



**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: OJ's Coquitlam Restaurant Inc.
dba Original Joe's Restaurant & Bar
#15 – 2662 Austin Avenue
Coquitlam, BC V3K 6C4

Case: EH09-148

For the Licensee: Derek Doke

For the Branch: Peter Mior

Enforcement Hearing Adjudicator: Edward Owsianski

Date of Hearing: Written Submissions

Date of Decision: May 13, 2010

**Ministry of Housing
& Social
Development**

Liquor Control and
Licensing Branch

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INTRODUCTION

The licensee, OJ's Coquitlam Restaurant Inc. dba Original Joe's Restaurant & Bar holds Food Primary Licence No. 303519 for the operation of a restaurant at #15 – 2662 Austin Avenue, Coquitlam BC with liquor sales from 9:00 a.m. to midnight, seven days a week. The licence is, as are all liquor licenses issued in the province, subject to the terms and conditions contained in the publication "Guide for Liquor Licensees in British Columbia."

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The branch's allegations and proposed penalty are set out in the Notice of Enforcement Action (the "NOEA") dated January 8, 2010.

The branch alleges that on November 24, 2009, the licensee contravened s. 38 of the *Liquor Control & Licensing Act (the Act)* which states:

38 (1) Except as provided in this Act, the *Liquor Distribution Act* or the regulations made under those Acts, a person must not, personally or by his or her clerk, employee or agent, keep for sale, sell or, in consideration of the purchase or transfer of property or for other consideration, give liquor to another person.

The proposed penalty is a \$7500 monetary penalty (item 16 of Schedule 4 of the *Liquor Control and Licensing Regulation (the Regulation)*).

Item 16 of Schedule 4 of *the Regulation* provides a range of penalties for a first contravention of a licence suspension for 10 - 15 days and/or a monetary penalty of \$7500 - \$10,000.

The licensee does not dispute that the contravention took place, just the penalty proposed. It was agreed that this hearing would take place by way of written submissions.

REVELANT STATUTORY PROVISIONS

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

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ISSUES

1. Did the contravention occur?
2. If so, what penalty, if any, is warranted?

EXHIBITS

1. Branch's package of disclosure to the licensee dated March 26, 2010.
2. Branch advocate's letter of March 29, 2010, to the licensee.
3. Licensee's submission dated April 9, 2010.

EVIDENCE & SUBMISSIONS

The branch's evidence and submissions are summarized as follows:

On November 24, 2009, at approximately 6:00 p.m. two liquor inspectors and a police officer conducted an inspection of a special occasion licensed (SOL) event at the Coquitlam Centre Mall. The SOL included approval for liquor manufacturers and their agents to provide samples of beer and wine to patrons attending the event. They observed a booth operated by the licensee and staffed by two employees serving beer to patrons. The beer was served in clear plastic "7 ounce" cups filled nearly to the top. One male patron was served three full glasses of

beer. One of the employees was observed drinking from a glass of beer in between serving patrons. One of the staff members told the inspectors that they were from Original Joe's Restaurant in Coquitlam and were serving their house beer, which is manufactured by a brewery for the restaurant and had been brought from the restaurant for the event.

The inspectors spoke with one of the employees who identified himself as being the managing partner of the restaurant. He told the inspectors that the organizer for the event told him that they were permitted to serve liquor at the event. The inspectors advised him that only liquor manufacturers or their agents were permitted to conduct such tastings, that the sampling size for beer was 30 ml (1 ounce), multiple servings were not to be made to patrons, and employees were not permitted to consume liquor. The manager was told to cease liquor service and shut down the booth, which was done.

A contravention notice was subsequently issued and a NOEA prepared. The inspector felt that a penalty was necessary for future compliance and recommended a monetary penalty of \$7500, the minimum monetary penalty for a first contravention of this type.

The NOEA, at Appendix B, indicates that there is no compliance history for this establishment.

The licensee's evidence and submissions are summarized as follows:

The licensee has operated over 30 establishments in four provinces since 1998 without a liquor control violation. Staff receives training with respect to all liquor laws. This incident resulted from an error in judgement on the part of one of the managers. While the event organizer said that it was okay to provide small samples of their branded beer, they now realize that they should have checked with the liquor inspector prior to proceeding. Since the incident several steps have been taken to ensure that this will not happen again, including retraining for the manager on the liquor laws. All managers have been made aware of the importance of contacting the liquor inspector prior to participating in any future events.

The sample sizes were small, thus there was no threat to the public. There was no profit to the licensee. A \$7500 penalty would have a serious negative impact on the licensed establishment.

REASONS AND DECISION

The licensee has admitted the contravention. Having considered all of the evidence, I find that on November 24, 2009, the licensee contravened s. 38 of the *Liquor Control & Licensing Act*.

DUE DILIGENCE

The licensee is entitled to a defence to the allegations of the contraventions, if it can be shown that it was duly diligent in taking reasonable steps to prevent the contraventions from occurring. The licensee must not only establish procedures to identify and deal with problems, it must ensure that those procedures are consistently acted upon and problems dealt with.

Here, there is little evidence upon which I can find that the licensee was duly diligent. At the time of the contravention, the on-site manager was responsible for supervising the licensee's staff. The manager was, at the time, the directing mind of the licensee and failed to take reasonable measures to ensure compliance with the *Act* and *Regulations*.

In conclusion, I find that the licensee has not been duly diligent.

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 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, and 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 achieving voluntary compliance. 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.

There is no record of prior proven contraventions, offences or enforcement actions of the same type for this licensee for this license within the year preceding this incident. I therefore find this to be a first contravention.

In the circumstances of this case, I am satisfied that the licensee had not, at the time of the contravention, successfully or sufficiently stressed upon its management and staff the need to fully and conscientiously carry out their duties. The licensee, not being a liquor manufacturer, was precluded from providing tasting samples of liquor (beer) to patrons at the event. Patrons were provided tasting samples far in excess of the amounts permitted. Patrons were provided with multiple samples. One employee was observed consuming liquor (beer). In consequence, I find that a penalty is necessary to ensure future compliance.

Any penalty imposed must be sufficient to ensure compliance in the future. Schedule 4 of the *Regulations* provides a range of penalties for a first contravention of this type. For monetary penalties the range is from \$7500 to \$10,000. The branch has proposed the minimum monetary penalty of \$7500. I am satisfied that in the circumstances of the contravention the minimum monetary penalty of \$7500 is necessary, reasonable and appropriate.

ORDER

Pursuant to Section 20 (2) of the *Act*, I order the payment of a Seven Thousand Five Hundred Dollar (\$7500) monetary penalty be paid by the licensee to the general manager on or before Monday, June 14, 2010.

Original signed by

Edward W. Owsianski
Enforcement Hearing Adjudicator

Date: May 13, 2010

cc: RCMP Coquitlam Detachment

Liquor Control and Licensing Branch, Surrey Office
Attn: Michael Clark, Regional Manager

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