



**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:	PS Liquor Store Ltd. dba Fraser Inn Beer & Wine Store 245 Donald Road Williams Lake, BC
Case:	EH14-100
For the Licensee:	Peter Saunders
For the Branch:	Peter Mior
General Manager's Delegate:	Daniel M. Graham
Date of Hearing:	Written submissions
Date of Decision:	November 24, 2014

**Liquor Control and
Licensing Branch**

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INTRODUCTION

PS Liquor Store Ltd. (the "Licensee") operates the Fraser Inn Beer & Wine Store (the "Establishment") under Licensee Retail Store Licence No. 194937 (the "Licence"). The Establishment is located at 245 Donald Road, Williams Lake, 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 *A Guide for Liquor Licensees in British Columbia* (the "Guide").

Mr. Peter Saunders, 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 August 26, 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 an \$8,000 monetary penalty. 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 September 25, 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 \$8,000 monetary penalty.

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 16 inclusive.

Exhibit 2: The Licensee's two-page written submission dated October 27, 2014, with attachments including: store policy, copies of paychecks, correspondence from the General Manager dated October 2012, eight photos of signage in the Establishment, and a memo from the Establishment's manager dated October 17, 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 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 6)

One of the liquor inspectors entered the Establishment at approximately 4:33 p.m., followed almost immediately by the minor agent through another entrance. The minor agent selected a six-pack of Budweiser beer from a cooler and took it to the till. The clerk at the till scanned the beer, then accepted \$20 from the minor agent and handed him his change. The minor agent took his purchase and exited the Establishment. The minor agent subsequently completed an observation sheet and statement (Exhibit 1, tabs 4 and 5).

At 9:24 p.m. the liquor inspectors advised the Licensee of the contravention. On June 23, 2014 Contravention Notice #B007454 was sent to the Licensee by mail (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 monetary penalty of \$8,000 is appropriate to reinforce the seriousness of the contravention.

SUBMISSIONS – LICENSEE

In its written submission, dated October 27, 2014, the Licensee wrote that it admits that the contravention occurred, but does not believe that a monetary penalty is warranted. The Licensee submitted that if a monetary penalty is to be imposed, it should not exceed \$7,500.

The Licensee went on to explain that:

- On the day of the contravention, the clerk who served the minor agent had been employed by the Licensee for about seven weeks.
- The clerk had undergone a two-week training period, including four to six shifts under direct managerial supervision and two shifts being shadowed by a supervisor.
- On the day of the contravention the clerk disregarded the Licensee's clear policies and procedures, and her employment was accordingly terminated by the Licensee.

In support of its submission that no monetary penalty is warranted, or alternatively that the monetary penalty should not exceed the prescribed minimum of \$7,500, the Licensee provided the following documentation as attachments to Exhibit 2:

- A copy of the Establishment's policy on ID requirements, signed by the clerk who committed the contravention.
- A copy of a staff pay cheque, demonstrating that such cheques are stamped multiple times with the statement "Please make sure you always ID properly!" The Licensee indicated that this has been its practice for "the last 2 years +."
- A copy of a letter from the General Manager sent to licensees in October 2012 advising of the commencement of MAP inspections of food-primary establishments. The Licensee submitted that staff are asked to review and sign memos from the Branch.
- Eight photographs of signage in the Establishment reminding staff "Always remember, you must ask for two pieces of identification."

- A memo from the manager of the Establishment, dated October 17, 2014, indicating that the Licensee has periodically engaged young adults to conduct “secret shopper” monitoring of the Establishment. The manager wrote that “No staff member to date has failed to request identification in one of these self-imposed compliance tests.”

The Licensee also submitted that:

- The manager gives frequent verbal reminders to staff regarding identification requirements, and ensures that staff have Serving It Right certification.
- The Establishment has a security system that can be monitored at any time from the two managers’ cell phones. The managers conduct frequent spot checks to ensure that staff members are requesting identification.
- The Licensee is developing a detailed staff manual and is implementing a pop-up reminder on its cash register as a further reminder against service of alcohol to minors.

In conclusion, the Licensee argued that a penalty is not warranted in the circumstances because it has taken appropriate measures to ensure that alcohol is not served to minors, and that the clerk was in clear breach of the Licensee’s policies when the contravention occurred. The Licensee argued alternatively that if a penalty is imposed, it should not exceed the prescribed minimum monetary penalty of \$7,500.

REASONS AND DECISION

Contravention

The Licensee admits the contravention. That admission, along with the evidence and submissions filed in these proceedings, demonstrates 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 it was not pursuing a due diligence defence. The Licensee presented evidence to demonstrate steps it has implemented to reduce the risk of a contravention of this nature from occurring, but expressly did so for the purposes of assessing penalty.

Accordingly, I 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

I am not bound to order the penalty proposed in the NOEA. However, if I find that either a licence suspension or a monetary penalty is warranted, I am bound to follow 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.

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.

Based on the seriousness of this public safety contravention and the fact that an employee sold beer to a 17 year old without any request for identification, 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, steps taken by the Licensee to mitigate the risk of a contravention occurring, 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.

The compliance history listed in the NOEA includes a Waiver Notice signed by the Licensee on October 26, 2012. In the Waiver Notice the Licensee agreed that it had committed a contravention of section 33(1)(a) of the Act as set out in a Notice of Enforcement Action dated May 17, 2012, and it accepted a monetary penalty of \$7,500.

Based on principles of progressive discipline, a second contravention of section 33(1)(a) within a period of just over two years would normally indicate that a monetary penalty for the current contravention should be at the higher end of the prescribed range of \$7,500 to \$10,000, or more depending on all the relevant circumstances. However, evidence submitted by the Licensee demonstrates that it has taken a number of significant steps since its last contravention to reduce the risk of alcohol being sold to a minor, and that it is actively working to implement further safeguards. This evidence persuades me that some mitigation of the penalty would be fitting.

Considering all the circumstances, I find the proposed \$8,000 monetary penalty to be reasonable and appropriate in achieving the Branch's objectives of general and specific deterrence.

ORDER

Pursuant to section 20(2) of the Act, I order that the Licensee pay a monetary penalty in the sum of \$8,000 to the General Manager of the Branch on or before **January 6, 2015**.

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

Daniel M. Graham
General Manager's Delegate

Date: November 24, 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: Peter Mior, Branch Advocate