



**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: Trev-Cher Enterprises Ltd.
dba Fynnigans Neighbourhood Pub
1212 8th Street
Dawson Creek, BC V1G 4G7

Case: EH13-159

For the Licensee: William (Bill) Likar and Douglas Likar

For the Branch: Hugh Trenchard

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

Date of Hearing: Written Submissions

Date of Decision: February 14, 2014

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, Trev-Cher Enterprises Ltd., (the "Licensee") owns and operates an establishment known as Fynnigans Neighbourhood Pub in Dawson Creek, B.C. The Licensee holds Licensee Retail Store Licence number 192055 (the "Licence"). The authorized representatives of the Licensee are William (Bill) Likar and Douglas Likar.

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 19, 2013.

The Branch alleges that on August 8, 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 seven day licence suspension, instead of the proposed \$7,500 monetary penalty.

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 11 inclusive.

Exhibit 2: Letter dated December 6, 2013 from the Licensee to the Branch requesting the substitution of a license suspension for a monetary penalty and attaching excerpts from unaudited Financial Statements for the Licensee's operations for the year 2012.

Exhibit 3: Letter dated January 15, 2014 from the Licensee to the Branch again requesting the substitution of a license suspension for a monetary penalty and attaching excerpts from Financial Statements of the Licensee for the years 2010 and 2011.

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 of the penalty which the Branch has recommended. Accordingly, the evidence may be summarized as set out below.

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 19 years of age ("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 August 8, 2013, MAP inspections were being conducted in the Dawson Creek area in order to test compliance of several retail stores selling packaged alcohol for off-site consumption. Inspectors A, B and C were the lead Branch personnel accompanying the Minor Agent ("Minor Agent #55") on this date (the "Inspection Team"). At the start of the shift, Minor Agent #55 was photographed and identification was viewed confirming the Minor Agent to be 16 years of age.

Fynnigans Neighbourhood Pub Store is a Licensee Retail Store (LRS). This type of establishment is licensed to sell all types of packaged liquor. Additional terms and conditions to this class of licence state that Minors are allowed in a LRS only when accompanied by a parent or guardian.

At approximately 6:22 p.m. on August 8, 2013, the Inspection Team arrived at the establishment. Minor Agent #55 entered the store and was immediately followed in by Inspector B. Minor Agent #55 went to the counter with a six pack of a product known as "Palm Bay coolers". Minor Agent #55 put the coolers on the counter, paid with a \$20.00 bill and received change from the clerk. Minor Agent #55 then went back to the Branch's vehicle, where the six pack of coolers was given to Inspector C, who tagged and secured the same as evidence.

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 – THE LICENSEE

In its very brief submission of December 6, 2013 the Licensee requests that a seven day licence suspension be substituted for the \$7,500 monetary penalty, “just because we are a small beer store and our profits over that period would not cover the fine, so a closing would be much more financially acceptable”.

In support of that contention, the Licensee has presented excerpts from the Licensee’s financial records for the years 2010, 2011 and 2012. Those excerpts are entitled “Statement of Loss and Retained Earnings”. Those documents purport to show business losses over that period of time of \$94,152.00 (2010), \$27,197.00 (2011), \$63,303.00 (2012). Finally, in its submission of January 15, 2014, the Licensee advises that due to losses in 2013, the business had to borrow money in order to pay the property taxes on the establishment.

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 August 8, 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, advised that it did not wish to 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.

Licensees are obligated to comply with the Regulation and the terms and conditions of their licences. 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. Therefore, I find 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, and in support of that proposition points to excerpts from the Licensee's financial records, Exhibits 2 and 3 in these proceedings.

One of the difficulties that I have in accepting a plea for leniency in this case is the unreliability of the financial data presented. In fact, this very concern was raised by the Licensee's own Chartered Accountant wherein he states in a note to the financial statements, that he had not performed an audit or a review engagement in respect of the financial statements, and, accordingly he expressed no assurance on those documents and cautioned that the financial statements might not be appropriate for their purpose. Also, financial records for the most critical time period, that being 2013, were not presented.

Another significant factor that augers against leniency in this case, is the fact that Minor Agent #55 was only 16 years old at the time of the contravention and, according to Inspector C's observation at least, Minor Agent #55 looked her age.

Finally, although this contravention is considered to be a first contravention, a review of the past enforcement action against this Licensee discloses that this Licensee, on August 28, 2010, contravened section 43(2)(b) of the Act and received a five day licence suspension.

In light of all of the above, I find that the 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 12, 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 14, 2014

cc: Liquor Control and Licensing Branch, Surrey Regional Office
Attn: Michael Clark, Regional Manager

Liquor Control and Licensing Branch, Victoria Regional Office
Attn: Hugh Trenchard, Branch Advocate