



**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: Sharlyles Hotel Ltd.  
dba Silver Dollar Cold Beer, Wine  
& Spirits Store  
115 4<sup>th</sup> Street  
Salmo, BC V0G 1Z0

Case: EH14-021

For the Licensee: Carollyne Harper

For the Branch: Peter Mior

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

Date of Hearing: Written Submissions

Date of Decision: May 21, 2014

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**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:  
4<sup>th</sup> Floor, 3350 Douglas Street  
Victoria BC

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

## INTRODUCTION

The Licensee, Sharlyles Hotel Ltd. (the "Licensee") owns and operates an establishment known as the Silver Dollar Cold Beer, Wine & Spirits Store, in Salmo BC. The Licensee holds Licensee Retail Store Licence number 195146 (the "Licence"). The authorized representative of the Licensee is Carollyne Harper.

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 Licence 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 March 19, 2014.

The Branch alleges that on January 10, 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 enforcement action outlined in the NOEA is a 10 day Licence suspension.

The proposed Licence suspension 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 \$7,500 monetary penalty, instead of the proposed 10 day suspension.

**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:** Letter to the Branch from the Licensee dated April 28, 2014, setting out the Licensee's position with respect to an appropriate penalty.

**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 nineteen years ("Minors").

The Branch has hired 16 to 18 year old minors 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 January 10, 2014, MAP inspections were conducted to test compliance at several licensee retail stores in the West Kootenay Region. Liquor 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 #62 was photographed. Also Minor Agent #62's identification was viewed and confirmed that she was under 19 years of age.

The Inspection Team arrived near the Licensee's establishment at approximately 17:20 hours. Inspector A entered the establishment at approximately 17:26 hours and observed Minor Agent #62 enter shortly thereafter. At that time, there was one male patron in the store purchasing a six pack of coolers. The lone female staff member was assisting a male patron. Minor Agent #62 proceeded to the cooler area opposite the main entrance and obtained a four pack of Orange Screwdriver Smirnoff Ice.

Minor Agent #62 then proceeded to the checkout counter. Liquor Inspector A took up a position immediately behind Minor Agent #62 in order to make observations. Once the male patron departed, the female staff member of the Licensee asked Minor Agent #62 if she would like a bag. Minor Agent #62 declined the offer, provided \$20.00 to the clerk and received change. Minor agent #62 then departed the establishment at approximately 17:28 hours, in possession of the liquor. At no time during this transaction was identification requested of Minor Agent #62.

## **SUBMISSIONS—BRANCH**

The Branch says that the contravention has been proven and that the recommended 10 day Licence suspension is appropriate and necessary in the circumstances, in order to ensure future compliance by this Licensee with respect to the operation of section 33(1)(a) of the Act.

## **SUBMISSIONS—LICENSEE**

In its very brief written submission of April 28, 2014 (Exhibit 2), the Licensee basically says that due to its favourable reputation in the community and the fact that it would be unfair to all of the employees who would suffer a wage loss, the Licensee would prefer the imposition of a monetary penalty of \$7,500, in substitution for the 10 day Licence suspension recommended by the Branch.

## **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 January 10, 2014 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 responsible 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 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 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. 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.

In considering the Licensee's plea for leniency by allowing for a substitution of the monetary penalty for a licence suspension, I have reviewed the totality of the Licensee's disciplinary record. That record discloses that this Licensee has had some difficulty in the past with the topic of alcohol and minors.

In June 2008, the Licensee was found to have contravened section 35 of the Act by permitting a minor to be on the premises, for which the Licensee received a four day Licence suspension.

Furthermore, in both 2005 and 2008, this Licensee was required to attend compliance meetings to discuss the Branch's concerns regarding the subject of minors' involvement with alcohol and intoxication.

In light of all of the above, I find that a 10 day Licence suspension is appropriate in the circumstances in order to encourage compliance with section 33(1)(a) of the Act by this Licensee.

So far as the Licensee's suggestion that it would be unfair that other employees would suffer a wage loss, through no fault of their own, I would simply point out that it is the Licensee alone who is responsible for contraventions of the Act or Regulation. This would not, however, prevent the Licensee from making those employees whole for lost wages over the period of suspension.

## ORDER

Pursuant to Section 20(2) of the Act, I order a suspension of Licensee Retail Store Licence number 195146, for a period of 10 consecutive business days, to commence on the close of business on Thursday, June 19, 2014 and to continue each succeeding business day until the suspension is completed.

To ensure that this order is effective, I direct that the liquor licence be held either by the Branch, or the RCMP, from the close of business on Thursday, June 19, 2014 until the Licensee has demonstrated to the Branch's satisfaction that the suspension has been served.

I further order that 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: May 21, 2014

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

Liquor Control and Licensing Branch, Vancouver Office  
Attn: Peter Mior, Branch Advocate