



**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: 0853302 B.C. Ltd.
dba Crofton Liquor Store
1534 Joan Avenue
Crofton, BC V0R 1R0

Case: EH11-078

For the Licensee: Tony Van de Mortel

For the Branch: Bode Fagbamiye

Enforcement Hearing Adjudicator: George C.E. Fuller

Date of Hearing: Written Submission

Date of Decision: November 18, 2011

INTRODUCTION

The Corporate Licensee, 0853302 B.C. Ltd., (the "the Licensee") owns and operates an establishment known as Crofton Liquor Store, in Crofton, BC. The Licensee holds Licensee Retail Store Licence number 195309. The authorized representative of the Licensee is Tony Van de Mortel.

According to the terms of its Licensee Retail Store Licence, the Licensee may sell liquor from 9:00 am to 11:00 pm, seven days a week. The Licence is, as are all liquor licences issued in the Province, subject to the terms and conditions contained in the publication, "*A Guide for Liquor Licensees in British Columbia*".

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Liquor Control and Licensing Branch's (the "Branch") allegations and proposed penalty are set out in the Notice of Enforcement Action (the "NOEA") dated July 21, 2011.

The Branch alleges that on Friday, May 20, 2011, the Licensee contravened section 33(1)(a) of the *Liquor Control and Licensing Act* (the "Act") and the terms and conditions of the Licence by selling, giving or otherwise supplying liquor to a minor. The proposed penalty is a monetary penalty is \$7,500.

The Licensee does not dispute that the contravention occurred. However, it disputes the proposed penalty. The Branch and the Licensee agreed that the hearing would take place by way of written submissions.

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

ISSUES

1. Did the contravention occur?
2. Was the Licensee duly diligent?
3. If the Licensee was not duly diligent, is a penalty warranted under the circumstances?
4. If a penalty is warranted, what is the appropriate warranty?

EXHIBITS

The following documents were submitted for consideration:

- Exhibit 1:** The Branch's disclosure package, Tabs 1 to 15.
- Exhibit 2:** The Licensee's submission (three pages) dated October 2, 2011.
- Exhibit 3:** The Branch's response (three pages) dated October 13, 2011.
- Exhibit 4:** The Licensee's reply (two pages) dated October 21, 2011.
- Exhibit 5:** A copy of the establishment's surveillance video for the event in question.

EVIDENCE

As previously noted, the Licensee does not dispute that the contravention occurred and, therefore, it is deemed to accept the facts as put forward by the Branch with respect to the issue of whether the contravention occurred. The Licensee has, however, made submissions with respect to the appropriateness and fairness of the penalty which the Branch has recommended.

In light of the above, the evidence can be summarized as follows:

Inspector 1 and Inspector 2

The Croft Liquor Store is adjacent to the Crofton Hotel in the Municipality of Cowichan, B.C. On the evening of Friday, May 20, 2011, Inspector 1 and Inspector 2 were on duty in their capacity as liquor inspectors for the Branch. They were accompanied by Minor Agents #1 and #4, who were 16 and 17 years of age respectively.

At approximately 9:05 p.m. on that date, inspector 1 and 2 and Agent #1 and #4 arrived at the Crofton Liquor Store in order to attempt to make a purchase from the Licensee's retail store. Inspector 1 entered the Licensee's premises, and Inspector 1 conversed with the store clerk. He then observed Minor Agent #1 enter the store and pick up a box of Carling Black Label Extra Old Stock beer. He further observed Minor Agent #1 walk towards the cash register with his purchase, when he heard the store clerk say, "GET SOME FROM THE COOLER WHERE ITS COLD". Inspector 1 then observed Minor Agent #1 pay for the beer and noted that the store clerk made no attempt to check the minor's identification. Minor Agent #1 left the store completely unchallenged as to his age.

Inspector 2 observed Minor Agent #1 leave the Licensee's premises and return to the vehicle carrying a box of one dozen Carling Black Label Extra Old Stock beer. It was confirmed that Minor Agent #1 had purchased the beer for \$20.35 from the Licensee's establishment. Inspector 2 then drove a couple of blocks and parked, where Inspector 1 and Minor Agent #1 completed their notes and observation sheets.

On May 24, 2011, Inspector 2 issued contravention notice B007190 to the Licensee for supplying liquor to a minor, together with a demand letter requesting documents and CCTV footage from the establishment, all of which matters were delivered to the Branch by the Licensee in a timely fashion.

SUBMISSIONS OF THE LICENSEE

The Licensee says that it takes very seriously the role which staff play in ensuring that the establishment follows the regulations set out in the Act. Furthermore, the Licensee ensures that all staff have their Serving It Right Certificates. The Licensee also conducts staff meetings to go over issues involving compliance. The Licensee has visible signage at the entrance and at the counter and employees receive copies of fines and penalties levied against other establishments in order to re-enforce the seriousness of the failure to follow the rules. The Licensee had meetings with staff, informing them that the Branch would be conducting spot checks, in order to determine whether establishments were out of compliance.

At staff meetings the Licensee impresses upon employees that they would not only put the establishment at risk, but also the income of fellow employees, in the event that the rules were not followed. All of these measures are meant to reinforce the importance of compliance. With respect to the overall concept of due diligence, the Licensee simply says that it is at a loss as to what else it could do in order to ensure that an employee does not commit a contravention of the Act or the Regulation.

As to the events of the evening of May 20, 2011, the Licensee focused on how distracted the Licensee's clerk was, due to the actions of Inspector 1 who, he assumed, might be viewing the premises for a robbery or shoplifting attempt. To his credit, however, the Licensee acknowledged that this "is not a defense". Finally, the Licensee states that a penalty is not required in order to bring its operation into compliance.

SUBMISSIONS OF THE BRANCH

With regard to the issue of due diligence, the Branch submits that the overall ease with which the minor was able to purchase the liquor demonstrates that the Licensee did not comply with the Act or the terms and conditions of its licence, at the time of the alleged violation. The failure of the sales clerk to ask for and check the identification of Minor Agent #1 demonstrates that the Licensee had not instituted any effective form of training for its staff, nor were they properly supervised. The Licensee's assertion that it has conducted meetings specifically regarding the subject of the prevention of sales to minors is not supported by the evidence. The Branch says that in order to be compliant, the Licensee should develop written house policies. In the circumstances, therefore, the proposed penalty is warranted.

In reply, the Licensee says that although it admitted to the contravention, it did not concede that it failed to impress upon staff the seriousness of serving minors. It had impressed this upon the staff through training and staff meetings and, further, the sales clerk in this case had also been trained at another licensed establishment as well. The Licensee does not feel that it had to have its own house manual, as it had followed advice from the Branch to conduct staff training sessions in order to review Serving It Right principles.

ANALYSIS AND DECISION

The Licensee has admitted to the contravention. Having considered all of the evidence, and the submissions filed in these proceedings, I find that on May 20, 2011, the Licensee contravened Section 33(1)(a) of the Act and the terms and conditions of the licence by selling, giving or otherwise supplying liquor to a minor.

DUE DILIGENCE

Here, there is a paucity of evidence upon which I can find that the Licensee was duly diligent in this case. In order to shield itself from enforcement action, the Licensee should at the very least have developed written training materials specifically setting out the duties and obligations of an employee when serving patrons, who were apparently at, or near, 19 years of age. Those materials could then be canvassed in training sessions where employees would have the opportunity to clarify any concerns. The importance of providing these materials in writing is that they could always be referred to by staff who are unsure with regard to their duties and obligations, particularly if an employee had been unable to attend the training session. In order to further ensure compliance with the Act and Regulation, written tests should be administered to staff in order to determine whether those obligations were fully understood.

In view of the fact that the Licensee did not produce any of the above in these proceedings, I am compelled to conclude that the same did not exist and, therefore, the Licensee's due diligence defence must fail.

PENALTY

Pursuant to Section 20(3) 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 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 by 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 penalties proposed in the Notice of Enforcement Action.

The Branch's primary goal in bringing enforcement action and imposing penalties is to achieve voluntary compliance with the Act, the Regulation, and the terms and conditions of the licence. 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 public safety and the well-being of the community.

There are no proven contraventions of the same type for this Licensee within the year preceding this incident. Schedule 4, Item 2 of the Regulation, sets out penalties for first contraventions of this type (a licence suspension of 10-15 days and/or a monetary penalty of \$7,500 to \$10,000 for breaches of Section 33(1)(a) of the Act). The Branch has recommended a \$7,500 monetary penalty.

The most compelling aspect of this case in regard to penalty is the complete ease with which the minor was able to purchase the alcohol. Despite the submissions of the Licensee that the employee was distracted by the activities of Inspector 1, the employee still had the presence of mind to counsel Minor Agent #1 to get the beer where it was the coldest. Accordingly, it would seem that the store clerk was focusing more on customer service than he was on ensuring that he was compliant with the Act, the Regulation and the terms and conditions of the licence. Accordingly, it is clear that enforcement action is necessary in order to bring this Licensee into compliance. As noted, the sale of liquor to minors causes a number of serious issues on a social and provincial scale. This, then, impacts the minors themselves in injuries, assaults and serious sexual assaults due to the lack of inhibitions. This in turn places a burden on policing and also the health care system that have to treat hospitalized minors with drink related injuries that are preventable by the responsible service of liquor.

In light of all of the above, I find that a \$7,500 monetary penalty is appropriate.

ORDER

Pursuant to Section 20(2) of the Act, I order that the Licensee pay a monetary penalty in the sum of \$7,500 to the General Manager of the Liquor Control and Licensing Branch on or before December 19, 2011.

Original signed by

George C.E. Fuller
Enforcement Hearing Adjudicator

Date: November 18, 2011

cc: Liquor Control and Licensing Branch, Victoria Regional Office
Attn: Gary Barker, Regional Manager

Liquor Control and Licensing Branch, Victoria Regional Office
Attn: Bode Fagbamiye, Branch Advocate