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INTRODUCTION

The Enforcement Program

The role of the Liquor Control and Licensing Branch (the “branch”) enforcement program is to ensure that licensees comply with the Liquor Control and Licensing Act (the “Act”), the Liquor Control and Licensing Regulation (the “Regulation”), and the terms and conditions of their licence. While the goal of the branch is to minimize contraventions through education and voluntary compliance, enforcement action may be necessary when there is a serious contravention or repeated contraventions of the Act, its Regulation and/or with the terms and conditions of a licence.

It is important for the branch to take action against non-compliance to minimize public safety risks and protect community standards. A delay in dealing with non-compliance or not responding may endanger the public or compromise community standards. As well, it may encourage further incidences of non-compliance.

These rules are designed to explain the enforcement hearing process and ensure we take a consistent approach. The rules are branch policy, and the adjudicator may exercise discretion when imposing them in order to ensure administrative fairness.

The Authority of the General Manager

Section 20 of the Act authorizes the general manager of the branch, with or without a hearing, to take action against a licensee for alleged contraventions of the Act, its Regulation and/or the terms and conditions of the licence. The general manager may take one or more of the following enforcement actions:

- add terms and conditions to a licence or rescind or amend existing terms and conditions;
- require the licensee to pay a monetary penalty in accordance with the penalty schedule;
- suspend a licence in accordance with the penalty schedule;
- cancel all or part of a licence;
- order the licensee to transfer their licence, within a certain period, to a person who is at arms length from the licensee.

ROLES and RESPONSIBILITIES

Enforcement Hearing Adjudicator

The general manager has delegated authority to conduct enforcement hearings to several enforcement hearing adjudicators. (Although the general manager has authority to conduct enforcement hearings as well, most are done by a delegate.)

The enforcement hearing adjudicator conducting a hearing will consider the evidence and argument of the branch and the licensee, decide whether the alleged contravention(s) occurred and what enforcement action, if any, to impose.

Registrar

The registrar ensures that issues related to enforcement hearings are consistently addressed, and that licensees have ready access to information about the process, laws and policies. The registrar conducts pre-hearing conferences, schedules hearings and makes decisions on procedural matters that are raised before the hearing.

Branch Advocate

The branch advocate represents the branch at pre-hearing conferences and enforcement hearings. During the hearing, the branch advocate presents the branch's evidence and makes submissions.

The branch may also be represented by legal counsel, who may present legal arguments.

Compliance and Enforcement Officer

Liquor inspectors attend enforcement hearings as witnesses for the branch. They testify about the alleged contravention(s), the reasons for pursuing and proposing a particular enforcement action, and any prior compliance activity related to the licence or the licensee.

THE ENFORCEMENT PROCESS

Notice of Enforcement Action

If compliance and enforcement staff recommend enforcement action for an alleged contravention(s) of the Act, the Regulation and/or the terms and conditions of the licence, the licensee will receive a Notice of Enforcement Action. The Notice of Enforcement Action will include information on the alleged **contravention(s)**, the proposed enforcement action (i.e. proposed penalty), and the facts on which the alleged contravention(s) and proposed enforcement action are based.

Waiver

When the licensee receives a Notice of Enforcement Action, the licensee may sign a waiver notice. Signing a waiver notice means that the licensee

- agrees that they committed the contravention,
- accepts the enforcement action proposed in the Notice of Enforcement Action,
- waives the opportunity for an enforcement hearing on the matter, and
- agrees that this will form part of the compliance history of the licensee and of the license.

If a Notice of Enforcement Action contains more than one alleged contravention, a licensee may sign a waiver for one of the contraventions and dispute the others at a hearing.

Pre-Hearing Conference

The registrar may conduct a pre-hearing conference with the licensee and the branch advocate in order to:

- determine whether the licensee's response to the allegations necessitates holding an enforcement hearing,
- clarify and narrow the issues that will be dealt with at the enforcement hearing;
- identify and discuss the evidence (including witnesses) that will be presented at the enforcement hearing,
- set out the requirements for pre-hearing disclosure of evidence,
- schedule the enforcement hearing,
- set procedures to ensure a timely, fair and efficient hearing, and
- provide information to the licensee regarding the enforcement hearing process.

If the licensee does not participate in the pre-hearing conference, the licensee may lose the opportunity for an oral hearing and the general manager will base a decision on the written material only.

Enforcement Hearing

Hearings can be conducted by way of an oral hearing, teleconference call, written submissions, or any combination of these. The registrar will determine the location of the hearing and the manner in which it will be conducted.

At the enforcement hearing, a licensee may assert that the alleged contravention(s) did not occur, and/or the proposed enforcement action is not warranted. The enforcement hearing adjudicator will consider both the licensee and the branch's evidence and argument and issue a written decision.

In general, the format for an oral or teleconference hearing will be as follows:

- The enforcement hearing adjudicator will make introductory comments, and the licensee and the branch advocate will introduce themselves.
- The enforcement hearing adjudicator will deal with any preliminary matters,
- The branch advocate will present the branch's evidence of the contravention which may include documents, witnesses and an explanation of the branch's reasons for the proposed enforcement action.
- The licensee or licensee's representative may question the branch's witnesses.
- The licensee may present evidence, including documents and witnesses.
- The branch advocate may question the licensee's witnesses.
- The branch advocate will summarize the branch's case and make final submissions on the alleged contravention(s) and the proposed penalty.
- The licensee may provide a summary of the evidence and make submissions on the alleged contravention(s) and the proposed penalty.
- The enforcement hearing adjudicator may ask questions of the participants at any time during the hearing.

The Penalty Schedule

If the enforcement hearing adjudicator finds that a contravention occurred and that a penalty is warranted, he or she may do one or more of the following:

- add terms and conditions to a licence or rescind or amend existing terms and conditions;
- require the licensee to pay a monetary penalty in accordance with the penalty schedule;
- suspend a licence in accordance with the penalty schedule;
- cancel all or part of a licence;
- order the licensee to transfer their licence, within a certain period, to a person who is at arms length from the licensee.

If the enforcement hearing adjudicator finds that the contravention(s) occurred and that a licence suspension and/or a monetary penalty is warranted, he or she is bound to follow the minimums set out in Schedule 4 of the Regulation. The enforcement hearing adjudicator is not bound by the penalty proposed in the Notice of Enforcement Action, and may also impose higher penalties than those in the penalty schedule when it is in the public interest to do so.

The Decision Letter

The enforcement hearing adjudicator will issue a decision after the hearing has concluded. Once the licensee has received the decision letter, the branch will post the complete text of the decision on their web site. Names of individuals and personal identifiers (where they work, etc.) are removed to comply with the requirements of the Freedom of Information and Protection of Privacy Act.

Judicial Review

If the licensee is dissatisfied with an enforcement hearing decision, they may apply to the B.C. Supreme Court for a judicial review.

ENFORCEMENT HEARING RULES

Purpose

1. The purposes of these Rules are:
 - a) to assist licensees in understanding the enforcement hearing process
 - b) to ensure a consistent approach in enforcement hearings and
 - c) to ensure the fair and efficient adjudication of alleged contraventions.

Effective Date

2. The Rules will apply to Notices of Enforcement Action issued on or after January 15, 2001.

Definitions

3. In these Rules:

“Act” means the Liquor Control and Licensing Act, as amended from time to time;

“Branch” means the Liquor Control and Licensing Branch;

“Branch advocate” means the person appointed by the general manager of the Liquor Control and Licensing Branch to represent the Liquor Control and Licensing Branch in enforcement proceedings;

“Enforcement hearing adjudicator” means the general manager of the Liquor Control and Licensing Branch and any person to whom the general manager has delegated his or her powers, duties and functions under the Act and Regulation for the purpose of dealing with enforcement hearing cases;

“Expert report” or “expert evidence” means evidence expressing an opinion based on education, training or experience;

“Licensee” means “licensee” as defined in the Act;

“Proceeding” includes an oral hearing, a hearing by written submission, pre-hearing conference, or any other form of hearing, conference or meeting directed by the registrar or the enforcement hearing adjudicator;

“Produce” in relation to a document or other thing, means provide by mail, courier, fax transmission or e-mail so that the document or other thing to be produced is actually received at the address for delivery of the recipient by 4:00 p.m. on the date that the document or other thing is required to be provided, or means provide to the recipient and be received by the recipient as specified in a direction of the enforcement hearing adjudicator or registrar;

“Registrar” means the person to whom the general manager of the Liquor Control and Licensing Branch has delegated his or her powers, duties and functions under the Act and Regulation for the purpose of administering hearing proceedings.

“Regulation” means the Liquor Control and Licensing Regulation, as amended from time to time.

“Rules” means these enforcement hearing rules.

“Waiver Notice” means a notice in form and content satisfactory to the general manager, by which the licensee expressly and irrevocably

- (a) agrees that the licensee has committed the contravention,
- (b) accepts the specified enforcement actions,
- (c) waives the opportunity to have an enforcement hearing on the matter, and
- (d) agrees that the finding of contravention and the specified enforcement actions will form part of the compliance history of the licensee.

Extension or Reduction of Time

4. At any time, the enforcement hearing adjudicator or registrar may extend or reduce the time for an application or the performance of any obligation under the Rules as long as it does not alter any time limits set out in the Act or Regulation.

Representation

5. The licensee may represent them self, be represented by a lawyer, or give someone written authority to act on their behalf.

Notice of Enforcement Action

6. A Notice of Enforcement Action, sent to notify the licensee that enforcement action may be taken for an alleged contravention(s) of the Act, Regulation, and/or the terms and conditions of the licence, will contain information about:
 - a) the alleged contravention(s) and the proposed enforcement action;
 - b) the facts upon which the alleged contravention(s) and proposed enforcement action are based.
 - c) information about the waiver, the enforcement hearing process, the licensee’s option to sign a waiver, and what that means if they sign it.

Waiver

7. The licensee may sign a waiver at anytime, up until the time the hearing is set to begin. Once the hearing begins however, the licensee relinquishes their option to sign a waiver.

Hearing Date

8.
 - (1) If the licensee does not waive the opportunity for a hearing, the registrar may set a date for a hearing. The registrar will make reasonable efforts to accommodate the participant’s schedules.
 - (2) The registrar will confirm the date and location of the hearing with all participants, via a letter, fax, or email.
 - (3) If the licensee does not attend the hearing, the adjudicator may proceed without the licensee or adjourn the hearing to a later date.

Applications for Hearing Postponement

9. (1) The registrar may postpone a hearing on his or her own initiative or in response to an application for postponement at any time before the hearing has started.
- (2) The registrar will only grant a postponement if, in his or her opinion, there are exceptional circumstances.
- (3) An applicant seeking a postponement must contact the registrar in writing at least fourteen (14) days before the date of a hearing. The applicant must say why they are asking to have the hearing postponed, keeping in mind that the registrar will only postpone the hearing under exceptional circumstances.
- (4) In determining whether to grant a postponement, the registrar may consider, but is not limited to:
 - the reasons for the request and any objections to the postponement.
 - the number of postponements that have already been granted.
 - whether the postponement will needlessly delay or impede the conduct of the hearing.
 - whether the purpose for which the postponement is sought will contribute to the resolution of the matter.
 - whether the postponement is required to ensure a fair opportunity to be heard.
 - the degree to which the need for the postponement arises out of the intentional actions or the neglect of the applicant, and.
 - whether the branch and the licensee agree to the postponement.
- (5) The registrar may set any terms and conditions respecting scheduling, attendance at pre-hearing conferences, production of documents, or any other matters which may assist with the timely, fair and efficient conduct of the postponed hearing.

Pre-Hearing Disclosure

10. (1) The branch advocate and the licensee shall exchange copies of anything they will submit as evidence at the hearing at least fourteen (14) days before the hearing, unless the registrar orders otherwise.
- (2) The branch advocate and the licensee will let each other know the names of any witnesses who will be called to testify at the hearing, and the nature of the evidence they will present, at least fourteen (14) days before the hearing, unless the registrar orders otherwise.
- (3) Unless otherwise directed by the registrar, at least twenty-one (21) days before the commencement of the hearing, the branch advocate will provide the licensee a copy of any expert report(s) the branch intends to submit as evidence at the hearing. If the branch advocate intends to call an expert witness without a report, the branch will produce a written statement of the opinion to be given, the facts upon which the opinion is based and the qualifications of the expert witness.

- (4) Unless otherwise directed by the registrar, at least twenty-one (21) days before the commencement of the hearing, the licensee will provide the branch advocate with a copy of any expert report(s) the licensee intends to submit as evidence at the hearing. If the licensee intends to call an expert witness without a report, the licensee will produce a written statement of the opinion to be given, the facts upon which the opinion is based and the qualifications of the expert witness.

Pre-Hearing Procedures

11. (1) The registrar may set guidelines or provide direction for the fair and efficient conduct of a hearing, including convening a pre-hearing conference.
- (2) The registrar may direct that a pre-hearing conference be held in person, by telephone conference or by some other method.
- (3) At a pre-hearing conference, the registrar may:
 - a) provide information to the licensee regarding the enforcement hearing process and the allegations,
 - b) assist in clarifying and narrowing the issues that are in dispute,
 - c) determine whether an enforcement hearing is required and if so, in what format,
 - d) add alleged contraventions to be heard at the hearing,
 - e) clarify and discuss the evidence (including witnesses) that will be presented at the enforcement hearing,
 - f) set out the requirements for pre-hearing disclosure of evidence, including requiring the production or access to evidence that will be entered at the hearing,
 - g) require the licensee to prepare and produce a list of witnesses' and a written summary of a witness' evidence,
 - h) require presentation of written submissions,
 - i) schedule or reschedule the enforcement hearing,
 - j) impose time limitations and terms and conditions on the production of documents, expert reports, agreed statements of fact, written submissions or any other process necessary for the fair and efficient management of the hearing,
 - k) report the results of the pre-hearing conference, including a summary of the issues and any directions made at that pre-hearing conference, and
 - l) set procedures to ensure a timely, fair and efficient hearing.
- (4) The registrar may issue summons for the attendance of witnesses.

Hearing Procedures

12. (1) The registrar or the enforcement hearing adjudicator may direct that a hearing be conducted by oral hearing, written submissions, telephone conference, or any combination of these.
- (2) The enforcement hearing adjudicator may establish his or her own practices and procedures for hearings and may:

- a) determine the procedures for the enforcement hearing;
 - b) make determinations regarding the admissibility of evidence;
 - c) require the production of evidence;
 - d) proceed in the absence of the licensee or other party or in the absence of any submissions from the licensee or other party where the party has had notice of the proceeding;
 - e) ask questions to clarify issues or facts;
 - f) ask questions of a witness in the nature of direct examination or cross-examination;
 - g) place time limitations on the examination or cross-examination of witnesses or presentation of opening or closing submissions;
 - h) require presentation of written submissions;
 - i) adjourn a hearing.
- (3) The registrar will determine the location of the enforcement hearing.

Recording Hearings

13. (1) The branch does not record enforcement hearings.
- (2) If a licensee wishes to record the hearing, they must obtain the Registrar's consent.
 - (3) A request to record the hearing must be made at least seven (7) calendar days before the commencement of the hearing.
 - (4) If the Registrar agrees that the licensee may record the hearing, the licensee must:
 - (a) record the hearing at their own expense,
 - (b) provide a copy of the audio recording to the general manager, if requested to do so,
 - (c) if a transcript is produced, direct the reporter to provide a copy to the general manager upon request of the general manager.
 - (5) The licensee and the general manager are each responsible for the costs of obtaining their own copy of the transcript.
 - (6) Once the hearing has commenced, the adjudicator may determine the procedure and conditions under which the hearing may be recorded.
 - (7) A recording made under this Rule is not part of the official record of the general manager's proceedings.

Evidence

14. (1) Subject to subsection (2), the enforcement hearing adjudicator has discretion to admit and consider evidence whether or not the evidence would be admissible in a court of law.
- (2) Nothing is admissible in evidence before the enforcement hearing adjudicator that is inadmissible in a court by reason of a privilege under the laws of evidence.

- (3) The enforcement hearing adjudicator will determine, on a balance of probabilities, whether the licensee has contravened the Act, Regulation or a term or condition of the licence.
- (4) Subject to Rule 10 and unless the enforcement hearing adjudicator otherwise orders, expert evidence may be presented.

Adjournments

15. (1) Once the hearing has commenced, the enforcement hearing adjudicator may adjourn a hearing on his or her own initiative or upon application.
 - (2) The enforcement hearing adjudicator will not grant an adjournment of a hearing unless there are exceptional circumstances to justify an adjournment.
 - (3) In determining whether to grant an adjournment the enforcement hearing adjudicator may consider, but is not limited to, the following factors:
 - a) the reasons for the request and any objections to the adjournment
 - b) the number of adjournments that have already been granted
 - c) whether the adjournment will needlessly delay or impede the conduct of the hearing
 - d) whether the purpose for which the adjournment is sought will contribute to the resolution of the matter
 - e) whether the adjournment is required to ensure a fair opportunity to be heard and
 - f) the degree to which the need for the adjournment arises out of intentional actions or the neglect of the applicant, and
 - g) whether the branch and the licensee agree to the adjournment.

Hearing Decisions

16. (1) The enforcement hearing adjudicator is not bound by previous decisions made pursuant to subsection 20(2) of the *Act*.
 - (2) The enforcement hearing adjudicator may rule on the alleged contravention at the hearing with written reasons to follow or reserve the decision and forward a written decision at a later date.
 - (3) If the enforcement hearing adjudicator determines that a licensee has contravened the Act, Regulation and/or the terms and condition of its license, the enforcement hearing adjudicator may:
 - a) take the proposed enforcement action recommended in the Notice of Enforcement Action, or
 - b) take any other enforcement action allowed under the Act and the Regulation.

Judicial Review

17. A licensee who is dissatisfied with a decision of an enforcement hearing adjudicator may initiate a judicial review pursuant to the Judicial Review Procedure Act [R.S.B.C. 1996], c. 241.

MORE INFORMATION

If you questions or would like more information, contact the Liquor Control and Licensing Branch Registrar, Enforcement Hearings at:

Mailing address
PO Box 9292 Stn Prov Govt,
Victoria, BC V8W 9J8

Office address
2nd floor, 1019 Wharf St.,
Victoria, BC V8W 2Y9

Email
lclb.lclb@gov.bc.ca

Phone
250 387-1254 in Victoria

Toll free Phone
1-866-209-2111