

NOVA SCOTIA UTILITY AND REVIEW BOARD

**IN THE MATTER OF THE LIQUOR CONTROL ACT AND THE LIQUOR LICENSING
REGULATIONS**

- and -

IN THE MATTER OF alleged infractions under sections 61(1), 61(2), 54(1) and 80(b) of the *Liquor Licensing Regulations* by **GRAFTON STREET RESTAURANT LIMITED** operating as **The Attic Lounge**, located at 1741 Grafton Street, Halifax, Nova Scotia, and holder of Cabaret License No. 4592

BEFORE: M. Kathleen McManus, K.C., Ph.D., Member

APPLICANT: **ALCOHOL, GAMING, FUEL AND TOBACCO, a DIVISION
of the DEPARTMENT OF SERVICE NOVA SCOTIA**
Duane A. Eddy, Counsel

DECISION DATE: **January 28, 2025**

DECISION: **Four-day Suspension of Licensing Privileges to be
served within 30 days of Board's Order.**

Erratum:

[1] On page 1, in the style of cause the word Restaurant was spelled incorrectly, is to be amended to read "**Restaurant**". The remainder of the document is unchanged.

ERRATUM DATED: **January 29, 2025**

NOVA SCOTIA UTILITY AND REVIEW BOARD

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of the DEPARTMENT OF SERVICE NOVA SCOTIA
Duane A. Eddy, Counsel

RESPONDENT: **GRAFTON STREET RESTAURANT LIMITED**
Gary Hurst

HEARING DATE: November 1, 2024

DECISION DATE: **January 28, 2025**

DECISION: **Four-day Suspension of Licensing Privileges to be served within 30 days of Board's Order.**

I INTRODUCTION

[1] On May 14, 2024, the Executive Director of the Alcohol, Gaming, Fuel and Tobacco (AGFT) division of the Department of Service Nova Scotia, referred a request for a disciplinary hearing to the Nova Scotia Utility and Review Board pursuant to s. 47B(1)(b) of the *Liquor Control Act (Act)*, R.S.N.S. 1989, c. 260. The requested hearing is about alleged violations of ss. 61(1), 61(2), 64(1) and 80(b) of the *Liquor Licensing Regulations*, N.S. Reg. 365/2007 (*Regulations*), by Grafton Street Restaurant Limited (Licensee), operating as The Attic Lounge, for the premises located at 1741 Grafton Street, Halifax, Nova Scotia (Licensed Premises).

[2] After discussions with the AGFT, the Licensee acknowledged that it had violated ss 61(1), 61(2), 64(1) and 80(b) of the *Regulations* and agreed to a license suspension of four consecutive days (Wednesday to Saturday). The AGFT and the Licensee did not agree about when the liquor license suspension would be served. In the AGFT's referral letter, the Board was asked to determine the issue of when the liquor license suspension should be served by the Licensee.

[3] On the same day that the AGFT sent the referral letter, Gary Hurst, President of Grafton Street Restaurant Limited, who owns the Licensed Premises, advised that he would be representing the Licensee before the Board. He requested a postponement of the hearing as he was beginning daily medical treatment. The Licensee agreed with AGFT's recommendation that the hearing of this appeal take place on November 1, 2024.

[4] In its pre-hearing written submissions, the AGFT reframed the issues of this appeal as: (1) does the Board have the jurisdiction to impose a liquor license suspension

that begins more than 30 days after the Board issues an Order suspending the license; (2) if the answer to issue (1) is yes, then is it reasonable to permit the Licensee to serve its license suspension in 2025, when the Licensee acknowledged in March 2024 that it violated the *Regulations* in May 2023; and (3) does the Board have the jurisdiction to consider “financial hardship” when determining when a liquor license suspension should be served?

[5] In its written submissions, the AGFT sought the following relief: (1) that the Licensee must serve the license suspension within 30 days from the date of the Board’s Order suspending the license; (2) a ruling, including supporting reasons, as to whether the AGFT’s policy of requiring a suspension to be served within 30 days of an Order or agreement on penalty is fair and reasonable in the circumstances; and, (3) a ruling on whether the Board will maintain the practice of requiring license suspensions to be served within 30 days from the date a Board’s Order is issued. At the hearing, the AGFT withdrew its request that the Board rule that the Board will maintain its practice of requiring license suspensions to be served within 30 days from the date of its Order.

[6] The Board finds it has the statutory authority to set when it considers appropriate in each circumstance the license suspension must be served. Accordingly, the Board could order the suspension be served in a time that is within less or more than 30 days of its Order. The Board also finds that it has the jurisdiction to consider financial hardship, if such a consideration is appropriate in the circumstances. In this appeal, however, the Board did not give weight to financial hardship as a relevant factor in determining when the license suspension should be served. Finally, at the hearing, the

AGFT withdrew its request that the Board rule that it will maintain the Board's practice of requiring license suspensions to be served within 30 days from the date of its Order.

[7] The Board finds the parties' recommendation that the Licensee serve a four-day license suspension on consecutive days beginning on a Wednesday, for the admitted violations of the *Liquor Licensing Regulations*, to be fair and reasonable. The Board orders that the Licensee shall serve its four-day suspension within 30 days of the Board's Order.

II BACKGROUND AND RELEVANT FACTS

[8] During the night of May 13 and into the early morning of May 14, 2023, the Licensee's staff allowed intoxicated persons to re-enter the Licensee's premises without knowing that these patrons had been recently escorted from a different exit of the premises due to their intoxication. After their subsequent re-entry and departure, at least two of the patrons became unconscious and needed medical assistance from Emergency Health Services. AGFT Compliance Officer Nikki DeWolfe, who investigated these events, summarized the circumstances in her final inspection report dated January 18, 2024, as follows:

Conclusion

Moore was removed from The Dome by security staff via the Argyle St. entrance. However, Moore was able to gain re-entry to the same establishment fifteen minutes later via an entrance on Grafton St. Moore is found unconscious on a bench eighteen minutes after last being seen on video surveillance in front of The Dome on Argyle St. requiring assistance from EHS.

Goggin and Otto are viewed making re-entry into The Dome via a side door off Argyle St after being removed from the establishment once. Goggin and Otto were removed the first time for intoxication. Seventeen seconds prior to being escorted out of the establishment for the second time, Goggin and Otto have an in-depth conversation with a bartender who just poured each a drink. Once outside, both patrons are arrested by HRP Officers and taken to the personal care facility for the night. Goggin becomes unconscious and requires assistance from EHS.

The blonde female is observed having four double drinks and four shooters over the course of an hour and 10 minutes. Three minutes after having a shot, the female is being escorted

by security out of the establishment. The female patron has a conversation on a few occasions with the female bartender with dark hair.

The Dome did not provide all video surveillance requested in the call slip for the night of May 13 into May 14, 2023. Camera angle CH24 extra 1 20230513231000 CR Wand 2 contained six minutes of video surveillance for the night. Video surveillance provided doesn't provide a view of patrons sitting on the couches, as they are out of camera view.

Staff are allowing individuals who were escorted out of The Dome to reenter. Security staff on Grafton St. are not aware of the patrons being escorted out of the establishment on Argyle St.

[Exhibit G-3, Affidavit of Andrew MacLean, Tab D]

[9] Andrew MacLean, Director of Investigation and Enforcement for AGFT stated, in his affidavit filed as part of this proceeding, that he reviewed and approved Compliance Officer DeWolfe's final inspection report dated January 18, 2024. He also stated that he approved the recommendations for disciplinary action as stated in Compliance Officer DeWolfe's final inspection report:

Recommendation:

I am recommending the file be refereed for disciplinary action due to the infractions listed below.

Three infractions to be issued for non-compliance of NSLLR Section 61(1)(a)(b), Section 61(2)

- One infraction for Moore toxication.
- One infraction for Goggin and Otto intoxication.
- One infraction for a female with long blonde hair, a black dress, and black boots intoxication.

An infraction to be issued for non-compliance of NSLLR Section 64(1). Moore, Goggin and Otto were able to gain re-entry into the Dome after being escorted.

An infraction to be issued for non-compliance of NSLLR Section 80(b). Providing all requested video.

[Exhibit G-3, Affidavit of Andrew MacLean, Tab D]

[10] In addition to filing an affidavit, Mr. MacLean also testified at the hearing. He stated that he was aware that within a month of the incidents, somewhere around June 2023, the Licensee took corrective steps to prevent future incidents.

[11] In his testimony, Gary Hurst, President of Grafton Street Restaurant Limited, who owns the Licensee, explained that following the incidents of May 13-14, 2023, the Licensee's security adopted a new practice of photographing a patron who was

being ejected and then sending the photograph by a mobile app to security at the other entrances to the Licensee's premises, so that they would know to stop re-entry by that person.

[12] In late March 2024, Mr. MacLean met with a manager of the Licensee and a consultant hired by the Licensee to discuss a possible resolution of the disciplinary matter. In his affidavit, Mr. MacLean stated that he, the manager and the consultant reached an "agreement in principle" that the Licensee acknowledged the violations of the *Regulations* and agreed to a penalty of a four consecutive days license suspension (Wednesday to Saturday) to be served in May 2024. The Licensee's manager and consultant stated that they would discuss the matter with Mr. Hurst and obtain his signature, on behalf of the Licensee, for the Agreed Statement of Facts upon his return from his vacation.

[13] At the hearing, both parties confirmed that the Agreed Statement of Facts was never executed. Mr. Hurst testified that because of these meetings with the AGFT, the Licensee admitted the identified violations of the *Regulations*. Further, the Licensee and AGFT both testified that they agreed an appropriate penalty for the violations was a suspension of the Licensee's liquor license for four consecutive days, to be served from Wednesday to Saturday.

[14] The parties could not, however, agree upon when the suspension should be served. Mr. MacLean testified that in keeping with AGFT's 30-day policy, he proposed the suspension should be served within 30 days from the execution of the settlement agreement. Mr. Hurst testified that he advised Mr. MacLean that the Licensee had suffered significant financial losses during the COVID-19 pandemic and was still

struggling to recover. Mr. Hurst advised Mr. MacLean that the Licensee could not afford to serve the penalty in the peak of its business season due to financial issues and asked that the penalty be served in January 2025, when its business is typically very slow. The AGFT offered to extend the time for service of the license suspension to within 60 days from the date of an executed settlement agreement, but the Licensee refused.

[15] The parties agreed that the AGFT's Executive Director should refer the matter to the Board to determine when the license suspension should be served.

III ISSUES

[16] The issues which the Board must decide in this appeal are:

- (1) Does the Board have the jurisdiction to impose a liquor license suspension more than 30 days after the Board issues an Order suspending the license?
- (2) If the answer to issue (1) is yes, then when should the Licensee serve its license suspension, and does the Board have the jurisdiction to consider "financial hardship" when making this determination?

IV ANALYSIS AND FINDINGS

Legal Framework

[17] The Board is a statutory tribunal, not a court. It has only the authority granted to it under its enabling legislation, the *Utility and Review Board Act*, S.N.S. 1992, c. 11, and, in this case, the *Liquor Control Act* and the *Liquor Licensing Regulations*. In *Northern Construction Enterprises Inc. v. Halifax (Regional Municipality)*, 2015 NSCA 43, the Court of Appeal affirmed this principle:

[23] In my view, the Board got it right. It is a creature of statute and its jurisdiction is limited to the parameters of the enabling legislation. [...]

[18] This liquor disciplinary matter is considered by the Board under s. 82B of the *Liquor Licensing Regulations* which states:

Referral of disciplinary matter

- 82B**
- (1) The Review Board may determine its own rules respecting practice and procedure for a disciplinary matter that has been referred to it by the Executive Director under 47B(1)(b) of the Act.
 - (2) A permanent licensee may be represented by counsel in a disciplinary matter.
 - (3) Once a permanent licensee is notified that a disciplinary matter has been referred to the Review Board and given an opportunity to participate, the Review Board may proceed without the permanent licensee's participation without further notice to the licensee.
 - (4) A hearing by the Review Board to determine a disciplinary matter may be held as an oral hearing or through written submissions, as the Review Board considers appropriate.
 - (5) As set out in clauses 47E(2)(a) to (e) and subsection 47E(3) of the Act, in determining a disciplinary matter, the Review Board may, subject to the Act, but otherwise in the Review Board's discretion, do any of the following:
 - (a) impose conditions on a license;
 - (b) rescind or amend existing conditions on a license;
 - (c) suspend all or any part of a license for any period of time that the Review Board considers appropriate;
 - (d) cancel all or any part of a license;
 - (e) order, in accordance with the Act and these regulations, another remedy that the Review Board considers appropriate.

[19] Under this provision, the Board has the jurisdiction to consider whether to accept agreements and joint recommendations from the parties on penalty (see, *Grafton Street Restaurant Ltd. v. Nova Scotia (Utility and Review Board)*, 2002 NSCA 120).

[20] In addition to considering the severity of the offences and whether a licensee has committed prior violations, other factors to be considered when deciding upon an appropriate penalty and a fair sanction for violating the *Liquor Licensing*

Regulations were outlined by the Board in *Economy Shoe Shop Café and Lounge*, 2002

NSUARB 13:

[21] Another concern of the Board is that an appropriate and fair sanction be imposed on the Licensee. The Board is also guided by principles of general and specific deterrence, ...The suspension must be sufficient to impart the seriousness of this matter upon the Licensee, and other licensees, that such offences are serious and cannot be tolerated. [Emphasis added]

[21] In determining the scope of the powers conferred on the Board by the *Liquor Control Act* and the *Liquor Licensing Regulations*, the Board applies the principles of the “modern rule” of statutory interpretation, as has been affirmed many times in Nova Scotia (see, *Sparks v. Nova Scotia (Assistance Appeal Board)*, 2017 NSCA 82), together with s. 9(5) of the *Interpretation Act*, R.S.N.S. 1989, c. 235. These principles apply to administrative decision makers to require that legislation be interpreted consistent with its text, context, and purpose. However, the form of analysis may look different than one undertaken by a court and may be enriched by the specialized expertise and the experience of the decision maker (*Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65, paras. 117-121).

Evidentiary Issues

[22] The AGFT filed the Affidavit of Andrew MacLean which included the documents gathered by Compliance Officer DeWolfe during her investigations, her final investigation report and other relevant documents related to the Licensee. The Licensee filed the Affidavit of Gary Hurst. At the hearing, both Mr. Hurst and Mr. MacLean were cross-examined and answered questions from the Board.

[23] Unless otherwise noted in this decision, the Board found the parties’ witnesses to be forthright and credible on the matters they testified about, and they were responsive to questions. Section 19 of the *Utility and Review Board Act* states that the

Board is not bound by the strict rules of evidence and may assess how much weight to give evidence. The Board did not exclude either witness' testimony that included hearsay, which was given, to some extent, by both witnesses. The Board was able to weigh the relevance and evidentiary value of those statements in the normal course. The outcome of this decision was largely based on legal interpretation rather than the weighing of conflicting evidence.

[24] In addition to the testimony referred to above, Mr. MacLean testified that completion of the AGFT final investigation report took over eight months because of the complexity of the investigation, including the review of surveillance videos, and other competing demands on the Compliance Officer's time. He stated that it was an AGFT practice to have discussions with a licensee accused of violations under the *Liquor Licensing Regulations* with the goal of reaching an executed settlement agreement.

[25] Mr. MacLean testified that the AGFT first proposed that the Licensee's penalty be served on four consecutive days from Thursday to Sunday. He said that the AGFT agreed to change this to Wednesday to Saturday after the Licensee explained the potential harm to its family-oriented Sunday brunch business caused by a posted suspension notice and the inability to serve liquor.

[26] Mr. MacLean said the AGFT's practice was that once a settlement agreement is executed by the parties, it goes to the Executive Director of the AGFT who then issues the order which would state when the license suspension would be served. He stated his belief that recent decisions of this Board follow a practice of requiring the suspension to be served within 30 days of the Board's Order. Mr. MacLean explained that

the Executive Director has a practice of requiring that that the suspension be served within 30 days of an executed settlement agreement, which follows the Board's practice.

[27] Mr. MacLean testified that the Licensee admitted the violations and accepted four consecutive days as a penalty, but the Licensee refused to accept serving the suspension within 30 days as it would cause too much harm to the business in peak season. Mr. MacLean said he offered to extend the period to serving within 60 days, but the Licensee refused and only wanted to serve it in January 2025, when the financial impact would be the least. As stated, January is a time when the Licensee's business is historically slow. Mr. MacLean said a penalty must recognize the seriousness of a violation and deter the Licensee and others from engaging in this conduct in the future. He said it was unreasonable, especially in light of the AGFT's 30-day policy, to have the suspension postponed seven months from when the Licensee acknowledged the violations and agreed to the number of days for the penalty.

[28] Mr. MacLean stated his understanding that the Executive Director has the authority to issue an order suspending a liquor license, regardless of whether a licensee acknowledged the violations. In such an instance, the licensee could serve the suspension or appeal the Executive Director's order to this Board.

[29] In his testimony, Mr. Hurst acknowledged that the incidents should not have occurred, but explained new challenges are always presenting themselves and new corrective actions must be taken. Mr. Hurst described the situation where an intoxicated patron is ejected from the premises only to then re-enter the premises by a different entrance as "a new one". He stated that without prompting by the AGFT, he and his staff immediately took steps to develop measures to prevent future incidents by using the

technology of photographing a patron who is ejected and then, via an app, send this photo to security at other entrances of the Licensee's premises so that they would not allow the ejected patron to re-enter. He said that these corrective measures were in place by June 2023, many months before the AGFT completed its investigation and commenced discussions for possible settlement. Further, he said that the AGFT was satisfied with these corrective measures.

[30] Mr. Hurst also testified about how the Licensee struggled during the COVID-19 pandemic and suffered significant financial losses. He stated that it will be years before the Licensee will recover financially and it certainly cannot, at this point, afford to serve a penalty through those months of the year which are when the Licensee has its highest revenue. Mr. Hurst said the Licensee could not agree to serve the penalty in the timeframe proposed by AGFT and sought to have it served in January 2025.

[31] I found Mr. Hurst's and Mr. MacLean's evidence to be helpful and credible. Although they disagreed about when the license suspension should be served, their recollections and recounting of relevant facts were not meaningfully contradictory except for one fact. Mr. Hurst stated in his affidavit that it was his understanding that when the AGFT referred the matter to the Board, it would not oppose the Licensee's request to serve the penalty in January 2025. Mr. MacLean stated in his testimony that he did not agree with this recollection. Mr. MacLean said that he understood the parties only agreed that they would let the Board determine the actual dates for serving the penalty. Mr. MacLean stated that if the AGFT had agreed not to oppose the Licensee's request for serving the penalty in January 2025, then there would have been no need to come before the Board to determine when the suspension should be served. Mr. MacLean said the

only position the AGFT was taking in this matter was that the Board follow its usual practice that the suspension be served within 30 days of the Board's Decision. Mr. Hurst stated that he accepted that recollections could vary on this point.

[32] The Board finds it is not necessary to resolve the discrepancy between the parties at the hearing since the parties were clear in their respective recommendations on when the license suspension should be served.

Does the Board have the jurisdiction to impose a liquor license suspension more than 30 days after the Board issues an Order suspending the license?

[33] Section 82B(5) of the *Liquor Licensing Regulations* provides the Board with broad discretion to hear an appeal or a referral and grant a remedy. It states that "in determining a disciplinary matter" which has been referred by the AGFT's Executive Director, the Board may, subject to the *Liquor Control Act*, exercise its discretion to "suspend all or any part of the license for any period of time" that the Board considers appropriate (s. 82B(5)(a)).

[34] Although the AGFT acknowledges that the Board has a broad discretion under the *Liquor Licensing Regulations* to impose a license suspension when and for however long that it finds appropriate in the circumstances, it argues the Board has adopted a "practice" in its decisions of requiring that the license suspension be served within 30 days of the issuance of the Board's Order (see, *Economy Shoe Shop Café and Lounge, Re*, 2002 NSUARB 13; *White Point Holdings Limited, Re*, 2005 NSUARB 8; *Tan Family Holdings, Re*, 2006 NSUARB 105; *Tusu Karaoke Inc., Re*, 2024 NSUARB 119). The AGFT acknowledged that it could not find a Board decision that explains the rationale for this practice. The AGFT argues, though, that this practice must be followed in this appeal unless the Board can find a reasonable basis not to follow it. In response, the

Licensee says that it wants the Board to consider its particular circumstances and not just apply a requirement that it serve the suspension within 30 days of the Board's Order simply because this is what the Board did in other cases.

[35] After reviewing the decisions relied on by the AGFT, the Board finds that it has not established a practice that, generally, license suspension must be served within 30 days of the Board's Order. Further, the Board rejects the AGFT's argument that it must follow this practice in this appeal unless there are reasonable grounds to do otherwise.

[36] The Board decisions relied on by the AGFT did require that the license suspension be served within 30 days of the Board's Order. These decisions arose in different circumstances. Several of the decisions were brought to the Board with an agreed statement of facts and joint recommendation about the penalty. It is notable that none of the decisions suggested that it was following a Board practice when deciding that the license suspension had to be served within 30 days of the Board's Order. The Board would suggest that these prior decisions would be better used to identify factors or circumstances when it may be appropriate to have the license suspension served within 30 days of the Board's Order or served within a time that is more or less than 30 days.

[37] The Board's broad discretion under the statutory scheme to determine when a license suspension will be served, with no time limits imposed, demonstrates the legislative intent that the Board must assess each matter before it on its own merits. The Board cannot fetter its discretion when assessing the circumstances of the appeal before it.

[38] In *Grafton Street Restaurant Ltd. v. Nova Scotia (Utility and Review Board)*, 2002 NSCA 120, the Court of Appeal reviewed the Board's exercise of its discretion in

determining the penalty for a liquor license violation. The Board rejected the parties' joint recommendation that the license suspension would be served on a day of the week different from the day that the violation took place. In its reasons, the Board noted its prior practice that the suspension be served on the day that the violation occurred and provided other reasons for selecting this day, instead of the day recommended by the parties. The Court of Appeal upheld the Board's decision and found that the Board had not fettered its discretion when referring to prior practice as the Board's reasons explained why it decided to follow a prior practice in the case before it. As the Court wrote at paragraph 5 of its decision:

...The determination of the penalty was within the discretion of the Board as was the weight it should give to a joint recommendation. The Board made it clear that it was troubled by the joint recommendation and counsel had every opportunity to address the Board's concerns. The Board did not impermissibly fetter its discretion by giving weight to its prior practices which, it would seem, were consistent with the normal practices of the Authority. The Board gave reasons for not departing in this case from its prior practices. There is nothing in the record to suggest that relevant considerations were ignored.

[39] The Board finds that while prior decisions may provide guidance, it must determine the appropriate time for serving the license suspension based on the circumstances of the case before it. It may be less than 30 days; it may be 30 days; or it may be more than 30 days from the date of the Board's Order. The circumstances will guide the Board in making its determination.

[40] With these principles in mind, the Board will now consider when the Licensee should serve its license suspension.

When should the Licensee serve its license suspension, and does the Board have the jurisdiction to consider "financial hardship" when making this determination?

[41] At the hearing, the Board advised the parties that as the hearing was occurring late in 2024, it was likely that the Board's Decision and Order would not be

issued until sometime in January 2025. Considering this possibility, the Board asked the parties if they had any changes they wished to make to their submissions. The AGFT did not change its recommendation and asks that the Board follow its “practice” of requiring the license suspension be served within 30 days of the Board’s Order, as there are no facts to suggest it would be “reasonable to deviate from this practice”. The AGFT did not refer the Board to any factors or considerations arising from the evidence before the Board to support its recommendation. The AGFT maintains, however, that the Board cannot consider financial hardship in determining when the license suspension should be served.

[42] The Licensee changed its submission at the hearing. The Licensee says that it prefers to serve the license suspension sometime in January, but if the suspension were to occur in February, then there are dates which are typically busy for the Licensee, and it prefers not to serve a suspension on these dates. The Licensee asks the Board to consider the financial struggles that it is still facing as it recovers from the COVID-19 pandemic.

[43] Turning first to whether the Board can consider economic hardship when determining when the license suspension will be served, the AGFT says that the Board can only exercise the jurisdiction that the legislation grants to it and there is no statutory provision which permits the Board to consider financial hardship. The AGFT also relied on the Board’s decision in *Economy Shoe Shop Café and Lounge*, which determined the Board cannot consider financial hardship when determining the penalty for a violation.

[44] The Board does not agree with the AGFT submissions on this point. When questioned, the AGFT agreed that the statutory scheme is silent about the factors the

Board may take into consideration to determine when a license suspension should be served. As already determined, the Board has a broad discretion when deciding an appropriate penalty.

[45] The Board may take guidance from prior Board decisions, but it is not bound to follow them. Further, the Board finds that the facts in *Economy Shoe Shop Café and Lounge* are different from those before the Board in this matter. In that instance, the licensee proposed paying a monetary amount to shorten the number of days of the license suspension. The licensee in that matter argued that the proposed suspension of three days would cause a financial toll on the business that could prove fatal to their business and hurt employees who were not involved with the violation. As noted by the Board, the statute did not give the Board the authority to order a monetary fine. Also, the Board noted that this was a repeat violation, and the Board needed to increase the penalty to deter violations from occurring again. Finally, the Board structured the penalty to cause the least impact on the kitchen staff who were not part of the liquor violation. I do not read this decision as finding that the Board can never consider financial hardship when determining a penalty. The Board must determine an appropriate penalty on the facts of the matter before it and the goals and purpose of the legislation. There may be circumstances where financial considerations will be appropriate.

[46] The Board commends the AGFT's actions in this matter to propose a penalty that considered the Licensee's financial circumstances. For instance, the AGFT originally proposed the four-day suspension take place from Thursday to Sunday, but modified this to Wednesday to Saturday, after the Licensee identified the harm that could occur to its Sunday brunch business. The AGFT also deviated from its 30-day policy for

-serving the license suspension and offered to extend this to 60 days to respond to the Licensee's concern about losing income in a busy business time. Ultimately, though, the AGFT found allowing the Licensee to postpone serving the license suspension by seven months would send the wrong message to the industry and compromise the statute's important goal of deterrence to the Licensee and others.

[47] While the Board does not preclude that financial considerations may be appropriate in certain circumstances, it does not find it appropriate to give weight to the financial hardships argued by the Licensee in this case. Essentially, the Licensee is arguing that it will be years before it can recover its financial losses from the COVID-19 pandemic and, as such, it should only have to serve a suspension during its slowest business periods when it will lose the least amount of money. The Board cannot accept this argument. Financial recovery from the COVID-19 pandemic has been underway for several years for many businesses, not just the Licensee. The legislation's goals and purpose intend that when a licensee violates the *Liquor Licensing Regulations* it must experience a penalty that causes an appropriate negative impact to recognize the seriousness of the violations and to deter a licensee and others from future violations. The Board understands why during the settlement discussions the AGFT considered it unreasonable to permit the Licensee to postpone serving the penalty by seven months, as it would have undermined the goals and purpose of the legislation. This consideration has become moot due to the timing of the appeal before the Board.

[48] The Board has taken into account that the Licensee has admitted the violations of the *Regulations*. The Board also considers that, on its own initiative, the Licensee took corrective actions within one month of the violations. This action occurred

well before the final investigation report in January 2024 and the settlement discussions in March 2024. The Board also has considered that the AGFT found the corrective actions were appropriate. The Board finds the parties' agreement that the suspension should be served on four consecutive days beginning on a Wednesday and ending a Saturday is fair and reasonable. After considering the recommendations of the AGFT and the Licensee, the Board considers it appropriate that the license suspension shall be served within 30 days of from the date of this Board's Decision and Order.

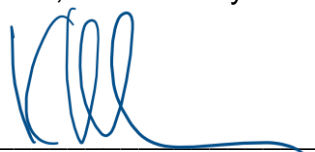
V SUMMARY

[49] After reviewing the evidence and submissions of the parties, the Board concludes that the parties' agreement on a license suspension for four consecutive days, beginning on a Wednesday and ending on the Saturday, is reasonable and appropriate in the circumstances. The Board orders that:

1. Cabaret Liquor License No: 4592 is suspended for a period of four consecutive days, beginning on a Wednesday and ending the Saturday, to occur within 30 days from the date of this Board's Decision and Order;
2. In accordance with sections 83(1) and (2) of the *Liquor Licensing Regulations*, a Suspension Notice will be posted at the licensed premises stating that the liquor license has been suspended. This does not prevent the business from providing the sale of food or other non-liquor related services.

[50] An Order will issue accordingly.

DATED at Halifax, Nova Scotia, this 28th day of January, 2025.



M. Kathleen McManus