



**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:	Kibo Izakaya Restaurant Inc. dba Kibo Restaurant & Lounge 1261 Hamilton Street Vancouver BC
Case:	EH14-165
For the Licensee:	Roger Teo
For the Branch:	Peter Mior
General Manager's Delegate:	Nerys Poole
Date of Hearing:	Written Submissions
Date of Decision:	May 1, 2015

**Liquor Control and
Licensing Branch**

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INTRODUCTION

Kibo Izakaya Restaurant Inc. dba Kibo Restaurant & Lounge (the “licensee”) holds a valid Food Primary Licence No. 304968 (the “licence”) for the restaurant located at 1261 Hamilton Street, Vancouver (the “restaurant”). The restaurant is permitted to serve liquor from the hours of 9:00 a.m. to 1:00 a.m. Sunday to Thursday and from 9:00 a.m. to 2:00 a.m. on Fridays and Saturdays.

Roger Teo is the General Manager of the licensee and signed the written submission for this hearing.

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 dated January 8, 2015 (the “NOEA”). The branch alleges that on December 6, 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 \$7,500 monetary penalty. Item 2, Schedule 4 of the *Liquor Control and Licensing Regulation* (the “Regulation”) sets out a range of penalties for a first contravention of this type: a 10 to 15 day licence suspension and/or a \$7,500 to \$10,000 monetary penalty.

By agreeing to a penalty-only written submissions hearing:

- The licensee admits that it contravened as alleged in the NOEA.
- The licensee is not pursuing a due diligence defence to the contravention.
- The licensee only disputes the proposed enforcement action (penalty).

The licensee agrees that its employee sold liquor to a minor. The licensee states further that it is willing to accept the proposed monetary penalty. However, the licensee asks me to consider a payment plan to relieve the financial hardship that the restaurant will experience from paying a lump sum.

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

Exhibit 1: Branch Book of Documents, tabs 1 to 16.

Exhibit 2: One page written submission from the licensee representative, dated February 24, 2015.

FACTS

The following facts are undisputed and are set out in the NOEA.

On December 6, 2014, two liquor inspectors and a minor agent attended the restaurant for the sole purpose of testing the establishment for compliance regarding refusal of service to minors. The Minors as Agents Program (MAP) inspections are used to test compliance with the Act's prohibition against selling or supplying liquor to persons under the age of 19. The minor agent was 17 years old at the time of the incident.

At approximately 5:46 p.m., the minor agent entered the restaurant through the front door. The minor agent walked to the lounge area and sat at a bar seat. There were no other customers seated at the bar. The male server approached the minor agent and spoke to her. He asked if the minor agent wanted a food menu. The minor agent stated, "No, can I just grab a Smirnoff Ice?" The server walked behind the bar and, after looking for the beverage, advised the minor agent they had no Smirnoff Ice. The minor queried the server regarding the beers they sold. The server listed a number of brands. The minor agent then asked for a Corona beer. The server opened a Corona beer and gave it to the minor agent without asking for identification at any time.

The liquor inspectors observed the minor agent and the above transaction from approximately 20 feet away, through the front window. Both inspectors had a clear and unobstructed view of the minor agent and the delivery of the beer to her. At this point, the inspectors entered the restaurant and the minor agent departed.

One of the inspectors identified himself to the male server and advised him of the contravention. The server gave his name and said he had worked at the restaurant for about nine months. The inspector completed a contravention notice (Exhibit 1, tab 8) and the server signed it, acknowledging service. The inspector paid for the beer and obtained a receipt (Exhibit 1, tab 4). Both inspectors left the restaurant at 6:05 p.m.

On December 9, 2014, the same inspector contacted the licensee regarding the contravention and to advise her of the enforcement process and the penalties involved. The inspector scheduled a meeting with the licensee and her manager on December 10, 2014 at the branch office. He explained the penalty schedule and indicated that a ten day suspension instead of a monetary penalty could be considered for this contravention. The licensee preferred the monetary penalty. The inspector, therefore, advised the licensee and her manager that the NOEA would indicate a proposed monetary penalty of \$7,500.

SUBMISSIONS – BRANCH

The branch submits that the contravention of section 33(1)(a) has been proven and there is no evidence of due diligence.

Given the seriousness of a public safety contravention such as this, a penalty is warranted. The proposed monetary penalty of \$7,500 falls within the penalty range as set out in Schedule 4 of the Regulation, and reinforces the seriousness of selling liquor to a minor.

SUBMISSIONS – LICENSEE

As noted, the licensee does not dispute the alleged contravention nor does it raise a defence of due diligence. Further, the licensee states that it accepts the proposed monetary penalty. The licensee indicated in the meeting with the inspector that they preferred a monetary penalty over a suspension.

The licensee states that their business emphasizes the importance of being compliant with all the rules and that proper disciplinary action has been taken to ensure future compliance. The licensee does not specify what disciplinary action was taken. They have also taken action to ensure all employees understand the importance of compliance.

In its written submission, the licensee states that the proposed penalty of \$7,500 is a great financial burden and would cause severe financial hardship on the operation of the business. The licensee refers to the comment by the liquor inspector that “the bar was not busy” when they entered at 5:45 p.m. on a Saturday. The licensee states that many businesses on their block have been struggling and that several businesses had already closed their doors.

The licensee makes a request for a payment plan in order to avoid a detrimental impact on not only the daily operation of the business but also on their staff members. The licensee proposes a repayment plan of six installments of \$1,250, payable monthly.

REASONS AND DECISION

Contravention

Based on the undisputed evidence as set out in the NOEA, I find that:

- A 17 year old minor, acting as agent for the branch, entered the restaurant on December 6, 2014.
- The male server delivered a bottle of Corona beer to the minor agent when she requested it.
- The male server did not ask for any identification while completing the transaction.

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.

The onus is on the licensee to prove this defence on the balance of probabilities. The licensee did not present a defence of due diligence. I find that the licensee has not established a defence of due diligence.

I, therefore, find that the licensee contravened section 33(1)(a) of the Act by selling liquor to a minor on December 6, 2014.

PENALTY

Pursuant to section 20(2) of the Act, having found that the licensee has contravened the Act, the Regulations 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.

Licensees are obliged to comply with the legislation and the terms and conditions of their licences. Enforcement action is intended to both redress the licensee's non-compliance, and to encourage future compliance by way of deterrence.

I find that a penalty is warranted on the facts of this case to ensure future compliance and for general deterrence. Selling liquor to minors is a significant public safety issue because of the following:

- The negative 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, resulting in a more intoxicating effect on minors, and
- The fact that liquor is a significant factor in many crimes committed by youth, including serious driving offences, assault, sexual assault and theft

The MAP demonstrates the branch's intention to ensure that licensees are not serving or selling liquor to minors. The branch has taken measures to advise licensees of the seriousness of the problem and to educate them on their responsibilities. Despite those initiatives, a 17 year old minor was able to purchase liquor from the licensee's employee, without being asked to produce any proof of age.

The factors that I have considered in determining the appropriate penalty in this case include: 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.

Having found that a penalty is warranted, I am required to impose at least the minimum, either a licence suspension of 10 days or a monetary penalty of \$7,500.

The licensee accepts the proposed monetary penalty but requests a payment plan over six months. At the branch meeting on December 10, 2014, the inspector discussed the option of a ten day suspension. The licensee indicated a preference for the monetary penalty. The inspector thus recommended a monetary penalty in the NOEA. In its written submission (Exhibit 2), the licensee stated that the monetary penalty of \$7,500 would be a great financial burden on its business and requested a monthly payment plan. The licensee provided no evidence of financial records to demonstrate its financial difficulties.

The licensee rejected the option of a suspension of its licence, which would have allowed the restaurant to continue serving customers food without the service of liquor. Without any evidence to support the licensee's claim of financial hardship or evidence of the percentage of liquor sales to food sales, I am unable to conclude if a ten day suspension may have been less financially onerous. At any rate, the licensee has indicated its preference for the monetary penalty.

Section 20(2.6) of the *Act* requires a monetary penalty to be paid within 30 days after the date on which the notice of the penalty is provided to the licensee or within any longer period specified by the General Manager. Without financial evidence to support the licensee's submission for a payment plan, I am not prepared to extend the 30 day time period and to make an order for monthly payments.

There is no record of a proven contravention of the same type for this licensee at this 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 find a monetary penalty of \$7,500 to be reasonable and appropriate given the seriousness of serving alcohol to minors, and given the licensee's preference for this option over a suspension. I note the licensee's submission that it has taken action to encourage future compliance. I encourage the licensee to continue its efforts to ensure its staff comply with the legislation and to prevent any future contraventions.

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 Liquor Control and Licensing Branch on or before June 1.

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 Liquor Control and Licensing Branch inspector or a police officer.

Original signed by

Nerys Poole
General Manager's Delegate

Date: May 1, 2015

cc: Liquor Control and Licensing Branch, Vancouver Regional Office
Attn: Donna Lister, Regional Manager

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