



**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:	Coast Hotels Limited dba Denman Place Wines 1763 Comox Street Vancouver, BC V6G 2M6
Case:	EH11-148
For the Licensee:	Craig Norris-Jones
For the Branch:	Olubode Fagbamiye
Enforcement Hearing Adjudicator:	Edward Owsianski
Date of Hearing:	Written Submissions
Date of Decision:	January 25, 2012

**Ministry of Public
Safety and Solicitor
General**

Liquor Control and
Licensing Branch

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INTRODUCTION

The licensee, Coast Hotels Limited, operates Denman Place Wines located in Vancouver, BC. The licensee holds Licensee Retail Store Licence No. 195425 for the operation of a licensee retail store with liquor sales from 9 a.m. to 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 November 1, 2011. The branch alleges that on September 21, 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 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 with the Act which prohibits 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 September 21, 2011 at approximately 8:21 p.m. a branch liquor inspector entered the Denman Place Wines liquor store. He was closely followed by an 18 year old female employed as an agent by the branch. She proceeded to the area where the beer was stored and picked up a six pack of canned beer. She proceeded to the counter where she paid the clerk for the beer. She was not asked her age nor requested to produce identification. She left the store with the beer, followed shortly afterwards 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 liquor inspector then entered the liquor store, advised the clerk that she had sold liquor to a minor and issued her a contravention notice. The general manager 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 provided several reasons for her recommendation. The inspector was concerned that selling liquor to a minor is a serious public safety issue. The manager of the corporate licensee is experienced and knowledgeable about the requirements of the liquor licence. The establishment has held a liquor licence at this location for several years. This is a first contravention of this type, so the minimum monetary penalty is appropriate to reinforce the seriousness of selling liquor to minors and the importance of being vigilant in requesting identification from youthful appearing patrons.

The licensee's evidence and submissions were made by the vice president of operations of the corporate licensee and are summarized as follows:

The contravention is admitted. A licence suspension rather than a monetary penalty would serve to stress the seriousness of the contravention to employees and patrons about the importance of being vigilant in requesting identification from anyone thought to be a minor. A three to five day suspension would be equal in value to the proposed \$7,500 monetary penalty

REASONS AND DECISION

The licensee has admitted the contravention. Having considered all of the evidence, I find that on September 21, 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 employee 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 licence 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. Due to concerns that minors are being allowed to purchase liquor in licensed establishments, the Branch developed a program to detect if this is occurring and to educate licensees about the seriousness of the problem and their responsibility to prevent it. 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. The licensee has requested a licence suspension penalty in the range of three to five days. Schedule 4, 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 and I am bound by the minimum penalties. In the circumstances here, I find that the minimum monetary penalty of \$7,500 is necessary, appropriate and reasonable. Regarding the licensee's view that a licence suspension would send a stronger message to its employees and patrons regarding the need to be vigilant when it comes to preventing liquor sales to minors, the licensee has other means at its disposal to stress the seriousness of the contravention, such as internal educational or disciplinary measures as well as signage.

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 February 23, 2012.

Original signed by

Edward W. Owsianski
Enforcement Hearing Adjudicator

Date: January 25, 2012

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

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