



**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:	Last Spike Holdings Ltd. dba Last Spike 3 <sup>rd</sup> Avenue, P.O. Box 29 Fort Fraser, BC
Case:	EH14-076
For the Licensee:	Betty Jackson
For the Branch:	Cristal Scheer
General Manager's Delegate:	George C.E. Fuller
Date of Hearing:	Written Submissions
Date of Decision:	November 12, 2014

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**Ministry of Justice**

Liquor Control and  
Licensing Branch

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## INTRODUCTION

The Licensee, Last Spike Holdings Ltd. (the "Licensee") owns and operates an establishment known as Last Spike ("Last Spike LRS"). The Licensee holds Licensee Retail Store Licence number 192733 (the "Licence"). The authorized representative of the Licensee is Betty Jackson.

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 July 15, 2014.

The Branch alleges that on 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 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 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, as this is a first contravention, there should not be a suspension of the Licence nor should a monetary penalty be imposed.

**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.

**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: Letter dated September 14, 2014 from the Licensee to the Branch Registrar, setting out its position with respect to the alleged contravention.

**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 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 sixteen, seventeen and eighteen 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 June 21, 2014, MAP inspections were being conducted to test compliance at several retail stores selling packaged liquor for offsite consumption. Inspectors A and B were the lead Branch personnel accompanying the Minor Agent ("the Inspection Team"). At the start of the shift, Minor Agent #70 (the "Minor Agent") was photographed and identification was viewed confirming the Minor Agent to be 17 years of age. The Last Spike LRS is located within the same building as the Last Spike Liquor Licence Primary #131450 ("Last Spike LP").

At approximately 11:37 a.m. Inspector A entered the Last Spike LRS. A female server was in the Last Spike LP and greeted Inspector A. Inspector A examined the coolers and the Minor Agent entered and proceeded to walk to the beer cooler. The female server was now at the counter in the Last Spike LRS. The Minor Agent selected a six pack of Canadian beer and walked to the counter. The female server scanned the product and took the Minor Agent's payment.

During this exchange, the female server asked the Minor Agent if he had his identification. Minor Agent replied, "No". The female server then asked the Minor Agent if he had far to go to obtain his identification. Minor Agent replied "Yes". The female server then asked the Minor Agent the year in which he was born. Minor Agent responded, "1997" and the server said, "OK, make sure you bring your ID next time". She then handed him the change together with the beer. Minor Agent thanked the server and left the store.

On June 24, 2014, Inspector B spoke with the Licensee regarding the alleged violation. It was also disclosed at that time that the female server did not have a Serving It Right certification.

## **SUBMISSIONS—BRANCH**

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

## **SUBMISSIONS—LICENSEE**

In its brief submission of September 29, 2014, the Licensee makes a general plea for leniency based upon the allegation that in 18 plus years of operating the pub and the liquor store it has had no previous infractions or complaints.

Furthermore, given the death of one employee and ill health of another employee, the Licensee says it was very difficult to replace those employees with experienced employees. At the end of the day, the Licensee was forced to hire an employee who did not possess a Serving It Right certificate.

## **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 June 21, 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 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 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.

With regard to the Licensee's claim that it had operated for 18 plus years without infractions or complaints, such a statement is not entirely accurate. The records of the Branch demonstrate that the Licensee was required to attend a compliance meeting on May 5, 2003. Those records are found at tab 1 of Exhibit 1 in these proceedings.

In response to the Licensee's position that the contravention occurred as a result of difficulty in replacing employees with experienced employees, I would point out that it is the Licensee's responsibility to ensure that employees are properly trained in order to satisfy the requirements of the Act, the Regulations, and the terms and conditions of its Licence.

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 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 the Licensee.

**ORDER**

Pursuant to section 20(2) of the Act, I order a suspension of Licensee Retail Store Licence number 192733, for a period of 10 consecutive days, to commence at the close of business on Friday, January 9, 2015 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 Fort Fraser RCMP Detachment, from the close of business on Friday, January 9, 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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General Manager's Delegate  
George C.E. Fuller

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