



**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:	Triple K Holdings Ltd. dba Jaffray Pub Cold Beer & Wine Store 2359 Highway 3/93 Jaffray, BC V0B 1T0
Case:	EH13-049
For the Licensee:	Ron Pion
For the Branch:	Cristal Scheer
General Manager's Delegate:	George C.E. Fuller
Date of Hearing:	Written Submissions
Date of Decision:	December 4, 2013

Ministry of Justice

Liquor Control and
Licensing Branch

Mailing Address:
PO Box 9292 Stn Prov Govt
Victoria BC V8W 9J8
Telephone: 250 952-5787
Facsimile: 250 952-7066

Location:
4th Floor, 3350 Douglas Street
Victoria BC

<http://www.pssg.gov.bc.ca/lclb/>

INTRODUCTION

The Licensee, Triple K. Holdings Ltd. (the "Licensee"), owns and operates an establishment known as Jaffray Pub Cold Beer & Wine Store (the "Retail Liquor Store"). The Licensee holds Licensee Retail Store Licence Number 195144. The authorized representative of the Licensee is Ron Pion.

According to the terms of its Licence, the Licensee may sell liquor from 9:00 a.m. to 11:00 p.m., seven days a week. The Licensee 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") allegations and proposed penalty are set out in the Notice of Enforcement Action (the "NOEA") dated April 25, 2013.

The Branch alleges that on February 24, 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 \$7,500 monetary penalty. The proposed monetary penalty falls within the penalty range set out in item 2, Schedule 4, of the *Liquor Control and Licensing Regulation* (the "Regulation") for a first contravention of this type. The range of penalties for a first contravention of this type is a ten to fifteen day licence suspension and/or a \$7,500 to \$10,000 monetary penalty.

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, 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 the Licensee established a defence to the contravention?
3. If the contravention is proven, what penalty, if any, is appropriate?

EXHIBITS

The following documents were submitted and were considered:

- Exhibit 1:** The Branch's book of documents, tabs 1 to 15 inclusive.
- Exhibit 2:** Copy of a two page submission by the Licensee to the Branch signed by Ron Pion as the owner/manager of Triple K. Holdings Ltd. [dba Jaffray Pub]
- Exhibit 3:** Copy of a letter dated September 20, 2013, marked "TO WHOM IT MAY CONCERN", from Hryciuk Gallinger, Certified General Accountants, entitled "Triple K. Holdings Ltd. – Gross Sales and Net Income."
- Exhibit 4:** Copies of three notices posted in the Licensee's establishment, regarding ID requirements.
- Exhibit 5:** Copy of an email dated October 1, 2013 from the authorized representative of the Licensee, Ron Pion, to the Branch Registrar.

EVIDENCE—BRANCH

As previously noted, the Licensee does not dispute that the contravention occurred as alleged. It is deemed, therefore, 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 in respect to the appropriateness and fairness to the penalty which the Branch has recommended. Accordingly, the evidence may be summarized as follows.

These proceeding arise out of an inspection conducted under the "Minors as Agents Program" ("MAP"). These types of inspections are utilized by the Branch in order to monitor compliance with the Act's prohibition against selling liquor to persons under the age of nineteen years of age ("Minors").

The Branch has hired 17 and 18 year old minors, who appear young, as agents to carry out these compliance inspections. No attempt was made to hide the minor's age or otherwise deceive the Licensee. The MAP is intended to test and ensure that liquor is not being sold to minors.

On February 24, 2013, MAP inspections were conducted to test compliance of several Licensee retail stores, Government Liquor Stores and Rural Agency stores in the East Kootenay region. Inspectors A and B were the Branch staff members accompanying the minor agent on this date (the "Inspection Team"). At the start of the shift, Minor Agent #48 was photographed and identification was viewed which confirmed that the Agent was under nineteen years of age.

At approximately 1:02 p.m. on February 24, 2013, Inspector B attempted to enter the Licensee's premises. The door was locked and a sign directed patrons to enter through the main doors to the restaurant. Once inside, another sign directed patrons to speak to a restaurant server to gain access to the Licensee Retail Store.

Minor Agent #48 followed the signs, also entering the restaurant at approximately 1:05 p.m. The Minor Agent approached a server located near the restaurant waiting area and requested access to the liquor store. The female server and Minor Agent #48 walked past Inspector B to a door which the server opened and invited Minor Agent #48 to enter the liquor store.

At approximately 1:07 p.m. both Minor Agent #48 and Inspector B entered the licensed premises.

Minor Agent #48 obtained a six pack of Palm Bay coolers and went to the checkout area. Inspector B positioned himself approximately five feet from the counter, in order to observe the transaction. The male employee (later identified as the Licensee, Ron Pion) scanned the six pack of Palm Bay coolers and requested \$12.00 from Minor Agent #48. Minor Agent #48 provided \$20.00 in cash, obtained the change and exited the store with the Palm Bay coolers at approximately 1:08 p.m. At no time during this transaction, or at any time, did the male employee ask Minor Agent #48 for any form of identification.

After completing additional inspections in the East Kootenay Region, the Inspection Team returned to the Licensee's premises and issued Contravention Notice B019884 at approximately 6:22 p.m.

SUBMISSIONS—BRANCH

The Branch says that the contravention has been proven and that the recommended penalty is appropriate and necessary in the circumstances, in order to ensure future compliance by this Licensee with respect to section 33(1)(a) of the Act.

SUBMISSIONS—LICENSEE

The principal of the Licensee says that he has been in business for approximately 20 years and has never had any enforcement action taken against the business, due to the fact that the business attempts to provide a safe and reputable establishment. The Licensee has established its own set of rules of conduct, and as a result, the word has spread that the business does not tolerate any type of bad behaviour. Patrons are aware

of the fact that the establishment is serious about following through with the rules which it has established.

The Licensee submitted that the current state of its business is poor. To summarize the evidence on this point, the Licensee stated that initially business was good at the establishment at its current location. Because of this, the Licensee took the opportunity to substantially expand its business operations. Shortly after the opening of the newly renovated premises, drinking and driving laws changed, the HST came into effect, and the minimum wage increased. The Licensee testified that all of these factors contributed to a significant downturn in business to the extent that the establishment has lost money every year since it opened. The Licensee now works between 10 and 14 hours a day and has not taken a salary out of the business in the last four years, in an attempt to keep the business operating.

The upshot of this poor economic situation is that the Licensee can no longer afford to employ a full-time customer service clerk in the Retail Liquor Store. The Licensee testified that due to the staff shortage, the waitresses keep the door locked, and attend to customers when requested. The Licensee provided a letter from its accountant confirming that the business is operating at a loss.

On the day in question, the Licensee and the waitress were the only two working and, as she was busy, she called to the Licensee to attend to the store. The Licensee was working in the kitchen so he hurried to the store, unlocked the door, and let Inspector B and Minor Agent #48 into the Retail Liquor Store.

The Licensee described the demeanor of the Minor Agent as having no hesitation or nervousness in her actions, characteristics that most underage people would display. When she approached, the Licensee looked directly at her and she stared back without blinking, and had a very confident manner about her. In his opinion, she appeared to be about 19-20 years old, and with her confidence and mannerisms, the Licensee was certain that the Minor Agent was of age.

The Licensee submits that with its impeccable record over the years, and the effort which has been put into the business in order to try and maintain its reputation, that a \$7,500.00 penalty for the alleged first infraction is unmanageable. In these circumstances, the Licensee requests that the Branch impose a ten day suspension of its Licence, in substitution for the monetary penalty.

ANALYSIS AND DECISION

Contravention

The Licensee has admitted to the contravention. Having considered all of the evidence and the submissions filed in these proceedings, I find that on February 24, 2013 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

The Licensee is entitled to a defence to the contravention, 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 the existence of procedures to identify and deal with problems, it must ensure that those procedures are consistently acted upon and problems are dealt with accordingly.

There is little evidence before me upon which I can find that the Licensee was duly diligent in this case. Although the Licensee has advised that it has established its own set of rules of conduct, it provided very little detail of what those rules of conduct contain. The main example given was with respect to fighting, or causing a disturbance. However, there was no description of the type and depth of training that the Licensee provided to its employees with respect to the topic of IDing underage patrons.

It is my view, therefore, that the evidence falls far short of that which would be necessary to successfully claim the benefit of due diligence. Accordingly, I find that the Licensee in this case is not entitled to claim the benefit of the defence of due diligence.

PENALTY

Pursuant to Section 20(2) of the Act, having found that the Licensee has contravened the Act, the Regulation or the terms and conditions of the Licence, I have discretion to order one or more of the following enforcement actions:

- Take no enforcement action
- 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 and/or a 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 penalty proposed in the Notice of Enforcement Action.

The Branch's primary goal in bringing enforcement action and imposing penalties is to achieve compliance with the Act, the Regulation, and the terms and conditions of the Licence. Among the factors that I have considered in determining the appropriate penalty in this case are: 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 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 and, therefore, this contravention should be dealt with accordingly. Normally, the imposition of a monetary penalty for a first contravention in the sum of \$7,500 would be appropriate. I am mindful, however, of the evidence provided by the Licensee concerning its economic circumstances, a summary of which is set out above. In my view, it is appropriate to consider the undue financial impact of a monetary penalty when a suspension may be more appropriate.

I accept the evidence of the Licensee that a monetary penalty would cause extreme hardship to its business. Based on the evidence of the Licensee, it is apparent that its business has suffered a significant downturn, and is operating at a loss, as confirmed by the letter from the Licensee's accountant. Because of this, I find that it is more appropriate to substitute a suspension instead of a monetary penalty. I am also satisfied that the length of the minimum 10 day licence suspension will be sufficient to bring the Licensee into compliance with its obligations under the legislation in the future. Having reviewed and considered all of the evidence in this case, I find that a 10 day licence suspension should be substituted for the proposed monetary penalty.

ORDER

Pursuant to section 20(2) of the Act, I order a suspension of Licensee Retail Store Licence Number 195144 for a period of 10 days to commence at the close of business on Saturday, January 4, 2014 and to continue each succeeding business day until the suspension is completed.

To ensure this order is effective, I direct that the liquor licence be held by the branch or the police from the close of business on January 4, 2014 until the licensee has demonstrated to the branch's satisfaction that the suspension has been served.

Signs satisfactory to the general manager notifying the public that the licence is suspended will be placed in a prominent location in the establishment by a branch inspector or a police officer, and must remain in place during the period of suspension.

Original signed by

George C.E. Fuller
Enforcement Hearing Adjudicator

Date: December 4, 2013

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

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