

THE UNIVERSITY OF BRITISH COLUMBIA
PETER A. ALLARD SCHOOL OF LAW

FINAL EXAMINATION – DECEMBER 2020

LAW 372.002
Administrative Law

Professor Jocelyn Stacey

EXAM PASSWORD: 5NdERT
RESUME CODE: ABB235

TOTAL MARKS: 70 MARKS

(8:50 AM PST) **PREPARATION TIME ALLOWED: 10 MINUTES**

(9:00 AM PST) **WRITING (INCLUSIVE OF READING) TIME ALLOWED: 2 HOURS (120 MINUTES)**

8:50-9:00 AM Preparation Time (Exam writing not permitted) – This time is given to students to download/print your exam questions once the exam has been made available online on Canvas, to read the Exam Password on this exam coversheet, to enter the Exam Password for the exam in Exemplify, and to progress in Exemplify until you see the **STOP SIGN**, where you will **WAIT until 9:00 AM. DO NOT proceed past the STOP SIGN. DO NOT begin typing your exam answers in Exemplify until 9:00 AM!**

9:00 AM Exam Writing Time – At 9:00 AM, you may proceed past the **STOP SIGN** in Exemplify and begin typing your exam answers. Students are required to calculate and monitor their own time for writing exams. All exam answer uploads will be monitored to ensure that typing of answers only occurred during the allotted Exam Writing Time.

This is an open book examination, meaning that you can refer to your notes and the course materials.

There is one question on the exam. It contains multiple issues. Ensure you read the entire question and answer all of the issues. You have TWO (2) hours to complete this exam.

If you think you have discovered an error or potential error in a question on this exam, please make a realistic assumption, set out that assumption clearly in writing for your professor, and continue answering the question. Do not email your professor or anyone else about this while the exam is in progress.

ACADEMIC INTEGRITY

Any exam answers that raise suspicion of breaking any restrictions outlined on this cover page may be subject to being processed through academic integrity software. Students typing exam answers before or after the allocated exam writing time may receive a grade penalty.

CONFIDENTIALITY REGULATIONS – READ CAREFULLY

As this exam is being written off-campus and is unsupervised, any communication whatsoever (including, but not limited to in person, telephone, e-mail, text, social media, etc.) concerning the contents of this examination with anyone (other than the Student Services staff of the Allard School of Law) is strictly prohibited.

In the event any information comes to your attention regarding a breach of these regulations (by others, or inadvertently by you), please immediately contact Student Academic Services (studentservices@allard.ubc.ca) and make full disclosure.

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What Do I Do If:

- **I cannot access the exam questions on Canvas**

If you experience technical difficulties accessing the exam questions on Canvas, email studentservices@allard.ubc.ca and the exam questions will be emailed to you. Please provide your phone number when emailing Student Services.

- **I'm experiencing technical difficulties DURING THE WRITING of the exam**

If you experience technical difficulties with Exemplify at the very beginning or during an exam, you may attempt to solve your problem/reboot your computer **BY YOURSELF**. You are **STRONGLY** encouraged to spend **NO MORE THAN 5 minutes** attempting to do so. You will **NOT BE GIVEN ANY EXTRA TIME** to complete the exam. **If your attempt to solve the problem is unsuccessful**, or if you choose not to make such an attempt, you **MUST** immediately **begin hand-writing** your exam answers with pen on lined paper. **You may NOT type your exam answer in word-processing software.**

When you have finished writing the exam, you must upload the exam answers that you completed in Exemplify (if you are prompted for a Resume Code, it is on the coversheet of the exam questions). Email Bernie Flinn, flinn@allard.ubc.ca, for help with this. Please provide your phone number in the email. Bernie or another IT Support staff person will then help you to upload any answers that you typed in Exemplify.

You must also upload to Canvas your hand-written exam answers into the "Exam Answer File Upload (Word Processor or Hand-written ONLY)" folder. Scan or take a picture of each page (.jpg) of your exam and put them into one folder to upload.

Your answer file should be named, and the coversheet of your answers should be titled with:
Your Exam Code, Course Number, Name of Course, and Instructor Name
i.e., **9999 LAW 100.001 Law of Exam Taking – Galileo**

- **I'm experiencing technical difficulties EXITING and UPLOADING the exam**

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If you have approved accommodations to type your answers using Word Processing Software, and experience difficulties uploading your exam answer file to Canvas, email your exam answer file to studentservices@ubc.ca.

- **I fall ill in the middle of an exam, or am otherwise interrupted such that I'm unable to continue writing my exam**

Please stop writing, note the time that you stopped, and email studentservices@allard.ubc.ca immediately to notify them and discuss options. Please provide your phone number when emailing Student Services.

END OF COVER PAGES

LAW 372.002

Question (70 Marks)

Ms Liu is interested in challenging the decision in court. Please address the following points:

- (i) Whether the Office afforded Ms Liu a fair hearing,
- (ii) Whether the decision was, in its substance, unlawful,
- (iii) In which court Ms Liu would challenge this decision and, if she is successful, what remedy would the court grant. [*Max 3 sentences*]

Background

Rosie Liu owns and operates Dynasty Restaurant in Vancouver. Until recently her restaurant flourished. It is a well-run and reputable establishment with stable staff and a regular clientele. There has never been a case of food-borne illness linked to Dynasty Restaurant. In the past two months Dynasty has had four unannounced inspections by health and safety inspectors. Prior to this period, her restaurant had only been inspected two times in the previous five years of operation. During the first of the four recent inspections, the inspector cited no violations of the legislation. The second inspection occurred only one week after the first. This was followed by the third and fourth inspections the following month. The second, third and fourth inspections each resulted in a notice of violation for the improper storage of raw meat. For reasons explained in her submission to the Office of Food Services Safety, Ms Liu did not contest these notices and rather paid the administrative monetary penalty.

After she paid the third penalty, Ms Liu received a Notice of License Revocation in the mail. The Notice stated:

“The Office has determined that your provision of food services presents a risk to public health and safety on the basis of three violations in the past two months. The Office is prepared to revoke the license for operating Dynasty Restaurant. Unless you contest this notice, your license will be revoked effective December 4, 2020. If you wish to contest this notice, you have 5 business days to provide written submissions to the Office via email. Your submissions should clearly state why your provision of food services does not pose a risk to public health and safety. This is the only matter that can be considered by the Office.”

Ms Liu contested the notice by providing submissions within the required time period. Her written submissions can be found below. She awaited a response from the Office and, after one week, received in the mail a decision of the Office. The decision can be found below and is followed by the relevant statutory provisions.

Ms Liu's Submissions to the Office of Food Services Safety

Dear Office of Food Services Safety:

I am writing to contest the Notice of License Revocation. The basis for contesting this Notice is that my food services establishment, Dynasty Restaurant, does not pose a risk to health and safety. I believe my restaurant has been the subject of discriminatory inspection practices against Asian restaurants in the Vancouver region. Dynasty Restaurant has been inspected four times in less than two months. There have been no instances of illness linked to my restaurant. On each of the inspections, the inspector confirmed that they were not responding to a complaint, rather they were conducting routine, periodic inspections for compliance purposes. The first inspection revealed no violations. In light of this, it is entirely unclear to me why Dynasty was subject to *another* inspection the very next week.

Dynasty Restaurant received three notices of violation as a result of this increased scrutiny. Each of these violations was for a minor infraction. The first violation was due to storage of raw meat at the bottom of a refrigerator which contained other foods. I believed this to be industry standard for storage as the meat poses no contamination risk when it is at the bottom of the fridge. However, I took responsibility for this violation, paid the penalty and made the change to storage practices. I moved all raw meats into a separate refrigerator, but due to space limitations different kinds of meat had to be stored together. I was in the process of having bins installed in the fridge to ensure no risk of dripping when the third inspection and second violation occurred. The inspector issued a violation rather than a warning and would not accept my explanation. The fourth inspection which yielded the third violation was the result of the inspector observing raw meat on the counter in preparation for cooking.

I did not contest these violations, which I now realize was a mistake. I was not aware that multiple minor violations risked such a severe consequence. The restaurant is my sole means of livelihood and I have three children in university who I am supporting. I have operated responsibly and without incident for five years. Moreover, I did not contest the individual tickets because I was concerned this would worsen the intense scrutiny I was already receiving. Each violation was minor and attracted the lowest penalty. I paid the penalty and kept my head down.

In order to fully make my case to the Office I would like to meet in person. I ask that this meeting be scheduled for such a time that allows me to first secure representation by legal counsel. Fortunately, my son was available to help with this letter because my English is not strong and I believe a lawyer will best help me make my case. Thank you for your consideration.

Sincerely,
Rosie Liu

Decision of the Office of Food Services Safety

Re Dynasty Restaurant Notice of License Revocation, 2020-1234

This decision revokes the license of Dynasty Restaurant effective immediately. To reinstate the license, Ms Liu must contact the BC Restaurateurs' Association for retraining and certification. She may then apply for license reinstatement in not less than 3 months time.

In making this decision, I must consider Dynasty Restaurant's history of compliance with the Act. Dynasty Restaurant has received three violations under the Act in less than two months. This number of violations in such a short period of time indicates that Dynasty poses a risk to the health and safety of the public. Revoking its license is in the public interest.

I refer to my previous ruling in *Re A&W 2019-111*, in which I stated that the seriousness of the violation is relevant to the consideration of the history of violations. Ms Liu has suggested she received minor violations. However, as I found in *Re A&W* and I find again here: any violation due to the improper storage of meat is a serious violation of the Act. The uncontroversial, uncontested evidence is that raw meat can contain E. Coli and Salmonella, which can easily spread to other foods and cause illness in those enjoying food services.

I cannot consider the circumstances surrounding the inspections (*Re A&W*). Concerns about the inspections should have been addressed by contesting those individual tickets. Though this is the first time a concern about discrimination has been raised on a public interest revocation matter, decisions of this Office have consistently held that the only relevant consideration is the risk to the public. I must follow *Re A&W* on this issue. I take these violations at face value: clear evidence of a public health risk.

The fact that no one has become ill and that there have been no complaints about food services provision are irrelevant to my determination. The purpose of this legislation is to protect public health and safety by preventing – not reacting to – food contamination and illness.

I have considered the hardship that a revocation would cause to Ms Liu, as she states that the restaurant is her sole means of livelihood. I accept that this decision will cause hardship. But this hardship would be true of most owners and operators of restaurants. It cannot override the primary goal of the legislation which is ensuring public health and safety.

Given the volume of work, the Office normally relies on written hearings for resolving matters such as Ms Liu's. There is nothing exceptional about her application to contest the Notice of License Revocation. She was, of course, welcome to retain legal counsel to assist her with written submissions in this matter.

Signed by the Officer of Food Services Safety

Relevant Statutory Provisions

Food Services Safety Act, SBC 2019, c 11

Part 1 - General

1 In this Act,

"provider" means any establishment in which, in the ordinary course of business, food is prepared, processed, distributed, sold, or is stored or handled for any of those purposes;

"inspector" means an inspector appointed under section 3 of this Part;

"Office" means the Office of Food Services Safety established under section 4 of this Part;

2 The purpose of this legislation is to ensure the provision of safe food services.

3 After a merit-based process, the Office must appoint inspectors to carry out the powers and functions in Part 4 of this Act.

4 The Office is hereby established, consisting of one member and one deputy member, to be appointed by the Lieutenant Governor in Council, to hold office during good behaviour for a term not exceeding five years but may be removed at any time by the Lieutenant Governor in Council for cause.

5 (1) The following provisions of the *Administrative Tribunals Act* apply to the Office:

- (a) section 19;
- (b) section 36;
- (c) section 44.

(2) For the purposes of the *Administrative Tribunals Act*, "tribunal" means the Office.

Part 2 - Food Services Requirements

10 A contravention of any of the provisions in Part 2 of this Act constitutes a violation subject to the penalties in Part 3 of the Act.

Meat Requirements

11 (1) Providers must ensure raw meats are stored separately from all other foods.

(2) Providers must ensure raw meats are stored separately from all other forms of raw meats.

(3) Providers must ensure raw meats are stored at temperatures at or below 4°C.

Part 3 - Penalties

Expediency of Proceedings

20 All powers under this Part must be exercised as expeditiously as fairness will allow.

Individual violations

21 (1) A provider who commits a violation under Part 2 is subject to an administrative monetary penalty, the amount of which is set out in Schedule 1 to this Act.¹

(2) A provider may contest the notice of violation by following the rules of procedure.²

(3) If a notice of violation is uncontested, a provider must pay the penalty following the process set out on the notice of violation.³

Public interest revocation

22 (1) The Office may revoke the license of a provider in the event that:

- (a) the provider has committed three or more violations of Part 2 within a one-year period,
- (b) the provider has, in the opinion of the Office, committed a gross violation of the Act, or
- (c) the Office determines that the revocation of the license is in the public interest.

(2) In making a determination under subsection (1), the Office must consider the provider's history of compliance with this Act and other applicable acts and regulations.

(3) In making a determination under subsection (1) the first priority must be the public health and ensuring food is fit for human consumption.

Part 4 Compliance and Enforcement

Inspection Powers

30 (1) For the purposes of ensuring compliance with this Act, inspectors may conduct inspections of the premises of providers.

(2) Inspectors are not required to provide notice of an inspection and may enter the premises without notice or a warrant.

¹ The specific penalties set out in the Schedule are not relevant to this problem.

² The Rules of Procedure are not relevant to this problem.

³ The process for paying the penalty is not relevant to this problem.

- 31** (1) When an inspector identifies a violation under Part 2 of the Act, the inspector shall:
- (a) Issue a warning, or
 - (b) Issue a notice of violation, stating the penalty and the process for contesting or paying the penalty.

(2) The inspector shall register a notice of violation with the Office.

Administrative Tribunals Act, SBC 2004, c 45

Part 4 — Practice and Procedure

19 (1) If the tribunal is required to provide a notice or any document to a party or other person in an application, it may do so by personal service of a copy of the notice or document or by sending the copy to the person by any of the following means:

- (a) ordinary mail;
- (b) electronic transmission, including telephone transmission of a facsimile;
- (c) if specified in the tribunal's rules, another method that allows proof of receipt.

36 In an application or an interim or preliminary matter, the tribunal may hold any combination of written, electronic and oral hearings.

Part 5 — Jurisdiction over Legal Questions

44 (1) The tribunal does not have jurisdiction over constitutional questions.

(2) Subsection (1) applies to all applications made before, on or after the date that the subsection applies to a tribunal.

Judicial Review Procedure Act, RSBC 1996, c 241

2 (1) An application for judicial review must be brought by way of a petition proceeding.

(2) On an application for judicial review, the court may grant any relief that the applicant would be entitled to in any one or more of the proceedings for:

- (a) relief in the nature of mandamus, prohibition or certiorari;
- (b) a declaration or injunction, or both, in relation to the exercise, refusal to exercise, or proposed or purported exercise, of a statutory power.

5 (1) On an application for judicial review in relation to the exercise, refusal to exercise, or purported exercise of a statutory power of decision, the court may direct the tribunal whose act or omission is the subject matter of the application to reconsider and determine, either generally or in respect of a specified matter, the whole or any part of a matter to which the application relates.

(2) In giving a direction under subsection (1), the court must

- (a) advise the tribunal of its reasons, and
- (b) give it any directions that the court thinks appropriate for the reconsideration or otherwise of the whole or any part of the matter that is referred back for reconsideration.

* END OF EXAMINATION *

HAPPY WINTER BREAK!