



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: North Arm Pub Ltd.  
dba North Arm Beer & Wine Store  
1507 Stones Bay Road  
Fort St. James, BC

Case: EH14-075

For the Licensee: Carole Kirkaldy

For the Branch: Cristal Scheer

General Manager's Delegate: Daniel M. Graham

Date of Hearing: Written Submissions

Date of Decision: November 12, 2014

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**Liquor Control and  
Licensing Branch**

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## INTRODUCTION

North Arm Pub Ltd. (the "Licensee") operates the North Arm Beer & Wine Store (the "Establishment") under Licensee Retail Store Licence 195174 (the "Licence"). The Establishment is located at 1507 Stones Bay Road, Fort St. James, BC.

The Licence specifies hours of liquor service daily, seven days a week, from 9:00 a.m. to 11:00 p.m. The Licence is, as are all liquor licences in the province, subject to the terms and conditions contained in the publication Guide for Liquor Licensees in British Columbia (the "Guide").

Ms. Carole Kirkaldy, principal of the corporate Licensee, represented the Licensee for the purposes of this hearing.

## ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Liquor Control and Licensing Branch's (the "Branch") allegations and proposed penalty are set out in a Notice of Enforcement Action dated July 15, 2014 (the "NOEA"). The Branch alleges that on Saturday, June 21 2014 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 sanction is a 10 day suspension of the Licence. This proposed penalty falls within the penalty range set out in item 2, schedule 4 of the *Liquor Control and Licensing Regulation* (the "Regulation"). 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.

On August 5, 2014 the Licensee advised the Branch that the Licensee was admitting the contravention as alleged and, by agreeing to proceed by way of written submission, the Licensee chose not to make out a due diligence defence. The Licensee is disputing the proposed penalty of a 10 day suspension of the Licence.

For the purposes of this hearing, and in accordance with section 3 of the Regulation, the General Manager has delegated to me the powers, duties and functions provided to the General Manager by section 20 of the Act and sections 65-69 of the Regulation.

## RELEVANT STATUTORY PROVISIONS

### *Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267*

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?

## EXHIBITS

- Exhibit 1: The Branch's book of documents, tabs 1 to 12 inclusive.
- Exhibit 2: The Licensee's one-page written submission of September 26, 2014 with attachments.

## FACTS

The Licensee does not dispute the contravention and therefore accepts the facts as laid out in the NOEA (Exhibit 1, tab 1). The following is a summary of the facts from the NOEA.

On June 21, 2014, two liquor inspectors and a minor agent conducted a Minors as Agents Program ("MAP") inspection of the Establishment. MAP inspections are used to test compliance with the Act's prohibition against selling or supplying liquor to persons under the age of 19.

Prior to going to the Establishment, the minor agent was photographed and his identification was photocopied. The minor agent was 17 years old on the date of the contravention. (Exhibit 1, tab 12)

One of the liquor inspectors entered the Establishment at approximately 1:27 p.m., followed almost immediately by the minor agent. The minor agent selected a six pack of Budweiser beer from a cooler and took it to the till. The clerk at the till put the beer in a white plastic bag, accepted a \$20 bill from the minor agent, and handed the minor agent the beer and his change. At no time did the clerk ask the minor agent for identification.

After exiting the Establishment, the minor agent returned to the inspectors' vehicle and completed an observation sheet and statement (Exhibit 1, tab 5).

At 5:55 p.m. the liquor inspectors advised the Licensee of the contravention. On June 23, 2014 Contravention Notice #B012036 was sent to the Licensee by registered mail (Exhibit 1, tab 2).

## SUBMISSIONS – BRANCH

Through the book of documents (Exhibit 1), including the NOEA, the Branch submitted that the elements of the contravention have been established by the evidence. The Branch's position is that the recommended suspension penalty of 10 days is appropriate to reinforce the seriousness of the contravention.

## SUBMISSIONS – LICENSEE

In its one-page written submission dated May 13, 2014 the Licensee wrote that it does not dispute the contravention. The Licensee submitted that the clerk on the day of the contravention had been a full time employee at the Establishment since December 2012 and had been very responsible and exceptionally diligent. The clerk obtained a Serving It Right certificate upon employment. As a result of notification from a consultant in May 2013 regarding the MAP, the Licensee had all its staff – including the clerk – read and sign a “compliance agreement” which reads as follows:

I have read and understand the importance of not serving a minor. (Minor being under the age of 19.)

I will ask anyone who looks to be under the age of 25 for 2 pieces of ID, one consisting of a clear picture government issued ID as well as a second piece of government issued ID. (ex. Medical card, SIN card, BCID, or Passport.) Status cards will not be accepted.

I understand the serious penalties the company will face if a minor is served alcohol.

The clerk’s Serving It Right certificate and signed compliance agreement were attached to the Licensee’s written submission.

In its submission, the Licensee stated that the clerk had given notice to leave her employment with the Licensee two weeks prior to the contravention. The clerk was 34 minutes away from finishing her last shift when the contravention occurred. The Licensee argued that despite being a very diligent employee, the clerk had overlooked her responsibilities as a server due to her excitement of being near the end of her last day on the job.

The Licensee wrote that the clerk's actions in failing to ask for ID were out of character for her, and argued that in the circumstances where an employee holds a valid Serving It Right certificate and acknowledges in writing that she has been informed of the law, she should be held accountable for her own actions rather than the Licensee.

Accordingly, the Licensee submitted that the proposed penalty should be waived or reduced.

## **REASONS AND DECISION**

### **Contravention**

The Licensee admits the contravention.

That admission, along with the evidence and submissions filed in these proceedings, demonstrate on the balance of probabilities that, with reference to section 33(1)(a) of the Act:

- A person (the Licensee, acting through its employee, the clerk)
- sold liquor (a six-pack of Budweiser beer)
- to a minor (the minor agent)

Accordingly, I find that on June 21, 2014 the Licensee contravened section 33(1)(a) of the Act by selling, giving or otherwise supplying 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 problems are dealt with.

In requesting the hearing by written submission, the Licensee agreed that the contravention occurred and that the Licensee was not pursuing a due diligence defence.

The Licensee has presented very limited evidence of efforts made by the Licensee to exercise due diligence, specifically the clerk's Serving It Right certification and the compliancy agreement. I, therefore, find that the Licensee has not established due diligence and I turn to the question of penalty.

## **PENALTY**

Pursuant to section 20(2) of the Act, having found that the Licensee has contravened the Act, the Regulation 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

The Branch has consistently maintained that the sale of alcohol to minors is a significant public safety issue and a high priority for enforcement. The NOEA outlines why the Branch considers this a significant public safety issue:

- The effects of alcohol on growing bodies and developing minds
- The effects on individuals and society of irresponsible drinking behaviour learned at an early age
- A minor's lack of capacity to metabolize alcohol in the same manner as an adult; therefore, liquor has a more intoxicating effect on minors, and
- Liquor is a significant factor in many crimes committed by youth, including serious driving offences, assault, sexual assault, and theft

In this case, the facts are that the Licensee's employee served alcohol to a 17 year old individual without any request for identification. Other than a reference to the clerk obtaining Serving It Right certification and signing the compliance agreement, the Licensee has provided no evidence of any training being provided to its staff, or of any steps taken to supervise and monitor its operations sufficiently to ensure that staff are applying their training appropriately.

Based on the seriousness of this public safety contravention, the fact that an employee served beer to a 17 year old without any request for identification, and the limited evidence of the training of employees and procedures in place at the Establishment, I find that a penalty is warranted.

The factors that I considered in this case in determining the appropriate penalty include: consideration of 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 the Licensee at the Establishment within the preceding 12 months of this incident. Therefore, I find this to be a first contravention for the purposes of Schedule 4 and calculating a penalty.

A Conduct Routine Inspection form (Exhibit 1, tab 8) indicates that the Establishment was inspected on May 28, 2014 with no non-compliance noted. There is no evidence before me of any other compliance issues involving the Licensee. Accordingly, I conclude the Licensee had a clean compliance record previous to the contravention that is the subject of this hearing.

In consideration of:

- the serious public safety concerns related to selling alcohol to minors; and
- the Licensee's previously clean compliance record

I find the proposed minimum 10 day Licence suspension to be reasonable and appropriate to achieve the Branch's objectives with respect to general and specific deterrence.

**ORDER**

Pursuant to section 20(2) of the Act, I order a suspension of the Licence for a period of 10 days to commence at the close of business on Friday, January 2, 2015 and to continue each succeeding business day until the suspension is completed.

To ensure this order is effective, I direct that the Licence be held by the Branch or the local police from the close of business on Friday, January 2, 2015 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 police officer, and must remain in place during the period of suspension.

*Original signed by*

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Daniel M. Graham  
General Manager's Delegate

Date: November 12, 2014

cc: Liquor Control and Licensing Branch, Surrey Regional Office  
Attn: Rupi Gill, A/Regional Manager

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