



**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:	The Sin Bin Sports Grill Inc. dba Sin Bin Sports Grill (The) 295 2 nd Avenue West Vancouver, BC V5Y 1C7
Case:	EH12-207
For the Licensee:	Chris Hall
For the Branch:	Olubode Fagbamiye
General Manager's Delegate:	Nerys Poole
Date of Hearing:	Written Submissions
Date of Decision:	December 12, 2012

INTRODUCTION

The licensee, The Sin Bin Sports Grill Inc. dba The Sin Bin Sports Grill, is located in Vancouver, B.C. Chris Hall is the principal of the licensee and represented the licensee for the purposes of this hearing. The licensee holds Food Primary Licence No. 302453. The hours of liquor service are Sunday to Thursday, 9:00 a.m. to 1:00 a.m. and Friday and Saturday, 9:00 a.m. to 2:00 a.m. The Sin Bin Sports Grill has two interior licensed areas with a capacity of 116 persons and a lounge endorsement with a capacity of 18 persons. Minors are permitted into the lounge area when accompanied by an adult but cannot be sold, served or consume liquor. 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 (the "Guide")."

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Liquor Control and Licensing Branch's (the "branch") allegation and proposed penalty are set out in the Notice of Enforcement Action (the "NOEA") dated September 20, 2012. The branch alleges that on September 8, 2012, the licensee contravened section 33(1)(a) of the *Liquor Control and Licensing Act* (the "Act") by selling, giving or otherwise supplying liquor to a minor. The proposed penalty is a \$7,500 monetary penalty.

For a first contravention of this type, Item 2 of Schedule 4 of the *Liquor Control and Licensing Regulation* (the "Regulation"), provides a range of penalties: a licence suspension for ten to fifteen days and/or a monetary penalty of \$7,500 - \$10,000.

The licensee does not dispute that an employee contravened section 33(1)(a) of the Act, nor does the licensee dispute that a penalty is warranted. The licensee submits that a suspension of ten days is more appropriate than a monetary penalty in the circumstances of this case. It was agreed that the 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, has Licensee established a defence to the contravention?
3. If the contravention is proven, what penalty, if any, is appropriate?

EXHIBITS

Exhibit 1: Branch's book of Documents, tabs 1 to 15

Exhibit 2: Licensee's Submission of one page (undated)

EVIDENCE

The licensee does not dispute the contravention nor does he disagree with any of the details as set out in the NOEA. I will briefly summarize the facts.

On September 8, 2012, two liquor inspectors and a 17 year old agent (the "minor agent") conducted a Minors as Agents Program (MAP) inspection. MAP inspections are used to test compliance with the Act's prohibition against selling or supplying liquor to persons under the age of 19 (minors). The minor agent entered the Sin Bin Sports Grill restaurant at approximately 10:00 p.m. and sat down at the bar in the lounge area. Two liquor inspectors immediately followed the minor agent into the restaurant, sat down at a table adjacent to the lounge area and kept the minor agent in view at all times.

The female server set a menu down in front of the minor agent who requested a Molson Canadian while waiting for his buddy. The female server did not ask for identification of any sort. She returned with a bottle of Molson Canadian and set it down in front of the minor agent. The minor agent stood up and proceeded to the exit. Liquor inspector No.1 intercepted him and escorted him to the branch's vehicle outside.

Liquor inspector No.2 went into the lounge and took possession of the bottle of Molson Canadian beer. He smelled the contents of the bottle and confirmed that the liquid in the bottle was consistent with beer. He then took photos of the purchased beer (included in exhibit 1). Exhibit 1 also contains the driver's licence of the minor agent, confirming he was 17 years old at the time.

Liquor inspector No.2 informed the female server that she had served a minor and asked for the liquor licence and receipt of sale for the beer. The female server returned with the owner Chris Hall. Liquor inspector No.2 served the contravention notice on Mr. Hall and Mr. Hall signed it. Both the liquor inspector No.2 and the female server signed the receipt, confirming the sale of the liquor.

SUBMISSIONS

The branch notes that the minor agent was 17 years old and that the minor agent made no attempt to deceive or mislead in order to make the purchase of the liquor. In this case, the minor freely entered the lounge area without an adult and proceeded to order a bottle of beer that was brought to him without any request for identification. The licensee's employee failed to comply with the Act.

The licensee admits the contravention occurred. The licensee takes issue only with the choice of penalty for this contravention.

REASONS AND DECISION

The licensee accepts the facts of the contravention as set out in the NOEA.

Due Diligence

The licensee is entitled to a defence if it can be shown that it was duly diligent in taking reasonable steps to prevent the contravention 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 are dealt with.

The licensee provided no evidence to support a defence of due diligence.

I find therefore that the licensee contravened section 33(1)(a) of the Act.

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 may do one or more of the following:

- Take no enforcement action
- Impose terms and conditions on the licence or rescind or amend existing terms and conditions
- Impose a monetary penalty on the licensee
- Suspend all or any part of the licence
- Cancel all or any part of the licence
- Order the licensee to transfer the licence

I am not bound to order the penalty proposed in the Notice of Enforcement Action. However, if I find that either a licence suspension or a 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.

The branch's primary goal in bringing enforcement action and imposing penalties is achieving voluntary compliance. The factors that are considered in determining the appropriate penalty include whether there is a proven compliance history, 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 a proven contravention of the same type for this licensee at this establishment within the preceding twelve months of this incident. Therefore, I find this to be a first contravention for the purposes of Schedule 4 and calculating a penalty. Item 2 in Schedule 4 provides a range of penalties for a first contravention of this type: a 10 to 15 day licence suspension and/or a monetary penalty of \$7500 to \$10,000.

I find that a penalty is warranted on the facts of this case, for the following reasons:

The Minors as Agents program demonstrates the branch's intention to ensure that licensees are not serving or selling liquor to minors. The branch has taken measures to advise licensees of the seriousness of the problem and to educate them on their responsibilities, and the consequences if they are found to be serving minors. Despite those initiatives, in this case a minor was able to purchase liquor without being asked to produce any proof of age. Permitting minors access to liquor is a significant public safety issue. All reasonable measures to ensure both general and specific deterrence within society at large should be undertaken.

In the present case, the minor agent was only 17 years old. The staff person made no attempt to ask for any identification. It is reasonable to expect that, even with minimal training, an individual working in the liquor service industry would be well versed in their responsibility to prevent the sale of liquor to minors. The licensee has clearly failed its staff in ensuring that policies are in place and that staff are well trained to prevent this type of contravention.

The branch recommends the minimum monetary penalty of \$7500. A monetary penalty is consistent with other proposed penalties under the Minors as Agents program.

The licensee submits that he is not in a position to pay this amount of penalty. As a small independent business, he does not have available funds. As the sole owner of the business without any investors, the licensee says that there are no options for him to try to come up with the funds to pay the penalty. The licensee requests that the monetary penalty be substituted with a suspension of ten days. Unfortunately, I have no evidence before me, other than the licensee's unsworn submission, to verify the financial situation of the licensee.

The licensee requests that this suspension be imposed at a slower time for the business, i.e. from December 18th to December 27th. A suspension is not intended to be served at a time chosen by a licensee to have the least impact on its business. The Regulation states that a suspension takes effect on the same day of the week as the day on which the contravention was committed, unless the general manager considers another day to be more appropriate. The practice of the branch is to allow a minimum of 30 days between the date of the enforcement decision and the commencement of a suspension. Even if I were to impose a suspension in this case, I would have followed the normal practice in selecting the dates for the suspension as I find no basis here for varying that practice.

The licensee submits that a closure of ten days will make the staff realize the seriousness of the situation as they will all be forced to lose shifts. This may be so, but it is the licensee's responsibility to ensure that staff understand the seriousness of the situation. The licensee is responsible for training its staff and for the implementation of the necessary policies to prevent contraventions such as this one. Ultimately, it is the licensee that is responsible for selling the liquor to the minor and it is the licensee that is responsible for the consequences of contravening the provisions of the Act.

The licensee points out that he has held a staff meeting to specifically discuss the contravention. He has now posted signs in the server areas to remind them of the seriousness of the situation and what will be the result of further enforcement actions.

The post-contravention actions taken by a licensee to prevent further contraventions are what the branch expects when enforcement action is taken. Such post-contravention actions may achieve the branch's goal of voluntary compliance but do not absolve a licensee of the contravention nor of the imposition of a branch penalty.

For the reasons stated above, I am not persuaded that the circumstances here justify a departure from the proposed monetary penalty. I find that the minimum monetary penalty is reasonable and appropriate.

ORDER

Pursuant to section 20(2) of the Act, I order that the Licensee pay a monetary penalty in the sum of \$7500 to the general manager of the Liquor Control and Licensing Branch on or before January 11, 2013.

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 Liquor Control and Licensing Branch inspector or a police officer.

Original signed by

Nerys Poole
Enforcement Hearing Adjudicator

Date: December 12, 2012

cc: Liquor Control and Licensing Branch, Vancouver Office
Attn: Donna Lister, Regional Manager
Liquor Control and Licensing Branch, Victoria Office
Attn: Olubode Fagbamiye, Branch Advocate