



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: Northwest Hotels Inc.
dba Powell River Town Centre Hotel
4660 Joyce Avenue
Powel River, BC

Case: EH14-123

For the Licensee: J. L. (Jack) Barr

For the Branch: Hugh Trenchard

General Manager's Delegate: Daniel M. Graham

Date of Hearing: Written Submissions

Date of Decision: March 4, 2015

**Liquor Control and
Licensing Branch**

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INTRODUCTION

Northwest Hotels Inc. (the "Licensee") operates the Powell River Town Centre Hotel (the "Establishment") under Liquor Primary Licence 159611 (the "Licence"). The Establishment is located at 4660 Joyce Avenue, in Powell River, BC.

The Licence specifies hours of liquor service of noon to 2:00 a.m. Monday to Saturday and 11:00 a.m. to midnight on Sunday. 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. J. L. (Jack) Barr, principal of the corporate Licensee (the "principal"), 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 November 5, 2014 (the "NOEA"). The Branch alleges that on Friday, September 19, 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 \$7,500 monetary penalty. 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 December 2, 2014 the Licensee advised the Branch that it opted to proceed by way of written submission. By agreeing to proceed with a hearing in writing, the Licensee admits that it contravened as alleged in the NOEA and chooses not to make out a due diligence defence to the contravention. The Licensee is disputing the proposed enforcement action of a \$7,500 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 15 inclusive.

Exhibit 2: The Licensee's two-page written submission of January 19, 2015.

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 September 19, 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 her identification was viewed and photocopied. The minor agent was 16 years old on the date of the contravention. (Exhibit 1, tabs 10 and 11)

At 2:00 p.m. one of the inspectors entered the Establishment and sat at an empty table near the entrance. The minor agent entered by the same door and sat at a table about eight feet away from the inspector, giving the inspector a clear and unobstructed view of the minor agent. A server came to the minor agent's table and the minor agent ordered a Smirnoff Ice, which is an alcoholic beverage. The server returned a few minutes later with a bottle of Smirnoff Ice and a glass of ice. The minor agent was never at any point asked for identification.

After the bottle of Smirnoff Ice was served, the minor agent exited the Establishment and subsequently completed an observation form and statement (Exhibit 1, tabs 8 and 9).

Once the minor agent had left the Establishment, the second liquor inspector entered and joined the first inspector who was standing near the table formerly occupied by the minor agent. The inspectors identified themselves to the server and informed her of the contravention. The server apologized and stated "It's my fault." The inspectors paid for the bottle of Smirnoff Ice and a receipt was issued. (Exhibit 1, tab 12) The inspectors completed Contravention Notice #B016274 (Exhibit 1, tab 2) and the server signed it. The inspectors left the Establishment at about 2:24 p.m.

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 \$7,500 is appropriate to reinforce the seriousness of the contravention.

SUBMISSIONS – LICENSEE

In its written submission, dated January 19, 2015, the Licensee wrote about the prominent place that the Establishment holds in the social fabric of the community. The Licensee expressed pride in the positive working environment it has provided since 1994, and in the fact that prior to the subject contravention there had been no enforcement action ever taken against the Establishment.

The Licensee submitted the following factors should be considered in mitigation:

- The server (identified by the Licensee as the bar manager) was a 20 year employee of the Establishment and was alone on her shift. She was busy trying to serve all the patrons and in her haste she mistakenly thought she recognized the minor agent as another individual whom she knew to be of legal age. At the time of the contravention, and unbeknownst to the Licensee, the server had accepted employment in another community to be closer to her family. The Licensee argued that it should not be "punished" for the server's failure to comply with legal requirements and the Licensee's established standards.
- The Licensee's only compliance incident prior to the contravention was a compliance meeting on October 29, 2013 when an employee allowed an intoxicated person to stay in the Establishment. When the intoxicated patron left the Establishment, he or she took a beer out of the Establishment without the employee's knowledge. As a result of this incident, the Licensee had all staff re-do their Serving It Right training.
- The Licensee's principal is president of the local Chamber of Commerce and is aware of the financial difficulties facing the community. Over the past six years liquor sales at the Establishment have dropped considerably. In addition, the

licensee identified another factor which it stated put it at a competitive disadvantage with other liquor establishments in town. The Licensee stated that despite these challenges, it is a strong corporate citizen that supports many charitable causes in the community.

The Licensee argued that in consideration of these factors, the monetary penalty should be waived and the contravention should not form part of the Licensee's compliance history. Alternatively, the Licensee argued that, if I conclude some enforcement action is necessary, I should order that the Licensee pay the monetary penalty to a local charity so the Licensee can continue to help the community.

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)
- supplied liquor (a bottle of Smirnoff Ice)
- to a minor (the minor agent).

Accordingly, I find that on September 19, 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 presented very limited evidence of efforts made by the Licensee to exercise due diligence before the contravention occurred, with a passing reference to “established standards” and a requirement that employees re-take Serving It Right training after the compliance incident in 2013. In these circumstances, 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 liquor to a 16 year old individual without any request for identification. Other than a reference to "established standards" and Serving It Right certification, 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 liquor to a 16 year old without any request for identification, and the limited evidence of 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.

The NOEA confirms the Licensee's contention that it has not been subject to previous enforcement action, and that it has had one previous compliance meeting on October 29, 2013 with respect to allowing liquor to be removed for the Establishment (section 42(4) of the Regulation) and permitting an intoxicated person to remain (section 43(2)(b) of the Act).

In consideration of:

- The serious public safety concerns related to selling alcohol to minors
- The insufficiency of evidence of training or systems to reasonably reduce the risk of the contravention occurring
- As mitigated by the Licensee's relatively good compliance record

I find the minimum \$7,500 monetary penalty to be reasonable and appropriate to achieve the Branch's objectives with respect to general and specific deterrence.

The Licensee has submitted that if I don't accede to its request to waive the proposed monetary penalty, I should order the monetary penalty be paid to a local charity. I find that is not an option that is available to me. Section 20(2.7) of the Act requires that "All monetary penalties received by the general manager under this section must be paid into the consolidated revenue fund." One might take the position that a monetary penalty that is paid to a local charity has not been "received" by the General Manager. However, reading section 20(2.7) in context with the rest of the legislation, I find it does not either expressly or by necessary implication provide me with the authority to order that a monetary penalty be paid to any entity other than the General Manager.

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 April 10, 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: March 4, 2015

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

Liquor Control and Licensing Branch, Victoria Office
Attn: Hugh Trenchard, Branch Advocate