



**DECISION OF THE
GENERAL MANAGER
LIQUOR CONTROL AND LICENCING BRANCH**

IN THE MATTER OF

A hearing pursuant to Section 20 of

The Liquor Control and Licensing Act RSBC c. 267

Licensee:	Earl's (Surrey) 10160 152 Street Surrey, BC V3R 9W9
Case:	EH07-100
For the Licensee:	Daiya Huffman, General Manager
For the Branch:	Shahid Noorani
Enforcement Hearing Adjudicator:	Sheldon M. Seigel
Date of Hearing:	September 25, 2007
Place of Hearing:	Surrey, BC
Date of Decision	October 3, 2007

INTRODUCTION

The licensee operates an establishment with a Food Primary Licence. The hours of operation indicated on Food Primary Licence No. 124589 are 11:30 a.m. to 1:30 a.m. Monday through Saturday, and 11:00 a.m. to Midnight on Sunday. The establishment is located in a mixed-use residential and commercial district on 152nd Street.

The licensee has admitted that the contravention occurred as alleged by the branch in the Notice of Enforcement Action dated July 17, 2007.

ALLEGED CONTRAVENTION

The branch alleges that on June 28, 2007, the licensee contravened s. 33 of the *Liquor Control and Licensing Act (Act)* by supplying liquor to minors.

RELEVANT STATUTORY PROVISIONS

Supplying liquor to minors

33 (1) A person must not

- (a) sell, give or otherwise supply liquor to a minor,
 - (b) have liquor in his or her possession for the purpose of selling, giving or otherwise supplying it to a minor, or
 - (c) in or at a place under his or her control, permit a minor to consume liquor.
- (4) If one of 2 or more persons, with the knowledge and consent of the rest, has liquor in his or her possession, it is deemed to be in the possession of each of them.

ISSUE

The only issue is whether a penalty should be ordered against the licensee and if so, what is the appropriate penalty?

EXHIBITS

Exhibit No.1: Branch's book of documents

EVIDENCE

The licensee and the branch agree as to the facts of the contravention. The inspector attended on the evening of June 28, 2007. She observed a table at which there were twelve patrons. Several of the patrons were ultimately determined to be minors. The youngest of them was seventeen years of age. The patrons, including the minors, were drinking from glasses of beer poured from two or more pitchers. The pitchers had been ordered and obtained by one or more of the minors. The pitchers had been served by one of the licensee's servers. The patrons, including the minors, had not been checked for identification.

The inspector testified that upon entering the establishment she noted that the patrons at the aforesaid table appeared young. She approached one of the patrons and requested identification. He was a minor. She ascertained that the patrons had not been checked for identification. The inspector then approached the server and together they checked all of the patrons for identification. The server advised that he had not checked any of the patrons for identification. The inspector then approached the restaurant manager, who advised that she did not check for identification either.

The inspector testified that she had a compliance meeting with the management of the establishment and discussed among other things, the importance of ensuring that minors do not obtain access to liquor.

The inspector issued a contravention notice and a notice of enforcement action and recommended a ten (10) day suspension.

The licensee presented the restaurant general manager to provide evidence. The general manager agreed to all of the inspector's testimony. She said that one of the patrons seated at the table was an employee of the restaurant who had just gone off shift. That employee was a server who had just completed her first day on the job and was still on probation. The general manager testified that the new employee had brought her friends in to drink with her, and she assured their server that all of the party were nineteen years of age. The general manager said that the server did not exercise due diligence because of peer pressure. He did not check the patrons for identification because he was supporting the position of a fellow worker.

The duty manager on the night in question asked the server if he had checked the identification of the patrons at the table. The server answered that he had. Again, the general manager, testified, the server was influenced by peer pressure.

The general manager testified that the new employee was interviewed and terminated for her conduct on June 28, in particular, her knowingly false representation of her friends' ages. She also said that the server was chastised for not checking for identification and he was suspended for a week. He was not terminated as he is a long-standing employee with a very good record and the licensee believed that the server understood his mistake and would not repeat it. He was provided with the warning that company policy requires.

The general manager also testified that it is never acceptable for any employee to server or condone service of liquor to an underage patron.

SUBMISSIONS

The licensee submitted that a monetary penalty would better suit the offence and would be felt by the management. The licensee submitted that the recommended licence suspension would impact the clientele of the establishment more than the establishment itself.

PENALTY

I find that the contravention has occurred as alleged.

Pursuant to section 20(2) of the *Act*, having found that the licensee has contravened the *Act*, the *Regulation* and/or the terms and conditions of the licence, I have the discretion to order one or more of the following enforcement actions:

- Impose a suspension of the liquor licence for a period of time
- Cancel a liquor licence
- Impose terms and conditions to a licence or rescind or amend existing terms and conditions
- Impose a monetary penalty
- Order a licensee to transfer a licence

Imposing any penalty is discretionary. However, if I find that either a licence suspension or monetary penalty is warranted, I am bound to follow the minimums set out in Schedule 4 of the *Regulation*. I am not bound by the maximums and may impose higher penalties when it is in the public interest to do so. I am not bound to order the penalty proposed in the Notice of Enforcement Action.

The branch recommended a ten (10) day suspension.

The range of penalty for a first contravention of section 33 of the *Act* in accordance with Schedule 4 of the *Regulation* is ten (10) to fifteen (15) days suspension and/or a monetary penalty of \$7,500- \$10,000.

The licensee submitted that a minimal monetary penalty was more appropriate. The licensee's general manager pointed to the immediate action taken by the licensee to terminate their relationship with the off-duty server who had misrepresented the age of her friends, and suspend the server who failed to confirm the ages of the patrons. She further submitted that though the actions of the server, in accepting the word of the off-duty employee as to the age of the party was wrong, it was understandable. She indicated that the server understands the importance of avoiding that mistake in the future.

The branch submitted that the recommended penalty is far less than the penalty that the licensee might have faced if the branch chose to pursue four separate allegations (one for each minor) instead of one.

Service of liquor to minors is a significant matter, and a serious public safety issue. The establishment is a large franchise and is popular among young people. As an experienced corporate licensee, there is an expectation that the organization would have very stringent training and standards with respect to the issue of minors. In this instance there were a total of four minors found to be consuming alcohol that had been served by an employee of the licensee. They appeared to be under age and no member of the licensee's staff checked for identification.

I find that a penalty is warranted in this instance. There is no doubt that service to minors is a fundamental breach of the *Act* and a significant departure from public policy. Any such breach must be taken seriously, and in this case there was no evidence of mitigating factors of the nature that would speak to the inappropriateness of a penalty.

I credit the licensee with accepting that a penalty is appropriate and not submitting that there be no penalty.

The branch has stated that the purpose of assessing a penalty for a given contravention is the pursuit of voluntary compliance. The uncontroverted evidence is that young patrons frequent this food primary establishment, yet there has not been a contravention alleged in more than three years.

I find that the evidence clearly indicates that the licensee has shown remorse for the contravention. Further, the licensee took immediate action following the contravention in dismissing one employee and suspending another. The licensee cooperated fully in a compliance meeting following the contravention and made commitments to the branch to continue to work toward 100% compliance. I find that these facts, in addition to the licensee's prompt acknowledgement of the contravention, demonstrate a high degree of accountability.

Accordingly, I find that an appropriate penalty is the minimum monetary penalty sought by the licensee.

ORDER

Pursuant to section 20(2) of the *Act*, I order the licensee to pay a monetary penalty of seven thousand five hundred dollars (\$7,500) relating to Food Primary Licence No. 124589 for this contravention. The monetary penalty must be paid no later than the close of business November 1, 2007.

[ORIGINAL SIGNED]

Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: October 3, 2007

cc: Surrey Police Department

Liquor Control and Licensing Branch, Victoria Headquarters
Attn: Michael Clark, Regional Manager

Liquor Control and Licensing Branch, Surrey Regional office
Attn: Shahid Noorani, Branch Advocate