



**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:	Galway Developments Ltd. dba West Country Hotel 20222 56 <sup>th</sup> Avenue Langley, BC V3A 3Y5
Case:	EH14-049
For the Licensee:	Alan Thistleton
For the Branch:	Peter Mior
General Manager's Delegate:	Daniel M. Graham
Date of Hearing:	Written Submissions
Date of Decision:	August 12, 2014

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**Liquor Control and  
Licensing Branch**

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## INTRODUCTION

Galway Developments Ltd. (the "Licensee") operates the West Country Hotel (the "Establishment") under Liquor Primary Licence 003965 (the "Licence"). The Establishment is located at 20222 56 Avenue, Langley, BC.

The Licence specifies hours of liquor service daily, seven days a week, from 11:00 a.m. to 1:00 a.m., except for Sundays when sales and service must stop by midnight. 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").

Mr. Alan Thistleton, 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 April 29, 2014 (the "NOEA"). The Branch alleges that on Wednesday, March 26, 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 monetary 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 May 13, 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 15 inclusive.

Exhibit 2: The Licensee's one-page written submission dated May 13, 2014.

## 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 March 26, 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 16 years old on the date of the contravention. (Exhibit 1, tab 7)

The minor agent entered the Establishment at approximately 4:32 p.m., followed by the two liquor inspectors. The minor agent took a seat at the main service bar while the two inspectors sat in an area where they had a clear view of the minor agent. A female server approached the minor agent and subsequently served him a pint of Canadian beer. At no time did the server ask the minor agent for identification.

The liquor inspectors then approached the minor agent and asked him to leave the Establishment. They identified themselves to the server and advised her of the sale of alcohol to a minor. The server stated that she was the manager on duty. When asked if she was aware of the MAP the server said that she'd heard a rumour of it from the newspaper.

The inspectors obtained a receipt for the beer (Exhibit 1, tab 4) and paid for it with cash. They issued Contravention Notice #B013862 (Exhibit 1, tab 8).

## **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 server knew the Establishment's policy with respect to asking for identification from anyone appearing to be younger than 25 and stated that she was dismissed after the contravention occurred. The Licensee argued that its compliance history has been good for 35 years, and that a suspension of the Licence would be detrimental to the Licensee's staff and business. Accordingly, the Licensee submitted that a monetary penalty should be imposed instead of the proposed 10 day suspension.

## **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 server)
- sold liquor (a pint of Canadian beer)
- to a minor (the minor agent).

Accordingly, I find that on March 26, 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 not presented any evidence to demonstrate due diligence. 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 16 year old individual without any request for identification. Other than a reference to the Establishment having a policy to request identification of anyone appearing to be younger than 25, 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 16 year old without any request for identification, and the absence of any evidence about 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.

I have reviewed the compliance history as listed in the NOEA, which states that no compliance history or compliance meetings were found. This tends to support the Licensee's argument that it has had a good compliance record for 35 years.

Mitigating factors include the fact that the Licensee has apparently had a clean compliance record for 35 years. An aggravating factor is that the Licensee has provided virtually no evidence – other than an oblique reference to 'policy' - of any efforts it has taken to prevent contraventions of this type from happening.

The Licensee's argument about the effect of a suspension on its staff is an irrelevant consideration, since the Licensee could provide compensation to its staff to mitigate the effects of a suspension on them.

In consideration of:

- the principle that it is appropriate to levy the minimum penalty required in the case-specific circumstances to achieve the objectives of providing specific and general deterrence;
- the Licensee's indication that in its circumstances it views a monetary penalty as being less severe than a suspension ; and
- the Licensee's exemplary compliance record;

I find a \$7,500 monetary penalty to be reasonable and appropriate.

## 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 Branch on or before **September 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 Branch inspector or a police officer.

*Original signed by*

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Daniel M. Graham  
General Manager's Delegate

Date: August 12, 2014

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

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