



**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

Licensee: G & D Woodward Holdings Ltd.
dba King Edward Licensed Liquor Store
22 – 7th Avenue South
Cranbrook, BC V1C 2J1

Case: EH11-027

For the Licensee: Karam Hans, Director of Corporate Licensee
Kathy Hoffman, Resident Manager

For the Branch: Peter Mior

General Manager's Delegate: Sheldon M. Seigel

Place of Hearing: By Written Submissions

Date of Decision: July 25, 2011

INTRODUCTION

The licensee operates a licensee retail store (LRS) in the King Edward Hotel in Cranbrook, BC. This establishment conducts sales of alcohol under Licensee Retail Store Licence No. 191461. The hours of sale of the liquor store are 9:00 a.m. to 11:00 p.m. seven days per week. The licence is, as are all liquor licences 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

The branch's allegations and proposed penalty are set out in a Notice of Enforcement Action (NOEA) EH11-027, dated May 6, 2011. The branch alleges that on January 8, 2011, the licensee contravened s. 33(1)(a) of the *Liquor Control and Licensing Act* (Act) by selling liquor to a minor. The proposed penalty is a ten (10) day licence suspension in accordance with Schedule 4, of the *Liquor Control and Licensing Regulation* (Regulation).

The licensee admits that the contravention took place but disputes the proposed penalty. The branch and the licensee agree that the hearing would take place by way of written submissions. By correspondence dated May 19, 2011, the branch confirms that on May 17, 2011, the licensee "followed up by explaining that the licensee had decided to admit to the contravention and would not be raising a defense of due diligence"

RELEVANT STATUTORY PROVISIONS***Liquor Control and Licensing Act [RSBC 1996] chapter 267***

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.

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: The Branch's book of documents.

Exhibit No. 2: The Licensee's book of documents.

Exhibit No. 3: Branch correspondence to the Licensee dated May 19, 2011.

EVIDENCE

The branch's book of documents includes police records that confirm the following:

At approximately 8:25 p.m. on January 8, 2011, a constable with the Cranbrook RCMP detachment observed a vehicle leaving the drive-through window of the liquor store with a young-looking individual at the wheel. The constable stopped the vehicle and ascertained that the three occupants of the vehicle were each 17 years of age. The vehicle contained an unopened 12-pack of beer. The operator of the vehicle informed the constable that he purchased the beer at the drive-through window immediately before the police stopped him, and that he was not asked for identification when he purchased the beer. The young driver described the store clerk who sold him the beer.

At approximately 8:52 p.m. on January 8, 2011, the RCMP constable attended at the liquor store and spoke with the lone clerk in control of the establishment. He showed the clerk a photo of the young man who had purchased the beer. The clerk confirmed that she sold the young man the beer and that she had not requested identification from him.

The branch's book of evidence also contains the licensee's contravention history.

The licensee's evidence (Exhibit #2) includes considerable discussion of the licensee's successful efforts at compliance, cooperation with the branch, and systems in place that are intended to assure compliance (including signage and the use of long-standing employees).

The licensee also provides evidence that the clerk who sold the liquor to the young man was a temporary employee who was hired to replace an experienced employee who was on medical leave. The licensee says that the clerk did not pass probation and was going to be fired, but the contravention happened just [a] couple of days before [the] planned dismissal date.

SUBMISSIONS

The branch says that the contravention is a serious one and requires an appropriate penalty. The branch submits that the proposed penalty is the lowest suspension in accordance with Schedule 4 of the *Regulation*.

The licensee says no penalty is required to ensure voluntary compliance in the future because it recognizes the importance of compliance, and has adequate systems in place to prevent contraventions in the future. The licensee also submits that if a penalty is deemed appropriate, a monetary one would be a more reasonable penalty in light of the economic realities in Cranbrook. In the alternative, if a suspension is awarded, the licensee seeks a postponement of the suspension in order that the busy summer season will not be interrupted.

REASONS AND DECISION

The licensee argues that the contravention occurred at the hands of a temporary employee who had already established herself as unsatisfactory for the job. The employee did not survive her probation period and was to be let go. I am forced to the conclusion that the licensee had allowed an employee who was unable to dutifully discharge the role entrusted to her to sell liquor to the public. Indeed the evidence discloses that this employee, whom the licensee had already decided was not a satisfactory employee, was the sole employee in control of the liquor store when the RCMP constable attended. I find this to be a considerable oversight with respect to the

licensee's obligation to protect the public by conforming to the requirements of the conditions of its licence.

I find that the contravention occurred as alleged.

DUE DILIGENCE

A licensee is entitled to a defense of due diligence if it shows that it did all that it reasonably could to prevent the contravention from occurring. The licensee admitted that the contravention took place. The licensee's evidence of diligence is insufficient to establish the defense of due diligence to my satisfaction. The indication of signage and the use of long-established employees does little to satisfy me that a new employee, temporary though she may have been, had been properly prepared for the obligations commensurate with her role at the liquor store. The defense fails.

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 NOEA.

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, offences or enforcement actions of the same type for this establishment within the year preceding this incident, but there are contraventions relating to the service of minors in the hands of the licensee for the liquor primary establishment operated in close proximity to the liquor store. Schedule 4 of the *Regulation* establishes prescribed penalties for contravention of the *Act* or *Regulation*. For a first contravention of s. 33, the range of penalty is ten (10) to fifteen (15) days licence suspension and/or \$7,500 to \$10,000 monetary penalty (item 2 of Schedule 4).

The licensee had an option of having the matter heard by the General Manager's delegate or waiving that opportunity and accepting and serving the proposed licence suspension on dates determined by the branch. The Licensee proposed delaying the implementation of any suspension that might be awarded in order to reflect the change in season that occurred during the enforcement process. I have before me no evidence of the branch previously allowing such a delay and I am not convinced it is appropriate to do so. I find that a penalty is appropriate for the substantive contravention. I have considered the licensee's preference for a monetary penalty and I have no doubt that such a penalty would reflect a smaller penalty to the licensee than would a suspension. I find the contravention to be significant and the evidence of systems in place at the time

of the contravention sufficiently inadequate so as to suggest that a more significant penalty might be required to prevent such contraventions from occurring in the future. I find the imposition of a suspension appropriate.

I find a ten (10) day suspension is reasonable under the circumstances.

ORDER

Pursuant to Section 20(2) of the *Act*, I order a suspension of Licensee Retail Store Licence No. 191461 for a period of ten (10) days to commence at the close of business on Friday, August 26, 2011, and to continue each succeeding business day until the suspension is completed. "Business day" means a day on which the licensee's establishment would normally be open for business (section 67 of the *Regulation*).

To ensure this order is effective, I direct that Licensee Retail Store Licence No. 191461 be held by the branch or the Cranbrook detachment of the RCMP from the close of business on Friday, August 26, 2011, until the licensee has demonstrated to the branch's satisfaction that the suspension has been served.

A suspension sign notifying the public that the licence is suspended 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 of suspension.

Original signed by

Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: July 25, 2011

cc: Liquor Control and Licensing Branch, Victoria Office
Attn: Gary Barker, Regional Manager
Liquor Control and Licensing Branch, Vancouver Office
Attn: Peter Mior, Branch Advocate