



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

IN THE MATTER OF

A hearing pursuant to Section 20 of

The Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267

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| Licensee: | Sea to Sky Hotels Inc. dba Sea to Sky Hotel 40330 Tantalus Way Garibaldi Highlands, BC V0K 1V0 |
| Case: | EH11-101 |
| For the Licensee: | Mohsen Mohajer |
| For the Branch: | Peter Mior |
| General Manager's Delegate: | Sheldon M. Seigel |
| Date of Hearing: | October 5, 2011 |
| Place of Hearing: | Vancouver, BC |
| Date of Decision: | October 26, 2011 |

**Ministry of Public
Safety & Solicitor
General**

Liquor Control and
Licensing Branch

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INTRODUCTION

Sea To Sky Hotels Inc. operates a licensed retail store in Garibaldi Highlands (just north of Squamish) under Licensee Retail Store (LRS) licence No. 191578. The licence stipulates that the hours of liquor sales are from 9:00 a.m. to 11:00 p.m. seven days per week. The licence is, as are all liquor licenses issued in the province, subject to the terms and conditions contained in the publication "*Guide for Liquor Licensees in British Columbia*" (Guide).

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

By Notice of Enforcement Action (NOEA) dated July 28, 2011, the Branch alleges that on July 8, 2011, the Licensee contravened section 33(1)(a) of the *Liquor Control and Licensing Act* (Act) by selling, giving, or otherwise supplying liquor to a minor.

Section 4 of the *Liquor Control and Licensing Regulation* (Regulation) establishes prescribed penalties for contravention of the Act or Regulation. For a first contravention of section 33(1)(a) of the Act, the range of penalty is a ten to fifteen day licence suspension and/or a \$7,500 to \$10,000 monetary penalty.

RELEVANT STATUTORY PROVISIONS

Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267

Supplying Liquor to minors

33(1) A person must not

- (a) sell, give or otherwise supply liquor to a minor,

Prohibitions with respect to minors

34 (5) This section, except as subsection (1) applies to the consumption of liquor, does not apply to a minor

(a) who is employed or contracted by a municipal police board, the provincial police force or the general manager to test the compliance of a licensee with section 33 or 35 or the regulations, and

(b) while the minor is engaged in that employment or under that contract and accompanied or supervised by a peace officer or an employee.

ISSUES

1. Did the contravention occur?
2. If so, is a penalty warranted under the circumstances?
3. If a penalty is warranted, what is the appropriate penalty?

EXHIBITS

- Exhibit No. 1: Branch's book of documents
Exhibit No. 2: Licensee's photographs of signage in establishment (5)
Exhibit No. 3: Licensee's employee letters (6)
Exhibit No. 4: Minutes of meeting January 7, 2011 provided by Licensee

PRELIMINARY MATTER

A copy of Exhibit #1, which at tab 4, contains two photographs of the minor and a full copy of his BC driver's licence and his BC ID, was provided by the branch for my exclusive use during the hearing. In order to protect the minor, the branch produced a partially redacted version of Exhibit #1 for use by the witnesses during the hearing. Those redactions occurred in tab 4 where photographs of the minor were visible along with his date of birth, but his name and address had been blacked out on the identification. The Branch requested that I order that the licensee representative and licensee witnesses not be permitted to view the version that was given to me for my exclusive use. Further, he requested that I order that the licensee not be permitted to copy, retain or remove from the hearing room the copy of Exhibit #1 he and witnesses had been given to reference.

The licensee did not object to this request.

I so ordered.

EVIDENCE

Regional Inspector

A regional inspector testified on behalf of the Branch. The inspector described the "minor agent program." In June of 2010 section 34 of the Act was amended to provide the general manager the authority to employ minors to test the compliance of licensees with section 33 or 35 of the regulations. This allowed the Branch to hire minors under the age of 19 for the purpose of testing licensees by having minors enter and attempt to purchase liquor from licensed establishments.

The Branch sent out correspondence to all licensed retail liquor stores in British Columbia (tab 10, p. 1-3) on July 14, 2010, describing the new legislative provisions. On February 7, 2011, the Branch sent out correspondence to all licensed retail liquor stores (tab 10, p. 4-5) advising the retail stores of the Branch's intention to hire minors to test compliance with the Act and Regulation, particularly with respect to prohibiting the sale of liquor to minors. The Branch also sent out a newsletter entitled "Liquor Line" (tab 10, p. 7-8) to all licensees further describing the program. Exhibit #1, tab 4, is information and photographs of agent #10 (The Minor) showing his identification. The Minor's birthday is May 23, 1993. The photographs are dated July 2011.

On July 8, 2011, the inspector and The Minor attended all of the licensed liquor stores between Pemberton and Squamish

At approximately 4:15 p.m. the inspector and The Minor arrived at the Sea to Sky Hotel and the inspector parked the car. The Minor went into the establishment. The inspector followed 10-15 seconds behind. Inside the store the inspector noted a female clerk and customers lined-up making purchases. The Minor went to the cooler and picked out a six-pack of beer. The inspector watched as The Minor lined up at the cash counter to make his purchase. The inspector observed from 15 feet away as The Minor presented the beer to the clerk and handed over some cash. The clerk bagged the product and returned some change to the minor and the minor exited the store at approximately 4:19 p.m. The inspector followed The Minor out of the store, where the minor handed over the beer and a receipt from the liquor store corresponding to the purchase. The receipt is at Exhibit #1, tab 3. The inspector identified his written statement made immediately after the event, as well as The Minor's statement, and a copy of the receipt, in Exhibit #1.

The inspector described the evidence at Exhibit #1, tabs 11-14, indicating past issues of non-compliance on the part of the Licensee and compliance meetings relating to minors in the licensed retail store. The inspector testified that selling liquor to minors is a contravention that the Branch believes has serious consequences to individuals and society and to agencies that have to deal with the resulting problems. Licensees receive training about problems associated with minors who obtain liquor and so should understand the consequences. The prohibition against selling liquor to minors is a significant part of the Guide. Because this contravention is serious, the Branch does not typically hold compliance meetings for selling to minors. Rather, the Branch pursues enforcement action.

The inspector said the reasons for recommending \$7500 rather than a licence suspension is that a monetary penalty directly impacts a licensee in a manner that conveys the importance of compliance with this provision. When a licence is suspended, it adversely affects the employees and they may lose their wages and some benefits. The monetary penalty however, impacts a Licensee directly, and the inspector stated that he feels this Licensee will respond to that penalty.

The Licensee's Representative

The Licensee's representative (Licensee) testified that he operates the establishment. He said that he acknowledges that the contravention occurred but he has taken reasonable steps to ensure that the employees comply with the law. He points out that although there is a previous contravention on record for failing to check the identification of a patron that person was a regular customer and his age was known to the staff-member (and the customer was of age).

The Licensee provided photographs showing signage in the establishment (Exhibit #2). Those photographs demonstrate that on a front window and at both cash desks there are signs indicating that a customer must be 19 years of age and have two pieces of identification in order to purchase liquor.

The Licensee said that he interacts with all of the employees and tells them every day that they have to check identification of any young-looking customers. He says he holds meetings and copies the minutes of those meetings for distribution to the employees (he provided an example at Exhibit #4) and at those meetings he always reminds the employees to ask for ID. He said that Squamish is a small town and there is a problem with minors waiting outside the liquor store to have adults buy liquor for them. He has trained the establishment's staff to call the police, but the minors just run away and come back when the police are gone.

The Licensee said that the clerk who sold the beer to The Minor has been with the establishment for 16 years, though she was away for a year at some point. He testified that she is experienced and dependable. He admits that in this instance she failed to ask for identification when she should have and he agrees with the Branch that it is not acceptable that she failed in that regard. He does not know what else he can do to ensure compliance by all of his employees. He explained that the clerk's failure to check ID was because she was tending to two customers at once. The Licensee provided six letters from employees attesting to the fact that they are required to ask for identification and regularly reminded to always ask for ID.

The Licensee agreed that he promised the Branch that he would utilize secret shoppers to test his employees' compliance with the requirement to check identification. He says he did do this right after a previous compliance meeting. He also testified that his staff is properly trained and has Serving It Right certificates.

The Licensee acknowledged that he has poor documentation of systems in place to prevent sales to minors. At the hearing, he provided the phone numbers of his employees for the Branch to call if it wished to confirm that they were properly trained.

SUBMISSIONS

The Branch submits that all of the components of the contravention have been established and the reasonableness of the recommended penalty has been shown. The Branch says the Licensee has not provided any acceptable defence to the contravention.

The Licensee submits that he has done all that he could reasonably do to ensure compliance with the requirement to ask for identification and he cannot stand by every employee for every hour of every day to ensure they do what they are supposed to do. The Licensee says the employees are adequately trained and are constantly reminded to ask for identification and not to serve liquor to minors. He seeks a smaller penalty than what has been recommended, or in the alternative, no penalty at all.

REASONS AND DECISION

I find that on July 8, 2010, The Minor was 18 years of age, that he was a “minor” as defined in the Act, and that the Licensee sold him liquor. The evidence of the inspector is uncontroverted in that regard. The Licensee does not claim otherwise. I find the contravention occurred as alleged.

The Licensee’s evidence includes an acknowledgement that his employee failed in her duty to check identification. The Licensee states that his employee is a seasoned veteran of many years in the role of clerk at the licensed retail store. He has no explanation for why she so failed other than that she was tending to more than one customer at a time. The Licensee claims that his employees are properly trained and that he emphasizes at all meetings and when in the presence of each employee that identification must be checked without exception. I find the evidence was vague in that regard. Though the Licensee indicated that his employees are well trained, he did not expand on that training except to say that they have Serving It Right certificates.

He says he emphasizes checking identification but there is no reference to specifics such as of whom identification is required, or under what circumstances. The clerk was not presented to give evidence, and there were no policy manuals, or training manuals or testing protocols provided to establish the nature and extent of the employee training. I find it of particular concern that the contravention occurred at the hands of a seasoned veteran of the Licensee's establishment training and systems, yet there is no adequate explanation given as to why the failure occurred. I am inclined to doubt that the Licensee's systems are as effective as he believes them to be.

The Licensee provides six employee letters, all attesting to the Licensee's emphasis on the need to check for ID. All of these letters are dated September 20, 2011. All are identical but for the names of those who signed and the dates that they started working for the Licensee. None of the employees appeared at the hearing to have their statements tested and the Licensee gave no explanation as to why they were not in attendance. I find under the circumstances that these letters are of insignificant weight.

The Licensee also provided the minutes of a meeting held on January 7, 2011. This was provided as a random example of the kind of minutes that the Licensee keeps. The minutes state: "Don't forget to ask for two pieces of I.D. at all times." As is the case with the other evidence proffered by the Licensee, there is no reference to the consequences of selling liquor to minors, or what to do if the ID looks to be improper, or if the ID does not match the person presenting it, or of whom to ask for identification. Again, I find that the minutes are not adequate evidence of an appropriate level of training or management involvement in the requirement for employees to meet the standards set by the Act and Regulation regarding minors.

The Licensee provided five photographs showing copies of signs indicating that one must be 19 years of age and produce approved identification in order to purchase liquor. The signs appear to be at the two cash counters and on the front door or window of the licensed retail store. I think highly of the presence of the signage for the purpose of reminding both patrons and staff of the legal requirements, but these signs do not replace adequate training and policies as a framework within which employees must work.

DUE DILIGENCE

The Licensee is entitled to a defence of due diligence if it can establish that it did all that it should reasonably have done to put in place systems and policies and implement those systems and policies in order to ensure compliance with the Act, Regulation, and the terms of the license. The Licensee's submissions in part are the equivalent of a plea for this defence.

There is insufficient evidence of specifics as to the policies and procedures in place at the licensed retail store to assure compliance, and insufficient evidence of actions intended to monitor the activities of the Licensee's employees to ensure the policies and procedures are acted upon. I cannot, on the evidence before me, conclude that the Licensee has been duly diligent.

PENALTY

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 may do any one or more of the following:

- 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, and I am not bound to order the penalty proposed in the Notice of Enforcement Action.

The branch's primary goal in bringing enforcement action and imposing penalties is achieving voluntary compliance. Among the factors that are considered in determining the appropriate penalty is whether there is a past history of warnings by the branch and/or the police, the seriousness of the contravention, the threat to the public safety and the well being of the community.

There is no record of prior proven contraventions of the same type for this licensee or this establishment within the year preceding this incident. For a first contravention of this section, the range of penalty is a 10-15 day licence suspension and/or a \$7,500 to \$10,000 monetary penalty. The Branch proposed a penalty of \$7,500. I find this penalty to be warranted and appropriate.

ORDER

Pursuant to Section 20(2) of the Act, I order that the licensee pay a monetary penalty of Seven Thousand Five-Hundred Dollars (\$7,500) to the general manager of the Liquor Control and Licensing Branch on or before Thursday, November 24, 2011.

Signs satisfactory to the General Manager showing that a monetary penalty has been imposed will be placed in a prominent location in the establishment by a branch inspector or a police officer, and must remain in place during the period to be determined by the branch.

Original signed by

Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: October 26, 2011

cc: Liquor Control and Licensing Branch, Vancouver Office
 Attn: Donna Lister, Regional Manager

 Liquor Control and Licensing Branch, Vancouver Office
 Attn: Peter Mior, Branch Advocate