



REVISED: March 30, 2011

**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: Big Billy's Restaurants Ltd.,
dba Little Billy's Steakhouse
6785 Hastings Street
Burnaby, BC V5B 1S6

Case: EH10-171

For the Licensee: Bill Paskalidis

For the Branch: Bode Fagbamiye

General Manager's Delegate: Sheldon M. Seigel

Place of Hearing: By Written Submissions

Date of Decision: March 23, 2011

**Ministry of Public
Safety & Solicitor
General**

Liquor Control and
Licensing Branch

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INTRODUCTION

Big Billy's Steakhouse is located in Burnaby, BC. This establishment conducts sales and service of alcohol under Food Primary Liquor Licence No. 303162, held by Big Billy's Restaurants Ltd. Hours of sale indicated on the Liquor Licence are 11:00 a.m. to midnight, seven days per week with a licensed capacity of 50 persons. 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*" ("*Guide*").

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The branch's allegations and proposed penalty are set out in a Notice of Enforcement Action (NOEA) EH10-171, dated December 3, 2010. The branch alleges that on October 31, 2010 the licensee contravened s. 44(3) of the *Liquor Control and Licensing Regulation* (Regulation) by allowing people to consume liquor in the licensed establishment beyond ½ hour after the time stated on the licence for the hours of liquor service. The proposed penalty is a four-day licence suspension (item 26 of Schedule 4, *Liquor Control and Licensing Regulation*).

The licensee admits that the contravention took place but disputes the proposed penalty. The branch and the licensee agreed that the hearing would take place by way of written submissions.

RELEVANT STATUTORY PROVISIONS***Liquor Control and Licensing Regulation, B.C. Reg. 244/2002*****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 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.

ISSUES

1. Did the contravention occur?
2. If so, is a penalty warranted under the circumstances?
3. If a penalty is warranted, what is the appropriate penalty?

EXHIBITS

- Exhibit No. 1: The branch book of documents
- Exhibit No. 2: Correspondence from the licensee dated January 27, 2011
- Exhibit No. 3: Licensee's phone records

EVIDENCE

Exhibit No. 1 includes (among other things) the following:

- NOEA letter dated December 3, 2010,
- Contravention notice B007376
- Food Primary Licence 303162
- Final Inspection Interview Sheet
- Record of compliance meeting held November 16, 2010
- Notes of the liquor inspectors
- A timeline of contact and attempted contact between the branch and liquor inspectors regarding this matter

Exhibit No. 2 contains evidence and submissions of the licensee regarding the events of October 31, 2010 (Business day of October 30, 2010) and his actions following the night in issue.

The liquor inspectors' evidence is that the establishment was occupied by approximately 11 patrons and the licensee at 1:45 am, or about an hour and a half beyond the end of liquor sale hours and more than an hour beyond the time at which liquor must be cleared from the patrons and tables in the establishment. At that time the occupants of the establishment still had wine and beer in their possession. When the liquor inspectors approached the bartender, he asked if he could help them with anything. The licensee does not deny that this occurred, and in fact characterizes the bartender's question as an offer of drinks as well as food.

The licensee was present at the time and described his actions as affected by his consumption of liquor, and that the event was a party or celebration for family and friends. There is also evidence that the licensee described some of the people in attendance and drinking at the time the liquor inspectors arrived as staff members.

Following the event, the licensee was in contact with the liquor inspectors and he says that he was prepared to waive his opportunity to a hearing as he recognizes that he contravened the *Regulation*. He says that he volunteered to close his business to liquor sales for the recommended four-day suspension, but did not get around to attending at the branch to sign the waiver due to matters outside of his control.

The liquor inspectors say that the licensee was indeed cooperating and indicated that he was prepared to sign a waiver and some discussion of the time of a suspension may have occurred. They confirm however that the licensee did not make his appointments to attend and sign the waiver and did not follow up on phone messages to do so.

SUBMISSIONS

The branch says that the licensee must serve his suspension of four days as it is the minimum suspension for a first contravention of s. 44(3) of the *Regulation* and it is reasonable.

The licensee says that he did already serve a four-day suspension on the dates that he thought he had agreed to do so. He says he posted the signage as would be required of a branch suspension, and closed the till to liquor sales. He submits that he did not sell any liquor on the indicated dates and that the phone records confirm that he tried to contact the branch on numerous occasions to arrange a time to attend to sign a waiver. He therefore submits that he should not have to endure a further suspension.

REASONS AND DECISION

The evidence clearly indicates that liquor was not cleared from the establishment when it was supposed to be. Whether the persons in the restaurant were employees or family or friends of the licensee, as they sat in the main body of the establishment and drank, they were patrons. The licensee may not allow patrons to consume liquor beyond the time permitted, and the facts in this instance are clear that it did so allow patrons to consume contrary to the *Regulation*. That the licensee was himself present is a contributing factor which does not assist in his plea for leniency, as he is uniquely aware of his obligations under the *Act* and *Regulation* by virtue of branch training (i.e., Final Inspection Interview Sheet) and of course his obligation to the branch and the public. The fact that he was intoxicated to the point that he offered that his judgement was impaired also does not help his position.

I find that the contravention occurred as alleged.

DUE DILIGENCE

A licensee is entitled to a defence of due diligence if he shows that he did all that he reasonably could to prevent the contravention from occurring. The licensee admitted that the contravention took place. Nothing in the evidence or argument indicates that the licensee had done all that he reasonably could to prevent the contravention from occurring, and therefore no defence of due diligence has been made out.

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 may do any one or more of the following:

- 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 or this establishment within the year preceding this incident. The range of penalties for a first contravention of section 44(3) of the *Regulation* pursuant to the *Regulation*, Schedule 4 is a suspension of four to seven days or a monetary penalty of \$5,000- \$7,000.

The licensee had an option of having the matter heard by the General Manager's delegate or waiving that right and accepting a penalty imposed by the branch on the terms imposed by the branch. Dates for suspensions are not typically negotiated. Penalties are imposed, not voluntarily implemented. The licensee, despite his alleged efforts, did not sign a waiver. I am not convinced by the evidence before me that the licensee served a suspension imposed by the branch for contravention of the *Regulation* on October 31, 2010.

I am convinced that a penalty is appropriate for the substantive contravention and as no penalty has been imposed and served, I find the imposition of one is appropriate.

The licensee was present, and by his own admission impaired when his establishment was serving liquor well beyond the time at which such activities should have terminated.

I find a four-day suspension is reasonable under the circumstances.

ORDER

Pursuant to Section 20(2) of the *Act*, I order a suspension of Food Primary Licence No. 303162 for a period of four (4) days to commence at the close of business on Friday, April 15, 2011 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*).

To ensure this order is effective, I direct that Food Primary Licence No. 303162 be held by the branch or the Burnaby Police Department from the close of business on Friday, April 15, until the licensee has demonstrated to the branch's satisfaction that the suspensions have been served.

A suspension sign notifying the public that the licence is suspended will be placed in a prominent location in the establishment by a branch inspector or a police officer, and must remain in place during the period of suspension.

Original signed by

Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: March 23, 2011

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

 Liquor Control and Licensing Branch, Victoria Office
 Attn: Bode Fagbamiye, Branch Advocate