

Date: October 20, 2016

To: All LCLB Staff
All licensees
All industry associations
All local government, First Nations and police agencies

Re: Compliance and Enforcement Policy Changes

Please note: These policy changes will come into effect on January 23, 2017

1. Choice of penalty

Current Policy

The general manager determines the penalty.

New Policy

A licensee may be permitted to choose one of either penalty (monetary penalty or licence suspension) if:

- it is the first contravention of a licence or authorization for the 12-month period preceding the contravention,
- the minimum of either penalty (monetary penalty or suspension) prescribed in the penalty schedule is suitable, and
- they sign a waiver agreeing the contravention occurred.

The general manager may determine in certain cases that a choice of penalty is not appropriate.

Explanation

One of the recommendations of the Liquor Policy Review was to consider the varying size and focus of licensed establishments and how different types of penalties (fine and licence suspension) uniquely impact licensees and their staff. This provides some flexibility to the licensee to address the issue.

2. Reconsideration process

Current Policy

The general manager has no authority to fix errors in his or her enforcement decisions and licensees who disagree have to apply to the B.C. Supreme Court for judicial review.

New Policy

Licensees can apply for reconsideration of enforcement decisions if the application meets one of the following prescribed grounds:

- there is new, substantial and material evidence that was not available at the time of the original hearing
- there was an error of law
- there was a failure to observe the rules of procedural fairness

Applicants for reconsideration must submit an application form, a \$500 application fee and a written submission identifying how they meet the grounds for reconsideration within 30 days of receiving their enforcement decision. The penalty may be upheld, varied or rescinded upon reconsideration. The application fee will be refunded if the enforcement decision is rescinded. If a licensee is dissatisfied with a reconsideration order, they can apply for judicial review within 30 days of receiving the reconsideration decision.

The reconsideration process is available to any enforcement decision received after December 24, 2016 (30 days prior to January 23, 2017), as long as it meets one of the prescribed grounds listed above.

Explanation

The cost of applying for judicial review can be a barrier for licensees, and the court process can be daunting for unrepresented licensees.

3. Judicial reviews must be commenced within 30 days of a decision by the general manager**Current Policy**

There is no deadline to apply for judicial review of the general manager's decisions.

New Policy

A licensee must apply for judicial review within 30 days of receiving a decision of the general manager, including an enforcement or reconsideration order.

Explanation

This change provides certainty for the branch and for licensees affected by a decision.

4. Compliance and enforcement against former licensees**Current Policy**

The branch may take enforcement action against current licensees, and may also take action against special occasion licensees for up to six months after the special occasion licence expires.

New Policy

The branch may now take enforcement action against:

- A current licensee.
- A former licensee, for up to six months after they ceased to be the licensee. (For example, their licence was transferred to a new owner, cancelled or they failed to renew their licence.)
- A new owner, prior to the licence transfer being approved by the branch, and up to six months after the branch has refused the licence transfer.
- A permittee.
- A former permittee, up to six months after the permit expires.

Explanation

These changes ensure the general manager can take action against the person who was legally responsible for the establishment at the time the contravention occurred.

(Please see Item 1 under General Policy Changes for All Licensees for more information about the changes to the licence transfer process.)

5. Compliance history

Current Policy

The current *Liquor Control and Licensing Act* requires that a licensee's compliance history must be considered when taking action that would result in a penalty higher than the prescribed schedule of monetary penalties or licence suspensions.

New Policy

The new *Liquor Control and Licensing Act* states that the compliance history of a licensee or permittee must be considered every time the branch takes enforcement action. The definition of compliance history is provided in s.149 of the new Liquor Control and Licensing Regulation.

Further Information

Further information regarding liquor control and licensing in British Columbia is available on the Liquor Control and Licensing Branch website at <http://www.gov.bc.ca/liquorregulationandlicensing>. If you have any questions regarding these changes, please contact the Liquor Control and Licensing Branch toll free in Canada at 1-866-209-2111 or 250 952-5787 if calling from the Victoria area.

Original signed by

Douglas Scott
Assistant Deputy Minister and General Manager