



**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: 0808204 B.C. Ltd.
dba Apex Liquor Market
6509 Victoria Drive
Vancouver, BC V5P 3X8

Case: EH13-155

For the Licensee: Kamaljit (Kam) Sandhu

For the Branch: Cristal Scheer

General Manager's Delegate: George C.E. Fuller

Date of Hearing: Written Submissions

Date of Decision: February 20, 2014

Ministry of Justice

Liquor Control and
Licensing Branch

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INTRODUCTION

The Licensee, 0808204 B.C. Ltd. (the "Licensee") owns and operates an establishment known as Apex Liquor Market in Vancouver, B.C. The Licensee holds Licensee Retail Store Licence Number 195373 (the "Licence"). The authorized representative of the Licensee is Kamaljit (Kam) Sandhu.

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 September 12, 2013.

The Branch alleges that on July 11, 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 10 to 15 day licence suspension and/or a \$7,500 to \$10,000 monetary penalty.

The Licensee does not dispute committing the contravention, nor is the Licensee pursuing a defence of due diligence. The Licensee disputes the proposed enforcement action and requests that, if any penalty is to be imposed, that it be a 7 day licence suspension, instead of the proposed \$7,500 monetary penalty.

RELEVANT STATUTORY PROVISIONS

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 12 inclusive.

Exhibit 2: Email communication dated January 16, 2014 from the Licensee to the Branch Registrar.

EVIDENCE—BRANCH

As previously noted, the Licensee does not dispute that the contravention occurred as alleged, nor does it seek to claim the benefit of the defence of due diligence. 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 of the penalty which the Branch has recommended. Accordingly, the evidence may be summarized as set out below.

These proceedings 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 19 years ("Minors").

The Branch has hired 16 to 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 July 11, 2013, MAP inspections were being conducted to test compliance at several licensee retail stores (LRS), food primary, and liquor primary establishments in Vancouver, B.C. Regional Inspector A and Liquor Inspector B were the Branch's personnel accompanying the Minor Agent ("Minor Agent #43") on this date (the "Inspection Team"). At the start of the shift, Minor Agent #43 was photographed and identification was viewed confirming the Minor Agent to be 18 years of age.

At approximately 21:16 hours, Inspector B entered the establishment approximately 25 seconds ahead of Minor Agent #43. Once inside, Minor Agent #43 walked to the beer section of the store and chose a four pack of "Guinness Beer", walked to the counter and placed it in front of the clerk.

The clerk greeted Minor Agent #43 and advised that the product was a total of \$15.00. Minor Agent #43 handed the clerk a 10 dollar and a 5 dollar bill but the clerk rejected the 5 dollar bill due to a tear. Minor Agent #43 gave him two 5 dollar bills instead. The clerk placed the product in a bag and Minor Agent #43 walked out of the store at approximately 21:18 hours.

The clerk did not ask for any ID to verify Minor Agent #43's age any time during this transaction. While in the establishment, Liquor Inspector B had a clear view of the transaction between Minor Agent #43 and the clerk.

SUBMISSIONS – BRANCH

The Branch says that the contravention has been proven and that the recommended monetary 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 Licensee basically asserts that although it does not disagree with the contravention, the amount of the fine is truly unbearable. The establishment has never been the subject of enforcement action before for selling liquor to a minor. The Licensee submits that, at the end of the day, we are all human and make mistakes. The Licensee also advises that it has certainly learned from the experience as it directed its training further around this issue.

The Licensee does not agree with the \$7,500 fine, particularly since it is the establishment's first contravention of this nature. The Licensee asks that the monetary penalty be reduced to acceptable levels.

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 July 11, 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.

The onus is upon the Licensee to prove this defence on the balance of probabilities. The Licensee here, expressly, did not present a defence of due diligence. I find, therefore, that the Licensee has not established a defence of due diligence.

Accordingly, I find that the Licensee contravened section 33(1)(a) of the Act by selling liquor to a minor.

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 are 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.

Licenses are obligated to comply with the Act, Regulation and the terms and conditions of their licenses. Enforcement actions are intended to both address the Licensee's non-compliance, and to encourage future compliance by way of deterrents. Sale of liquor to minors is considered a serious contravention, as the range of possible monetary penalties and licence suspensions attests. The Branch recognizes that minors, as a group, are unable to metabolize alcohol in the same manner as an adult, and so may be more susceptible to becoming intoxicated. In this condition, a minor may be at personal risk or constitute a public danger.

There is no record of a proven contravention of the same type for this Licensee at this establishment within the 12 months prior to this incident. I find, therefore, this to be a first contravention for the purposes of reviewing the range of applicable penalties under Schedule 4 of the Regulation. Item 2 in Schedule 4 of the Regulation provides that the penalties for a first contravention of this type are a 10 to 15 day licence suspension and/or a \$7,500 to \$10,000 monetary penalty.

The Licensee has raised an issue of the ability to pay the monetary penalty. Despite the Licensee's assertion that paying a monetary penalty will cause financial difficulty for the business, the Licensee has not lead any evidence in support of that claim. I would have expected, at the very least, that the Licensee would have presented excerpts from the Company's financial records corroborating this bald claim of financial distress. In addition, some considerable time has passed since the committing of a contravention outlined in the NOEA and the Licensee has been aware that the likelihood of this obligation may be forthcoming.

In light of all of the above, I find that a monetary penalty of \$7,500 is appropriate in the circumstances in order to encourage compliance with section 33(1)(a) of the Act by this Licensee.

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, and I direct that this monetary penalty be paid to the General Manager on or before March 20, 2014.

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

George C.E. Fuller
Enforcement Hearing Adjudicator

Date: February 20, 2014

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

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