

# Northwest Territories Liquor Licensing Board

**IN THE MATTER** of Boston Pizza Yellowknife, Licensed Premises, and Licence # 2011-A-21

**AND IN THE MATTER** of the *Liquor Act* S.N.W.T. 2007, c.15 ("the Act") and the *Liquor Regulations*, R-069-2008 ("the Regulations");

**AND IN THE MATTER** a hearing before the Liquor Licensing Board;

## REGARDING:

**Mbotlaxo Investments Ltd.**

Licence Holder

and

**Boston Pizza Yellowknife**

Licensed Premises

The Liquor Licensing Board, having conducted a hearing on the 13<sup>th</sup> day of December 2011 in the City of Yellowknife, has found:

The Licence Holder has failed to comply with:

Count #1: Section 92 of the Act; "Except as may be permitted in the regulations, a licence holder shall not allow an intoxicated person to enter or remain in a licensed premises."

Count #2: Section 93 of the Act; "No person shall sell or serve liquor at a licensed premises to or for an intoxicated person."

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## ORDER

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**IT IS HEREBY ORDERED** pursuant to section 30 of the Act:

1. Regard  
ing Count #1, The Licence Holder shall pay a compliance penalty in the amount of five hundred dollars (\$500) on or before January 14, 2012.
2. Regard  
ing Count #2, Liquor Licence # 2011-A-21 shall be suspended for one (1) day for the period of January 13, 2012 at 10:00am until January 14, 2012 at 10:00am. The Licence Holder shall post on all entrances to the Licensed Premises, for the duration of the suspension, a notice provided by the Board

Dated at the City of Yellowknife, this 5<sup>th</sup> day of January 2012.

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Colin Baile, Chairperson, on behalf of and with the concurrence of the other panel members.

## **Northwest Territories Liquor Licensing Board**

**IN THE MATTER** of Boston Pizza Yellowknife, Licensed Premises, and Licence # 2011-A-21

**AND IN THE MATTER** of the *Liquor Act* S.N.W.T. 2007, c.15 ("the Act") and the *Liquor Regulations*, R-069-2008 ("the Regulations");

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### **Reasons for Decision**

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**Liquor Licensing Board Case #:** 11-008

**Date of Inspection:** October 14, 2011

**Heard at** Yellowknife, NT on the 13<sup>th</sup> day of December, 2011

### **Panel Board Members:**

Colin Baile  
Wayne Smith  
Stanley Jones  
Albert Monchuk

### **Appearances:**

Karen Lajoie – Counsel for the Government of the Northwest Territories (Enforcement)  
Will Thomson – Representing the Licence Holder

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## Preliminary Matters

At hearing, the parties submitted an Agreed Statement of Facts.

## Enforcement Evidence

Counsel for the Government of the Northwest Territories (“Enforcement”) submitted an Agreed Statement of Facts. A summary of the Statement included:

- The Licence Holder operates both a family restaurant and a lounge on the premises. The Licence Holder has been in business for 15 years and has had no previous liquor infractions.
- On October 14, 2011, two Liquor Inspectors, Kerry Nicholson and Frank Yakimchuk conducted a liquor inspection of the lounge at 9:55 pm and remained until 10:55 pm.
- There were 49 people in the lounge that included one table with 20 patrons. The lounge’s capacity is 143 people. There were 8 staff members present.
- Inspect or Yakimchuk observed a female patron walking towards the exit. She was unsteady, nearly falling down. She was observed having to lean against an ATM for support.
- The Inspectors approached the patron in the foyer. They smelled a strong odour of alcohol. The patron was observed fumbling with her purse, had involuntary eye closure, and was incoherent.
- She exited the premises and leaned against the building while struggling with her cell phone. The patron re-entered the lounge, spoke to a male patron at the table with 20 people, and was escorted of the premises by him.
- The patron fell on the sidewalk while making her way to a taxi. The male patron assisted her, with considerable difficulty, stand and enter the taxi.

- The Inspectors, together with the on-site manager and the server, reviewed the video recordings of that evening. The female patron had been part of the large group seated in the lounge. She had been drinking rye and diet pop and wine. She was observed on the recording as being animated and at one point had difficulty sitting back in her chair.
- The tab for the table showed 9 ryes and 10 glasses of wine had been ordered. Several people at the table had been drinking rye.

Also submitted by Enforcement at hearing:

- A copy of the Notice of Hearing and proof of service;
- A copy of Liquor Licence #2011-A-21; and
- Copies of Inspection Reports # 40579 and #40580.

### **Licence Holder Evidence**

Mr. Thomson, representing the Licence Holder, agreed with the Statement of Facts.

### **Analysis**

We find the charges of non-compliance are made out.

We accept the events of October 14, 2011 are as described in the submitted Statement of Facts.

We also accept Mr. Thomson's admission of guilt.

Regarding Count #1, the intoxicated patron was allowed to remain in the Licensed Premises.

This action is in violation of section 92 of the *Act*.

Regarding Count #2, the intoxicated patron was served liquor. This action is in violation of section 93 of the *Act*.

We shall next address the submissions and considerations regarding penalty.

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<ul style="list-style-type: none"> <li>Recommend a penalty of a \$500 compliance penalty and no suspension of the Liquor License.</li> </ul>	Recommend
<ul style="list-style-type: none"> <li>It is a significant factor that this is a first offence.</li> </ul>	It is a
<ul style="list-style-type: none"> <li>The License Holder took prompt responsibility for this matter.</li> </ul>	The

■ Mr. Thomson agreed with Enforcement's submission.

We acknowledge the following mitigating factors:

- |   |         |
|---|---------|
| <ul style="list-style-type: none"> <li>the Licence Holder's first offence;</li> </ul>   | This is |
| <ul style="list-style-type: none"> <li>The Licence Holder has taken responsibility for the offence from the beginning.</li> </ul> | The     |

- The time of day that the offence occurred;
- That the Licensed Premise is a food primary facility.

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The penalty we have determined to be appropriate is less stringent because of the mitigating factors.

Regarding Count #2, The Board finds a breach of s. 93 to be a more serious violation. We must be mindful of the public interest in considering any punitive measures imposed by the Board.

An order shall issue pursuant to section 30 of the *Act* that:

1. The  
Licence Holder shall pay a compliance penalty in the amount of five hundred dollars (\$500) on or before January 14, 2012.
2. Liquor  
Licence # 2011-A-21 shall be suspended for one (1) day for the period of January 13, 2012 at 10:00am until January 14, 2012 at 10:00am. The Licence Holder shall post on all entrances to the Licensed Premises, for the duration of the suspension, a notice provided by the Board.

Dated at the City of Yellowknife, this 5<sup>th</sup> day of January 2012.

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Colin Baile, Chairperson, on behalf of and with the concurrence of the other panel members.