know he has music shows and once they confirmed that he could have karaoke, the police officers in attendance focused on under-age drinking. The establishment did not sell a lot of liquor on that night. He said that the young kids were drinking lots of water because it was very hot. He also noted that although he has red plastic cups, he did not use them on June 16, 2009.

He identified his email correspondence with the band about booking the establishment at Exhibit #2.

He said that he did not know that he had to apply for permission to have live music at the establishment.

Patron #1 testified that he was eighteen years old at the time of the hearing. He arrived at the restaurant on June 16 during the evening and noticed about forty or fifty people. He said most of the people were watching the band. Some were eating. Most of the people were there for the band rather than for food, but he knew there was food available. He felt he could have ordered food. He said the band was not preventing people from having dinner and although there were under-age people there, they did not appear to be drinking. He said he had been to the restaurant many times to watch the bands.

Patron #2 testified that she is seventeen years old and attends high school. She knows people who were in the band that night. She arrived at about 8:30 or 9:00 p.m. and thought there were forty people in attendance. Although she ate before coming to see the band, she thought she could order food if she wanted to. She remembers seeing plates on the tables. She met her friends that had eaten

there earlier. She knew there was a cover charge but she did not pay it as she knew the band. The band was not forcing people to pay who could not afford it. She thought most of the kids were of drinking age. She didn't see anyone there who was under-age. She said the lighting was bright and they were able to carry on a conversation. The music was not loud. She knew people were eating, though she did not see any staff or the owners of the restaurant bringing food or drinks to customers.

Patron #3 testified that he was seventeen years old and on June 16, helped the band by collecting money at the door. Some people didn't pay, but that was frowned upon. There were a couple of drinks at the piano though he was not drinking when he sat there (to collect cover charges). He did not eat because he had eaten dinner before he attended at the restaurant. He had been to the restaurant lots of times ten or eleven at least, and remembers eating there the first or second time he went. He usually goes for the bands. He only remembers one bearded man and a member of the band drinking liquor on June 16th. The lighting was very bright and the music was "regular volume for a live performance. It was loud, but not painful." He said that the restaurant has a disco ball, but that it was not operating on that night.

The Licensee's wife testified that she has been working at the establishment for ten years. Once in the past, the liquor inspector told her she could not have a cover charge sign on the door. She wanted clarification of that decision but did not get it. She said that when she got this contravention notice she was shocked. She thought she was allowed to have live music and she did not think the restaurant had served a lot of liquor on the evening in issue. She testified about a conversation with the liquor inspector in which the inspector asked for evidence of liquor and food sales for June 16, 2008. She sent Exhibit #3. The inspector told her afterward that he could not make any sense of it so she sent in a better copy of it (Exhibit #1, tab 17). She explained at the hearing that the cash



register tape shows category 01 food in the amount of \$135.75 and category 06-liquor in the amount of \$64.38 (or 68% food, 32% liquor) for June 16, 2008.

She described the discussions with the band member who called about booking the restaurant. She said they negotiated a fee for using the restaurant. She said the deal was that if the patrons the band brought in bought \$300 worth of food there would be no charge, but if less than \$300 of food was sold, there would be a charge of \$150. She prepared the cash register tape to prove there was not \$300 in food sold.

The last time she or her husband reviewed the *Guide* was in 2005. She knew that if she had a problem with the operation of the restaurant, she could look it up on the internet.

She always thought they (she and the Licensee) had a lounge endorsement that allowed live music. She was only told that was not the case after June 16, 2008. She said that when the inspector asked why she had a disco ball, she advised that she had a dance permit. The inspector told her she had to apply for a permit to have dancing. She did not apply because she thought she was allowed to have dancing by the city permit. She agreed that the inspector told her to apply for a permit for dancing in 2006.

She testified that on the night in issue, the bands played music from 8:00 p.m. on, and the music was "louder than normal restaurant but still within tolerance for listening." She recommended that the patrons buy food but did not force them. She said she and her husband added karaoke and live music because "business was almost dead."

She said that they have signs that say patrons have to order food, but some patrons come for the show only and do not want to buy anything. She said some customers bring their own bottles of Coca Cola. If they do not order food, and

they want drinks she will serve them once, but if they still do not want food later, she will stop serving them liquor. She decided, however, not to enforce that rule on June 16, 2008 because there was a cover charge for patrons to get in to the show.

## **SUBMISSIONS**

The Branch submitted that the establishment was clearly operating as a bar, and not as a food primary establishment on the date of the inspection. This was confirmed by:

- A live band producing loud music uncharacteristic of a restaurant.
- A cover charge for attendance.
- Most of the patrons standing, and some dancing.
- No food (but for a single plate of sushi) visible on the tables despite many patrons in attendance.
- Considerable quantities of liquor on the tables and in the hands of patrons.
- No sign of cooking or food preparation in the kitchen.
- No used or dirty dishes on the tables and the dishwasher not in operation.

The Branch submitted that food primary establishments must be primarily engaged in the service of food during all hours of operation, and that the emphasis is on the word *all* during the hours of operation. The *Regulation* does not contemplate a departure from food service at certain hours of the day such as during the evening periods. Restaurants offer liquor as an accompaniment to food rather than as the primary activity. Consequently, for a food primary establishment the service of food must remain the primary focus during all hours of operation.

The Branch also indicated that it has recommended the minimum penalty, which is appropriate for this contravention.

The Licensee submitted that a liquor inspector had attended the restaurant previously when there was a live band, and no issue was raised. In the past they were allowed live music, and so if they are not so allowed, they were misled by the inaction of the inspector.

The Licensee submitted that the food/alcohol ratio of 68%/32% is appropriate for a restaurant and indicates that the establishment was operating in accordance with its primary purpose.

Finally, the Licensee submitted that if they are found to have contravened the *Act* and *Regulation* a more appropriate penalty is a suspension, in light of the small revenue demonstrated by the provided receipts.

## **ANALYSIS AND DECISION**

There is evidence that the Licensee operated contrary to the primary purpose of its licence. The licence requires that the establishment must be used as food primary at all times. The evidence discloses a cover charge, a live band, no or little food in the later hours of the night, a standing and dancing crowd, empty seats, people milling around the stage, people gathering at the door area (not waiting to get in), people walking about with drinks (alcoholic or otherwise), and loud music not consistent with typical dining. The establishment appeared to be functioning as a bar or event destination, and did not engage in the service of food during all hours of operation on the date of the alleged contravention.

The Licensee pointed out that the food to liquor ratio was acceptable for a restaurant. I find that food was 68% of the sales of June 16, 2009, and liquor 32%. But that is not determinative of whether the contravention has occurred.

Indeed, the amount of food and liquor sold is so insignificant as to possibly amount to ten small meals and ten drinks for the whole of the business day. This ratio can sometimes be relevant to a determination of whether the establishment is operating within the bounds of a food primary licence, but in this case the ratio provides little assistance. The amount of the receipts is so small as to fail to counter the impression presented by the above described conditions. Further, the *Regulation* provides a list of considerations that the general manager may take into account in determining whether the primary purpose of the business was as required. That list includes, not only the ratio of receipts from food sales to liquor sales, but also the status of kitchen equipment, the type of entertainment offered, and other relevant considerations (section 11(3) *Regulation*).

The Licensee let out his premises to the wrong crowd. He acknowledged that he charged the band a fee for the use of the restaurant because he knew the patrons the band would bring would not have any buying power. He knew they were not going to buy food. It turned out to be a poor financial move that I am sure he is not pleased about. The mistake, however, was his. He was not diligent with respect to who he rented the establishment to. He did not require minimum food orders or sales. He did not limit liquor sales without food. It is his obligation to comply with the licensing requirements. And the visit by the police, which precipitated the enforcement action, was the result of his failure to control and monitor his patrons. Finally, he testified that he is entitled to have live music, which the Branch pointed out is not correct. There is no live entertainment endorsement on his licence, except for karaoke. Also, the *Guide*, at p.17 of tab 5, confirms that a specific endorsement is required for live music performances in a food primary establishment.

The Licensee is responsible for what goes on in his establishment. While it may be possible to rent out a restaurant for an event and still ensure that it will be operated according to its primary purpose, it is the Licensee's responsibility to so ensure. The Licensee provided the negotiating email with the band, but that

communication does not make it clear to the band that the establishment had to operate as a restaurant.

I think this Licensee contravened the *Act* and *Regulation*. I do not think that this occurred with malice or intention to fly in the face of the *Act* and *Regulation*, but I do think that the Licensee allowed his business to operate without specific reference to the regulatory scheme. In doing so the Licensee found itself awry of appropriate conduct. I find that it is a requirement of any licensee to inform itself of the conditions of its licence including direction and prohibitions in the *Act*, *Regulation*, and *Guide*.

The Licensee and his wife seem to have a strong sense of what they think is appropriate and not, and they try to act responsibly. They try not to serve minors and they try to serve liquor along with food. However, they do not regularly consult the Branch rules that include the regulatory requirements. Those requirements are either met or not met by the Licensee in accordance with the levels to which the requirements match the independent sense that the Licensee adheres to.

The Licensee is trying to act responsibly. The legal requirements, however, are not identified by the Licensee's sense of responsibility, but by the legislative scheme. The Licensee did not make sufficient effort to understand or comply with those regulations. As a result, the Licensee did not comply with those regulations. He had live music contrary to the terms of his licence (including the *Guide*), and allowed an event that he either knew or ought to have known would not comply with his obligation to serve food and serve alcohol only as an accompaniment to food. The premise was operating as a club or event venue with liquor available independent of food, on the night in question.

The *Regulation* stipulates at section 11(1) that, “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.**” I find that the evidence of the police officers indicates that on the evening of the alleged contravention, the Licensee did not engage in the service of food during all hours of its operation. The Licensee’s witnesses did little to indicate otherwise. To the extent that the Licensee’s witnesses testified otherwise, I find their evidence to be self serving and inconsistent with each other. The young patrons are friends of the band. The band has an interest in having places to perform and raise money. The Licensee said that the lighting was low. Two of the young patrons said it was high. The restaurant was either filled with minors (patron #1), or there were few if any minors there (patron #2). The music was not loud (patron #2), or loud (patron #3).

The Licensee provided little in the way of argument or evidence that addressed diligence in attempting to avoid non-compliance. I find that a lack of effort to keep alert to the obligations and responsibilities of a Food Primary Licensee speaks against any possibility of a finding of due diligence.

I find that the contravention occurred as alleged in the NOEA.

## **PENALTY**

Pursuant to section 20(2) of the *Act*, having found that the Licensee has contravened the *Act*, the *regulations* 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 by the minimums set out in Schedule 4 of the *Regulation*. However, 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.

The Branch's primary goal in bringing enforcement action and imposing penalties is to achieve voluntary compliance with the *Act*, *Regulation*, and rules. Among the factors that are considered in determining the appropriate penalty is whether there is 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.

The Branch submitted that food primary establishments must have as their primary purpose the service of food during all hours of operation. Restaurants offer liquor service as an accompaniment to food, rather than as the primary activity. It is contrary to the public interest for the Branch to allow restaurants to operate as bars. The current liquor licensing process requires public and local government input into licence applications for liquor-primary establishments but not for restaurants. Obtaining a liquor licence for a restaurant and then operating as a bar circumvents this process. Restaurants operating as bars tend to be associated with community complaints around late night noise, intoxication and other behaviour contrary to community standards and the public interest.

I find a penalty is warranted in order to ensure future compliance. The Licensee has been to a compliance meeting with the Branch, has been issued a contravention notice in the past, and has had regular contact with the liquor inspector. Despite the opportunities for education and voluntary

compliance, the Licensee has not seen fit to inform himself of the requirements of his licence, or to follow those requirements.

Schedule 4, item 1 of the *Regulation* sets out penalties for a first contravention of this kind including a license suspension of 10-15 days and/or a monetary penalty of \$7,500- \$10,000. The Branch recommended a monetary penalty of \$7,500 and described that penalty as the minimum for this contravention. I am doubtful that the recommended penalty is the minimum under the circumstances. The Licensee has asked that in the event of a finding of contravention, a suspension be awarded rather than a monetary penalty. I find this request to be confirmation that a suspension would be less onerous to the Licensee than a monetary penalty of the minimum amount. In light of the Licensee's threshold of \$300 in food sales for a Monday night this is consistent with my understanding.

I accept the Branch's view that a minimum penalty is warranted, but find that the lesser of the two modalities of payment stipulated in the *Regulation* is in this case a license suspension. Therefor I find that the minimum penalty is a ten day license suspension.

For the contravention of operating the establishment contrary to its primary purpose in contravention of the *Act* and *Regulation*, I find a ten day licence suspension is warranted.

## **ORDER**

Pursuant to section 20(2) of the *Act*, I order a suspension of Food Primary Licence no. 173285 for a period of ten (10) days to commence at the close of business on Sunday March 22, 2009 and to continue each succeeding business



day until the suspension is completed. "Business day" means a day on which the Licensee's establishment would normally be open for business (section 67 of the *Regulation*).

*Original signed by*

Sheldon M. Seigel  
Enforcement Hearing Adjudicator

Date: February 20, 2009

cc: RCMP Vancouver Detachment

Liquor Control and Licensing Branch, Vancouver Office  
Attn: Donna Lister, Regional Manager

Liquor Control and Licensing Branch, Vancouver Office  
Attn: Peter Mior, Branch Advocate

## **APPENDIX A**

### **Liquor Control and Licensing Act**

#### **[RSBC 1996] CHAPTER 267**

##### **Action against a licensee**

**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:

(a) the licensee's contravention of this Act or the regulations or the licensee's failure to comply with a term or condition of the licence;

(b) the conviction of the licensee of an offence under the laws of Canada or British Columbia or under the bylaws of a municipality or regional district, if the offence relates to the licensed establishment or the conduct of it;

(c) the persistent failure to keep the licensed establishment in a clean and orderly fashion;

(c.1) a failure by the licensee to take reasonable measures to ensure that the operation of the establishment is not contrary to the public interest and does not disturb persons in the vicinity of the establishment;

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

(e) the suspension or cancellation of a municipally, regionally, provincially or federally granted licence, permit or certificate that the licensee is required to hold in order to operate the licensed establishment.

(2) If the general manager has the right under subsection (1) to take action against a licensee, the general manager may do any one or more of the following, with or without a hearing:

(a) [Repealed 1999-36-13.]

(b) impose terms and conditions on the licensee's licence or rescind or amend existing terms and conditions on the licence;

(c) impose a monetary penalty on the licensee in accordance with the prescribed schedule of penalties;

(d) suspend all or any part of the licensee's licence in accordance with the prescribed schedule of licence suspensions;

(e) cancel all or any part of the licensee's licence;

(f) order the licensee to transfer the licence, within the prescribed period, to a person who is at arm's length from the licensee.

(2.1) The general manager may, if he or she is satisfied that it is in the public interest to do so,

(a) impose a monetary penalty under subsection (2) (c) that is greater than the amount provided for in the prescribed schedule of penalties, or

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

(2.2) The general manager must, in taking action against a licensee under subsection (2.1), take into account

(a) the licensee's entire compliance history in respect of the matters referred to in subsection (1), and

(b) the particular circumstances giving rise to the taking of action by the general manager.

(2.3) The general manager may not impose a monetary penalty referred to in subsection (2.1) (a) that is greater than the following amounts:

(a) \$50 000 for a contravention of section 38 (1), and

(b) \$25 000 for any other reason referred to in subsection (1) of this section for taking action against the licensee.

(2.4) If a corporation is liable to a monetary penalty imposed under this section in respect of a contravention of this Act or the regulations, an employee, officer, director or agent of the corporation who authorizes, permits or acquiesces in the contravention is also liable to the penalty.

(2.5) A person on whom a monetary penalty has been imposed under this section must pay the penalty whether or not the person

(a) has been convicted of an offence under this Act or the regulations, or

(b) is also liable to a fine for an offence under this Act or the regulations.

(2.6) A monetary penalty imposed under this section must be paid within 30 days after the date on which the notice referred to in subsection (4) (a) is provided to the licensee or within any longer period specified by the general manager.

(2.7) All monetary penalties received by the general manager under this section must be paid into the consolidated revenue fund.

(3) Despite subsection (2) (d), (e) and (f), the general manager must suspend, cancel or order the transfer of a licence held by a person who has been convicted of a prescribed number of prescribed offences under the laws of Canada or British Columbia.

(4) On taking action against a licensee under subsection (2), the general manager must

(a) provide the licensee with written notice of the action in accordance with the regulations,

(b) set out in the notice the reasons for taking the action,

(c) set out in the notice the details of the action 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 suspension is imposed, the period of the suspension and the dates on which the suspension must be served, and

(d) [Repealed 2002-48-37.]

(4.1) For the purposes of any hearing referred to in subsection (2), the general manager, by summons, may require a person

(a) to attend as a witness, at a place and time mentioned in the summons, which time must be a reasonable time from the date of the summons, and

(b) to bring and produce before the general manager all documents, writings, books, deeds and papers in the person's possession, custody or power touching, or in any way relating to, the subject matter of the hearing.

(4.2) A person named in and served with a summons referred to in subsection (4.1) must attend before the general manager and answer on oath, unless the general manager directs otherwise, all questions touching the subject matter of the hearing, and produce all documents, writings, books, deeds and papers in accordance with the summons.

(4.3) When the general manager exercises a power under subsection (4.1), a person who fails or refuses to comply with subsection (4.2) is liable, on application to the Supreme Court, to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

(5) [Repealed 1999-36-14.]

## **Liquor Control and Licensing Regulation**

[includes amendments up to B.C. Reg. 213/2007, June 21, 2007]

### **Food primary licences**

**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.

(2) The following terms and conditions apply to a food primary licence:

(a) minors are allowed in the establishment;

(b) liquor must not be served unless the establishment is open for service of a varied selection of food items, including both appetizers and main courses, or their equivalent;

(c) subject to limitation by the general manager, hours of liquor service must start no earlier than 9:00 a.m. and end no later than 4:00 a.m. the next day.

(3) The general manager may consider, in determining whether the primary purpose of the business carried on in the establishment is or will be the service of food during all hours of its operation, any or all of the following:

(a) kitchen equipment;

(b) furnishings and lighting;

(c) menu;

(d) type and hours of entertainment and games offered by the licensee;

(e) advertising;

(f) hours of operation;

(g) financial records;

(h) the ratio of receipts from food sales to receipts from liquor sales in the establishment;

(i) any other relevant consideration that may assist in the determination.