



**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: 0854455 B.C. Ltd.
dba Character's Liquor Store
8559 Young Road
Chilliwack, BC V2P 4P2

Case: EH11-109

For the Licensee: Jim Patterson

For the Branch: Olubode Fagbamiye

Enforcement Hearing Adjudicator: Edward Owsianski

Date of Hearing: Written Submissions

Date of Decision: December 15, 2011

**Ministry of Public
Safety and Solicitor
General**

Liquor Control and
Licensing Branch

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INTRODUCTION

The licensee, 0854455 B.C. Ltd, operates Character's Liquor Store located in Chilliwack, BC. The licensee holds Licensee Retail Store License No. 195232 for the operation of a licensee retail store with liquor sales from 9 a.m. 11:00 pm 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."

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The branch's allegation and proposed penalty is set out in the Notice of Enforcement Action (the "NOEA") dated July 29, 2011. The branch alleges that on July 6, 2011, the licensee contravened section 33(1)(a) of the *Liquor Control & Licensing Act (the Act)* by selling, giving or otherwise supplying liquor to a minor. The proposed penalty is a \$7,500 monetary penalty (item 2 of Schedule 4 of the *Liquor Control and Licensing Regulation (the Regulation)*).

Item 2 provides a range of penalties for a first contravention of a licence suspension for 10-15 days and/or a monetary penalty of \$7,500 - \$10,000.

The licensee does not dispute that the contravention took place, just the penalty proposed. It was agreed that this hearing would take place by way of written submissions.

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,

ISSUES

1. Did the contravention occur?
2. If so, what penalty, if any, is warranted?

EXHIBITS

1. Branch's book of documents, tabs 1 - 14.
2. Licensee's two page written submission.

EVIDENCE & SUBMISSIONS

The branch's evidence and submissions are summarized as follows:

In 2011 the branch undertook a "Minors as Agents Program" to monitor compliance of the Act prohibiting the sale of liquor to minors by licensed establishments. The program involves the hiring of minors by the branch to test whether individual licensed establishments are willing to sell liquor to a minor. To ensure that all licensees are aware of the program and of their responsibilities under the Act the branch issued a general press release followed by written notification to all licensees that minors under the supervision of a liquor inspector would be visiting government and private liquor stores and attempting to purchase liquor. Care is taken by the branch to ensure that the underage minors appear to be their actual age and no attempt is made to deceive or mislead in order to make a purchase of liquor.

On July 6, 2011 at approximately 12:38 p.m. an 18 year old male employed as an agent by the branch entered the Character's Liquor store. He was closely followed by a branch liquor inspector. The minor agent was greeted by the male clerk on duty. He proceeded to the cooler where the beer was stored and picked up a six pack of canned beer. He proceeded to the counter where he paid the clerk for the beer. He was not requested to produce identification. He left the store with the beer, shortly followed by the inspector. The agent and the inspector proceeded to their vehicle where the transaction was documented and individual notes made. The inspector accompanied by another inspector then entered the liquor store, advised the clerk that he had sold liquor to a minor and issued him a contravention notice. The principal of the corporate licensee was later advised of the alleged contravention.

A NOEA was prepared with a recommendation for a \$7,500 monetary penalty. The inspector was concerned that selling liquor to a minor is a serious public safety issue. The employee made no effort to check the identification of the underage agent despite his youthful appearance. The minimum monetary penalty is appropriate to reinforce the seriousness of selling liquor to minors and will encourage the licensee to enhance existing policies and procedures to ensure future voluntary compliance.

The licensee's evidence and submissions were made by the employee on duty at the time of the alleged contravention and are summarized as follows:

The contravention is admitted. The employee on duty at the time is experienced with 35 years experience working in government liquor stores. At the time of the sale to the minor the employee was distracted by the presence of the inspector. The inspector was acting suspiciously. Upon entering he went to the back of the store, was carrying something in his hand and appeared to be watching the employee. When the employee looked toward the inspector, he moved away from view. This behaviour led the employee to recall a past incident where he was robbed and a fear that he may be in danger. Had the inspector not acted in this manner, the employee's focus would have been on the minor. He normally checks for identification and instructs other staff to do

likewise. In the circumstances here there should not be any penalty imposed. There have been no previous incidents at this establishment and staff will be more aware in the future. A penalty may lead to the loss of employment for the employee.

REASONS AND DECISION

The licensee has admitted the contravention. Having considered all of the evidence, I find that on July 6, 2011, the licensee contravened section 33(1)(a) of the *Liquor Control & Licensing Act (the Act)* by selling, giving or otherwise supplying liquor to a minor.

DUE DILIGENCE

The licensee is entitled to a defence to the allegations of the contraventions, if it can be shown that it was duly diligent in taking reasonable steps to prevent the contraventions from occurring. The licensee must not only establish procedures to identify and deal with problems, it must ensure that those procedures are consistently acted upon and problems dealt with.

Here, there is little evidence upon which I can find that the licensee was duly diligent. There is no evidence of what training the employee received. There is no evidence of what policies and procedures were in place to guide staff in performing their duties. The employees on duty did not take any action to prevent the contravention from occurring.

In conclusion, I find that the licensee has not been duly diligent.

PENALTY

Pursuant to section 20(2) of the *Act*, having found that the licensee has contravened the *Act*, the *Regulations* 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 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, offences or enforcement actions of the same type for this licensee for this license within the year preceding this incident. I therefore find this to be a first contravention for the purposes of Schedule 4 and calculating a penalty.

In the circumstances of this case I am satisfied that the licensee has not successfully or sufficiently stressed upon its employees the need to fully and conscientiously carry out their duties and a penalty is necessary to ensure future compliance. If a situation exists that gives an employee a genuine concern for safety there must be procedures in place to deal with such possibilities. Here, the branch with a concern that minors are being permitted to purchase liquor in licensed establishments has developed a program aimed at determining whether this is occurring and has taken measures to advise licensees of

the seriousness of the problem and to educate them on their responsibilities. Despite those initiatives we have in this case an obviously youthful patron being able to purchase liquor without being asked to produce any proof of age. Giving consideration to all of the evidence and submissions I find that a penalty is necessary to ensure future voluntary compliance.

Any penalty imposed must be sufficient to ensure compliance in the future. Schedule 4 of the Regulations provides a range of penalties for a first contravention of this type. The branch has proposed the minimum monetary penalty suspension for a first contravention of this type. In the circumstances here I find that the minimum monetary penalty of \$7,500 is necessary, appropriate and reasonable.

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 January 16, 2012.

Original signed by

Edward W. Owsianski
Enforcement Hearing Adjudicator

Date: December 15, 2011

cc: Liquor Control and Licensing Branch, Surrey Office
Attention: Michael Clark, Regional Manager

Liquor Control and Licensing Branch, Victoria Office
Attention: Olubode Fagbamiye, Branch Advocate