



**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:	Ambassador Hotel Ltd. dba G Sports Bar and Grill 1208 Granville Street Vancouver, BC V6Z 1M4
Case:	EH13-093
For the Licensee:	Shirley Lam
For the Branch:	Cristal Scheer
Enforcement Hearing Adjudicator:	R. John Rogers
Date of Hearing:	Written Submissions
Date of Decision:	September 19, 2013

**Liquor Control and
Licensing Branch**

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INTRODUCTION

The corporate licensee, Ambassador Hotel Ltd. (the "Licensee") owns and operates the *G Sports Bar and Grill* at 1208 Granville Street in Vancouver (the "*G Sports Bar and Grill*") under Food Primary Licence Number 301634 (the "Licence"). The authorized representative of the Licensee is Shirley Lam.

Under the Licence, liquor sales are permitted from 9:00 a.m. until 1:00 a.m. from Sunday to Thursday and from 9:00 a.m. to 2:00 a.m. on Friday and Saturday. The permitted capacity under the Licence for the *G Sports Bar and Grill* is 110 persons with a 12 seat patio and a 27 seat lounge.

The Licence is, as are all liquor licences issued in the Province, subject to the terms and conditions contained in the *Guide for Liquor Licensees in British Columbia* (the "Guide").

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Liquor Control and Licensing Branch's (the "Branch") allegations and proposed penalties are set out in the Notice of Enforcement Action (the "NOEA") dated April 29, 2013.

The Branch alleges that on April 19, 2013, 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 enforcement action outlined in the NOEA is a monetary penalty of \$7,500 as provided for in item 2, Schedule 4 of the *Liquor Control and Licensing Regulation* (the "Regulation").

The Licensee does not dispute that the contravention as alleged in the NOEA occurred. However, the Licensee made submissions with respect to the penalty.

The Branch and the Licensee have agreed that this hearing should take place by way of written submissions.

Pursuant to section 3 of the *Liquor Control and Licensing Regulation*, B.C. Reg. 244/2002, the General Manager of the Branch has delegated to the undersigned the powers, duties and functions imposed upon the General Manager by, and referred to in, Section 20 of the *Liquor Control and Licensing Act* and section 65-69 of the *Liquor Control & Licensing Regulation* for the purpose of this enforcement hearing.

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,

Liquor Control and Licensing Regulation, B.C. Reg. 244/2002

Schedule 4

Enforcement Actions

Minors

Item	Contravention	Period of Suspension (Days)			Monetary Penalty
		First Contravention	Second Contravention	Subsequent Contraventions	
2	A breach of section 33 of the Act (<i>Selling liquor to minors</i>)	10-15	20-30	30-60	\$7,500-\$10,000

ISSUES

1. Did the contravention occur?
2. If so, has the Licensee established a defence to the contravention?
3. If the contravention is proven, what penalty, if any, is appropriate?

As the Licensee has admitted the contravention contained in the NOEA and has not raised any defence thereto, the only issue before me is what penalty, if any, is appropriate.

EXHIBITS

Exhibit 1: Branch's Book of Documents, tabs 1 to 11 inclusive.

Exhibit 2: The Licensee's written submission dated August 19, 2013.

EVIDENCE – THE BRANCH

The Minors as Agents Program

In June of 2010 the Act was amended to permit the Branch to employ minors as agents to test compliance with the Act's prohibition against selling, giving or otherwise supplying liquor to minors. Pursuant to this authority, the Branch established a Minors as Agents Program ("MAP"). Under this program, the Branch hires as agents 17 and 18 year old minors who clearly appear to be under the age of 19 for the purpose of carrying out inspections to determine compliance with the Act with respect to supplying liquor to minors. In the delivery of MAP, no attempt is made to hide the minor's age or to otherwise deceive a licensee in order to make it appear that the agent is older than 19 years of age. MAP includes training for the newly hired MAP agents on the relevant provisions of the Act together with training on how to make and document observations during an inspection and important safety considerations in carrying out their duties.

Commencing in 2011, the General Manager has communicated with all parties licensed under the Act to advise them of MAP and of the fact that MAP inspections are being conducted to determine compliance with checking the identification of persons who appeared to be minors. In this communication, the General Manager identifies the penalties for licensees found to be non-compliant.

Inspection of the G Sports Bar and Grill

The NOEA states that on Friday, April 19, 2013 two Regional Liquor Inspectors, ("Inspector A" and "Inspector B"), together with Liquor Inspector C ("Inspector C") and MAP female agent #34 ("Agent #34") constituted an investigation team. This team was involved in conducting MAP inspections at food primary establishments on Granville Street in Vancouver to assess compliance regarding the identifying and requesting of identification from a person under the age of 19 years who has ordered liquor.

At 7:01 p.m. on April 19, 2013, Inspectors A and C together with Agent #34 entered the front door of the *G Sports Bar and Grill* for the sole purpose of assessing the establishment for compliance. Agent #34 entered first and Inspectors A and C entered directly behind her. Upon entry, Agent #34 chose a table just inside the doors on the south side of the establishment adjacent to the lounge area and sat down by herself. There were 20 to 30 people in the *G Sports Bar and Grill*, the establishment being busy, but not crowded.

According to the NOEA, Inspector C observed that once seated, Agent #34 was approached by a female bartender/server (the "Server"). Due to the noise in the establishment, Inspector C could not hear the conversation between the Server and Agent #34, but within one minute of the conclusion of this conversation, Inspector C saw the Server approach Agent #34 and place a bottle of Smirnoff Ice and a glass of ice on the table in front of Agent #34. At this point and as instructed, Agent #34 got up from the table and left the establishment.

The next event, as documented by the NOEA, was that Inspector C went to the table where Agent #34 had been sitting, photographed the liquor and glass of ice sitting on it, took possession of the bottle of Smirnoff Ice, and then proceeded with Inspector A to speak with the manager of the *G Sports Bar and Grill* (the "Manager").

The NOEA states that after a conversation about what had occurred with the Manager, contravention notice B005661 was issued and the Manager was asked to notify the Licensee of the alleged contravention.

Finally, the NOEA states that Inspector C and Inspector A left the *G Sports Bar and Grill* and returned to their vehicle where Agent #34 and Inspector B were waiting. Inspector C related a conversation with Agent #34 who confirmed that she was not asked for identification when she ordered the Smirnoff Ice liquor. Agent #34 made notes of the occurrence, which notes she provided to Inspector C.

A copy of Agent #34's notes and a copy of the photograph of the bottle of Smirnoff Ice (taken by Inspector C) are included in the Branch's book of documents identified as Exhibit 1.

EVIDENCE – THE LICENSEE

As noted, the Licensee does not dispute that the contravention occurred.

SUBMISSIONS – THE BRANCH

The Branch submits that as the contravention has been proven, that the recommended penalty of \$7,500 is appropriate and necessary in order to ensure voluntary compliance in the future by the Licensee with respect to the provisions of Section 33(1)(a) of the Act.

SUBMISSIONS – THE LICENSEE

In its submissions, the Licensee states that the staff of *G Sports Bar and Grill* are always asked to pay attention to and do things in accordance with the liquor laws of British Columbia. The Licensee observes that, from a review of the CCTV camera video footage recorded in the *G Sports Bar and Grill* on April 19, 2013, it appears that Agent #34 looks much more mature than her age. For that reason, the Licensee submits, it is understandable why the Server did not ask Agent #34 for identification prior to serving her liquor in contravention of these laws.

The Licensee submits that *G Sports Bar and Grill* is a sports venue and that its business relies on the sports season. Last year, because of the NHL strike, the Licensee states that its sales dropped 30%. Further, in March 2013, the Licensee lost a few thousand dollars due to a debit machine being stolen. In addition, the Licensee submits, summer is its slowest season for sales as there are no sports events. To confirm this financial difficulty, the Licensee submitted financial statements for the *G Sports Bar and Grill* for the months of May, June and July 2013. The Licensee states that these documents demonstrate its financial difficulty and confirm the Licensee's inability to pay the penalty of \$7,500 proposed by the Branch.

It is due to this financial difficulty that the Licensee has requested that, in lieu of being required to make an immediate payment of \$7,500, that one of the following options is required of it:

1. Instead of a financial penalty, a suspension be imposed on the *G Sports Bar and Grill* and that this suspension run for 10 days from the middle of December, 2013; or
2. If the monetary payment of \$7,500 is imposed, that it be paid in 3 installments; or
3. If the monetary payment of \$7,500 is imposed, that it be paid in full at the end of the calendar year 2013.

REASONS AND DECISION

Contravention

The Licensee acknowledges that the events as set out in the NOEA did, in fact, occur. Its only response to the allegations contained in the NOEA is that, upon a review of its CCTV camera video footage from April 19, 2013, Agent #34 clearly appears not to be a minor and so it is understandable why the Server would serve Agent #34 without first asking for identification.

Unfortunately, this observation does not assist the Licensee. Section 33(1)(a) of the Act is what is known as a “strict liability offence”. This means that to establish liability under this section, the Branch does not need to demonstrate that the person serving the minor intended to serve liquor to a minor. It is sufficient merely that the Branch prove that the person, the subject of the alleged contravention, did indeed serve liquor to a minor.

I find that the evidence before me clearly shows that the Server did in fact serve liquor to Agent #34 on April 19, 2013 as alleged in the NOEA. At the time this service occurred, Agent #34 was under 19 years of age. Therefore, I find that the Branch has proven that the contravention as alleged in NOEA did occur.

As more fully set out in the Guide, under British Columbia law the Licensee is liable for the actions of one of its employees if that employee is found to have served liquor to a minor.

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 that any problems are dealt with.

In this matter, the Licensee accepts the facts as stated in the NOEA and offers no evidence to demonstrate due diligence. As the Licensee has not offered a due diligence defence and as I do not find sufficient evidence before me which might support such a defence, I determine that in this matter the Licensee is not entitled to the benefit of the defence of due diligence.

I find that on April 19, 2013 the Licensee contravened Section 33(1)(a) of the Act and the terms and conditions of its Licence by selling, giving or otherwise supplying liquor to a minor.

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 a monetary penalty on the licensee
- Suspend all or any part of the licence for a period of time
- Attach additional terms and conditions to the licence or rescind or amend existing terms and conditions attached to the licence
- Cancel all or any part of the licence, or
- Order the licensee to transfer the licence

My authority to impose any penalty is discretionary. I am not bound to order the penalty proposed in the NEOA. 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 in Schedule 4 of the Regulation 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 to achieve voluntary compliance with the Act, the Regulation and the terms and conditions of the licence which is the subject of the enforcement action.

The factors that I have considered in determining the appropriate penalty in this matter include: whether there is a proven compliance history; 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 before me of a proven contravention of Section 33(1)(a) of the Act for this Licensee at the *G Sports Bar and Grill* within the twelve months preceding April 19, 2013. Therefore, I find this to be a first contravention for the purposes of item 2 in Schedule 4 of the Regulation.

As above set out, item 2 of Schedule 4 of the Regulation provides for a penalty for first contraventions of Section 33(1)(a) of the Act to be either a monetary penalty of between \$7,500 and \$10,000 and/or a suspension of the Licence for a period of between 10 and 15 days.

The Branch has recommended a monetary penalty of \$7,500. This is the minimum monetary penalty for this particular contravention.

There can be no doubt but that a contravention of Section 33(1)(a) of the Act is at the high end of the seriousness scale where a licensee has breached the terms of a licence, and any penalty with respect to this contravention by the Licensee should reflect the gravity of this breach. The consumption of liquor by minors can lead to a host of social ills.

As I have found that this is a first contravention by the Licensee, I accept the Branch's recommendation that a minimum penalty for a first contravention is in order.

Although I am sympathetic with the Licensee for the financial difficulty professed by it in its submissions, I see no reason why the Licensee should be granted the relief sought by it in the form of a suspension rather than a financial penalty.

Other than a general platitude about advising its staff to comply with the liquor laws of British Columbia, it is not clear from the evidence before me that the Licensee acknowledges the seriousness of the contravention. Nor is there any evidence before me that, as a result of this contravention, it has taken any remedial measures to ensure a similar contravention will not occur in the future.

Section 20 (2.6) of the Act states:

A monetary penalty imposed under this section must be paid within 30 days after the date on which the notice referred to in subsection (4) (a) is provided to the licensee or within any longer period specified by the general manager.

And Section 20 (4(a)) states:

On taking action against a licensee under subsection (2), the general manager must

(a) provide the licensee with written notice of the action in accordance with the regulations,

These provisions of the Act determine that the entire monetary penalty imposed upon a licensee must be paid within 30 days after the written notice of its imposition, unless a longer period is specified by the General Manager. Therefore, although the Act enables me to extend the 30 day period for payment of a penalty, the Act does not grant me the authority to permit the penalty imposed upon a licensee to be paid by way of instalment payments in the manner requested by the Licensee in its submissions. Further, given the lack of evidence of the Licensee's acknowledgement of the seriousness of the contravention and of its lack of efforts to take remedial action as I above observed, I see no reason why this 30 day time period should be extended.

On the evidence before me, I find appropriate the Branch's recommendation to impose a monetary penalty of \$7,500.

ORDER

Pursuant to section 20(2) of the Act, I order that the Licensee pay a monetary penalty in the sum of \$7,500 (Seven Thousand Five Hundred Dollars) to the General Manager of the Branch on or before October 21, 2013.

Signs satisfactory to the General Manager showing that a monetary penalty has been imposed will be placed in a prominent location in the *G Sports Bar and Grill* by a Branch inspector or a police officer.

Original signed by

R. John Rogers
Enforcement Hearing Adjudicator

Date: September 19, 2013

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

Liquor Control and Licensing Branch, Vancouver Office
Attention: Cristal Scheer, Branch Advocate