



DECISION OF THE  
GENERAL MANAGER  
LIQUOR CONTROL AND LICENSING BRANCH

IN THE MATTER OF

A hearing pursuant to Section 51 of  
*The Liquor Control and Licensing Act, S.B.C. 2015, c. 19*

Licensee: Belrupert Holdings Ltd.  
dba Belmont Hotel Liquor Store  
c/o Susan MacKenzie  
PO Box 374 Cdo Prince Rupert  
Prince Rupert, BC V8J 3P9

Case: EH16-082

For the Licensee: Susan MacKenzie

For the Branch: Hugh Trenchard

General Manager's Delegate: R. John Rogers

Date of Hearing: March 8, 2017

Date of Decision: March 27, 2017

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**Liquor Control and  
Licensing Branch**

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## INTRODUCTION

Belrupert Holdings Ltd. (the "Licensee") holds Licensee Retail Store Licence No. 191776 (the "Licence"), pursuant to which it operates Belmont Hotel, the licensed liquor store attached to the Belmont Hotel at 725 3<sup>rd</sup> Avenue West, Prince Rupert, B.C., V8J 1M5 (the "Establishment").

According to the terms of the Licence, the Licensee may sell liquor from 9:00 a.m. to 11:00 p.m. Monday through Sunday.

The Licence is, as are all liquor licences issued in the Province, subject to the terms and conditions contained in the publication "Licensee Retail Store Licence, Terms and Conditions, A Guide for Liquor Licensees in British Columbia" (as of January 23, 2017 called the "Terms and Conditions Handbook").

## 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 August 3, 2016 (the "NOEA") (Exhibit 1 tab 1).

The Branch alleges that on July 12, 2016 the Licensee contravened section 33(1)(a) of the *Liquor Control and Licensing Act* R.S.B.C. 1996, c. 267 (the "Former Act") by selling, giving or otherwise supplying liquor to a male minor ("Minor Agent #80"). Item 2, Schedule 4 of the *Liquor Control and Licensing Regulation* BC Reg 244/2002 (the "Regulation") sets out the 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. The Branch proposes a monetary penalty of \$7,500.

The Licensee has admitted that its employee sold liquor to Minor Agent #80 and to the facts as set out in the NOEA. However, the Licensee disputes the finding of a contravention based upon a due diligence defence.

As of January 23, 2017, the Former Act was replaced with the *Liquor Control and Licensing Act* S.B.C. 2015 c. 19 (the "Current Act") which came into force on that date. Therefore, although this hearing was held pursuant to the provisions of the Current Act, as the contravention referenced in the NOEA was alleged to have occurred prior to

January 23, 2017, this decision has been made pursuant to and in accordance with the provisions of the Former Act and the Regulation.

For the purposes of this hearing and in accordance with Section 5 of the Current Act, the General Manager has delegated to me the powers, duties and functions provided to the General Manager by Section 51 of the Current Act.

## RELEVANT STATUTORY PROVISIONS OF THE FORMER ACT AND REGULATION

*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.

*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: Branch book of documents, tabs 1 to 16.
- Exhibit 2: A copy of a letter written by the staff member who allegedly sold liquor to Minor Agent #80; and
- Exhibit 3: A copy of a page published on the Branch's website, which page is entitled "The Role of the Liquor Inspector".

## WITNESSES

The Branch called the liquor inspector, ("Inspector A"), who issued the NOEA. The Branch did not call Minor Agent #80.

The Licensee's Representative gave evidence on behalf of the Licensee.

## EVIDENCE—BRANCH

The Licensee's Representative confirmed that the Licensee accepted the facts as they are set out in the NOEA as to what occurred in the Establishment on July 12, 2016 with respect to the alleged contravention.

### The NOEA

The facts in the NOEA might be summarized as follows:

- On July 12, 2016, Inspector A, Minor Agent #80, together with three RCMP Constables in plain clothes, including Constable B, constituted an inspection team pursuant to the Branch's Minors as Agents Program ("MAP") to test compliance with the Former Act and the Regulation at several licensed retail liquor establishments in the Prince Rupert area;
- At the start of the shift on this date, Minor Agent #80 was photographed (a redacted copy of which is included in Exhibit 1 tab 6), his identification viewed and photographed (a redacted copy of which is also included in Exhibit 1 tab 6) and his age confirmed to be 16 years old;
- At 12:15 pm on Tuesday, July 12, 2016, Minor Agent #80 entered the Establishment, selected a 6 pack of canned beer which he took to the female staff member (the "Staff Member") at the cash counter.

- Constable B entered the Establishment just behind Minor Agent #80 while Inspector A remained immediately outside the front door of the Establishment, so that both Constable B and Inspector A had a clear view of Minor Agent #80 during his time in the Establishment. It was noted that other than Minor Agent #80 and Constable B there were no other customers in the Establishment at that time.
- The Staff Member rang in the beer purchase and asked Minor Agent #80 if “that was all” and Minor Agent #80 said “that’s all but may I have a receipt”, which the Staff Member provided.
- The Staff Member did not ask Minor Agent #89 for identification at any time during this transaction.
- Minor Agent #80 then left the store with the purchased beer followed immediately by Constable B and both walked back to the inspection vehicle where Minor Agent #80 and Inspector A completed their notes and observations (Ex 1 tab 9 and Ex 1, tab 8, respectively).
- Inspector A took a photograph of both the beer purchased by Minor Agent #80 and the purchase receipt provided by the Staff Member to Minor Agent #80 (Ex 1 tab 10).
- At 4:30pm on July 12, 2016, Inspector A returned to the Establishment and spoke to the Staff Member as a representative of the Licensee was not available during this visit.
- Inspector A advised the Staff Member during this meeting that she had sold liquor to a minor and he issued the contravention notice for selling liquor to a minor (Ex 1 tab 2), which document was signed as received by the Staff Member.

### **Inspector A**

In his testimony, Inspector A:

- Stated that he has worked for the Branch for fourteen and a half years and is responsible for areas in the Lower Mainland, including New Westminster and Delta, together with areas in the northern portion of British Columbia pending the hiring of a full time inspector for these areas. He has held this temporary responsibility for the Prince Rupert area for approximately 2 years.
- Testified that MAP was introduced in 2011 for the purpose of testing the compliance of licensees in British Columbia with the prohibition against serving liquor to minors and he identified the various methods the Branch has deployed

to communicate the introduction of and the progress of MAP to such licensees (Ex 1 tab 11a and tab 11b).

- Identified the copy of the NOEA (Ex 1 tab 1) and confirmed that he was its author.
- Identified a copy of the Licence (Ex 1 tab 3) and confirmed that the terms and conditions of the Licence included the terms and conditions contained in the Terms and Conditions Handbook (Ex 1 tab 12).
- Confirmed that on July 12, 2016, the events as set out in the NOEA occurred.
- Identified his notes (Ex 1 tab 7), the redacted Minor Agent Observation Form and Minor Agent Statement which had been completed by Minor Agent #80 in his presence (Ex 1 tab 8), and the copies of the photographs of Minor Agent #80 and his identification (Ex 1 tab 8), which photographs he had taken.
- Pointed to Section 4 of the NOEA setting out his reasons for pursuing enforcement against the Licensee noting that Agent #80 was 16 at the time the Staff Member sold liquor to him, that the Establishment was not busy at the time of this sale, and the reasons why the sale of liquor to minors is a significant public safety issue.
- Noted that the Licensee had no history of previous contraventions and that he therefore believed that a minimum monetary penalty of \$7,500 would be an appropriate penalty.

On cross-examination, Inspector A confirmed that:

- His responsibility for the Prince Rupert area of British Columbia had started with the retirement of the liquor inspector previously responsible for the Prince Rupert area.
- He had not had an opportunity to attend a meeting of Bar Watch in Prince Rupert since he had taken over this position.
- He would be quite willing, if asked, to attend such meetings.

## **EVIDENCE—LICENSEE**

The Licensee's Representative testified on behalf of the Licensee.

### **The Absence of a Resident Inspector**

The Licensee's Representative started by expressing frustration with the fact that there had not been a full time resident liquor inspector for the Prince Rupert area for over 3 years. This meant that during this time period that there had not been any Bar Watch meetings. It was her belief that without the presence of a full time resident liquor inspector that licensees in the Prince Rupert area were not being kept informed of the changes occurring to the regulatory environment affecting their licenses.

The Licensee's Representative noted that the Branch's website (Ex 3) confirmed that the role of the liquor inspector includes a proactive role in the observing of a licensee's business practices and the identification of any gaps or weaknesses in them that might lead to non-compliance with the Current Act, the Regulation or the terms and conditions of a licensee's licence. The Licensee's Representative expressed her opinion that in the Prince Rupert area the Branch and its inspectors had failed the licensees in carrying out this proactive role.

### **Defense of Due Diligence**

The Licensee's Representative produced a letter from the Staff Member (Ex 2) giving the Staff Member's perspective on having served liquor to Minor Agent #80. In her letter the Staff Member admits that she sold liquor to Minor Agent #80 on July 12, 2016 without asking him for identification.

However, the Staff Member explains that the reason that she did not ask Minor Agent #80 for his identification was that she was under the impression that a few days earlier she had served Minor Agent #80; at that previous occasion she had asked him for his identification; and that he had produced it. Therefore, she states, she felt that there was no need to ask him to produce his identification on July 12, 2016.

The Licensee's Representative testified that with respect to the evidence of due diligence:

- The Licensee had a policy book;
- There were signs posted in the Establishment noting the prohibition against serving liquor to minors; and

- The Licensee's Representative talked to her staff on a regular basis about compliance matters.

On cross-examination, the Licensee's Representative confirmed:

- The policy book to which she referred as well as dealing with matters of compliance dealt with store duties such as opening and closing procedures, cleaning procedures, and how to operate store systems;
- The Staff Member was one of her best employees, but the Staff Member had come back to work for the Licensee in the fall of 2015 after an absence of many years and the Staff Member had not received any training on updated procedures upon her return;
- The Staff Member has her Serving it Right Certificate, but that it has been many years since the Staff Member acquired it;
- That the Licensee has a large staff turnover, but does not have any formal process of training a new employee on compliance matters when commencing work as it is assumed that such matters are dealt with in the Serving It Right program;
- That the Licensee's staff are not given age guidelines for asking for identification as it is assumed that each staff member will properly use his or her discretion as to when to ask for identification;
- There are usually only 5 employees who work at the Establishment but for special events when they know they are going to busy they bring in extra staff;
- The Licensee's Representative together with her daughter manage the Licensee's business;
- There is an incident log book, but with the small number of staff, it is more usual to talk about unusual incidents rather than to write them up; and
- The Licensee doesn't use check lists or test its employees, or use email or text messages to keep its staff aware of compliance rules.

## **SUBMISSIONS – BRANCH**

The Branch submitted that the Licensee has admitted that on July 12, 2016 liquor was sold by the Staff Member, an employee of the Licensee, to Minor Agent #80, who at the



time of the sale was a minor. Therefore, the Licensee had admitted to the contravention referenced in the NOEA.

### **Due Diligence**

The Branch further submitted that the Licensee had not made out the essential elements of the due diligence defence in that it had not established on a balance of probabilities that:

- The Staff Member had come back from a long time away from work and that she had received proper re-training;
- The Licensee had at the time of the contravention a culture of compliance with respect to the prohibition against the sale of liquor to minors in the form of consistent and clear policies and routines;
- The Licensee had documentation to demonstrate training policies focused around asking for identification ; and
- The Licensee had designed and maintained a testing and monitoring regime that was effective, consistent and appropriate to prevent the occurrence of the contravention.

Therefore, the Branch submitted, the Licensee had not made out the defence of due diligence.

As the sale of liquor to a minor had been admitted and as the Licensee had not demonstrated a defence to this contravention, the Branch submitted that the Licensee should be found liable for breach of section 33(1)(a) of the Act, by selling, giving or otherwise supplying liquor to a minor.

As to the matter of penalty, the Branch submitted that as this was the Licensee's first contravention, the minimum recommended monetary penalty of \$7,500 was reasonable and appropriate.

### **SUBMISSIONS – LICENSEE**

The Licensee acknowledged that on July 12, 2016, the Staff Member sold liquor to Minor Agent #80 as alleged in the NOEA.

However, the Licensee submitted that the defence of due diligence applies.

The Licensee's Representative submitted that although she admitted that more training and more follow up might be desirable at the Establishment, the Licensee ran a tight ship and had a clean compliance history.

## **REASONS AND DECISION**

### **Contravention**

The Licensee has admitted that on July 12, 2016, as alleged in the NOEA, the Staff Member sold liquor to Minor Agent #80 in contravention of section 33(1)(a) of the Former Act.

To address the Licensee's submissions on the defence of due diligence.

### **Due Diligence**

As the Staff Member sold liquor to a minor in contravention of section 33(1)(a) of the Former Act, the Licensee is liable unless it can demonstrate that it was duly diligent in taking reasonable steps to prevent the contravention from occurring. The onus falls on the Licensee to demonstrate on a balance of probabilities this due diligence and, in doing so, the Licensee must not only clearly demonstrate that it has established procedures to identify and prevent from happening activities which might lead to this contravention of the Former Act, it must also clearly demonstrate that it continues to ensure that such procedures are consistently in operation and acted upon by its employees.

The leading case is: *R v. Sault Ste. Marie* (1979) 2 SCR 1299, where at page 1331, Dickson, J. sets out the test of due diligence:

One comment on the defence of reasonable care in this context should be added. Since the issue is whether the defendant is guilty of an offence, the doctrine of respondeat superior has no application. The due diligence which must be established is that of the accused alone. Where an employer is charged in respect of an act committed by an employee acting in the course of employment, the question will be whether the act took place without the accused's direction or approval, thus negating wilful involvement of

the accused, and whether the accused exercised all reasonable care by establishing a proper system to prevent commission of the offence and by taking reasonable steps to ensure the effective operation of the system. The availability of the defence to a corporation will depend on whether such due diligence was taken by those who are the directing mind and will of the corporation, whose acts are therefore in law the acts of the corporation itself.

The BC Supreme Court, in *Beverly Corners Liquor Store Ltd. v. British Columbia (Liquor Control and Licensing Branch)*, 2012 BCSC 1851, considered and clarified the application of the defence of due diligence in the context of the sale of liquor to a minor contrary to the Act (see paragraphs 41 to 44).

The Court states that the defence of due diligence is to be considered in two stages:

1. Whether the employee who sold liquor to the minor was a directing mind of the Licensee – if so, the defence of due diligence is not available and the inquiry stops there.
2. If the employee who took such action or failed to take such action was not a directing mind of the Licensee (and there is no requirement that a “directing mind” must be on the premises when the contravention occurs), then the questions to be considered and answered are whether the Licensee had:
  - a. implemented adequate training and other systems to prevent the contravention (the sale of liquor to minors); and,
  - b. taken reasonable steps to ensure the effective application of that education and the operation of those systems.

Both of these issues are factual, and will depend upon the evidence presented. In summary, *Beverly Corners* provides that the onus is on the Licensee to establish on a balance of probabilities that it had exercised all reasonable care by establishing adequate training and other systems and ensuring effective application of them.

### Directing Mind

The Licensee’s “directing mind” is someone who can design and supervise the policies of the Licensee rather than an employee who carries out these policies.

The evidence before me is quite clear that the Licensee's Representative and her daughter are the directing minds of the Licensees and I so find. As neither the Licensee's Representative nor her daughter were in the Establishment when the contravention occurred, I find that the Licensee's directing mind did not participate in the sale of liquor to Minor Agent #80 and move to the second part of the analysis as set out in *Beverly Corners*.

#### Implementation of Adequate Training and Systems and Effective Application and Operation of these Systems

I accept the submissions of the Licensee's Representative that the Licensee strives to create and maintain a culture of compliance at the Establishment. It was obvious from the submissions made that the Licensee feels very strongly about ensuring that the rules are followed, including the rules prohibiting the sale of liquor to minors.

However, good intentions are not sufficient to meet the test for due diligence. The onus is on the Licensee to prove on the evidence before me that it has met the test for due diligence and can demonstrate that it has implemented adequate training and other systems and has taken reasonable steps to ensure the application of this training and the operation of its systems in a consistent and effective manner.

Therefore, in addition to evidence of a reasonably rigorous initial training environment, the Licensee must provide evidence of ongoing reinforcement of this training and culture which should most likely include the following:

1. A minimum age policy which requires any customer under a certain age to be asked for identification;
2. Appropriate signage;
3. Appropriate training manuals including current best practices;
4. An incident log book utilized and regularly reviewed;
5. Regular staff meetings at which compliance matters are stressed; and
6. Written quizzes for the employees testing them for an understanding of the Current Act, Regulation and Terms and Conditions Handbook.

I find that the Licensee has not met the test of proving the defence of due diligence on a balance of probabilities. I therefore find that on July 12, 2016 the Licensee contravened section 33(1)(a) of the Former Act, by selling, giving or otherwise supplying liquor to a minor.

## **PENALTY**

Pursuant to section 20(2) of the Former Act, having found that the Licensee has contravened the Former 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 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; the seriousness of the contraventions; the threat to the public safety; and the well-being of the community.

As the matter involves the sale of liquor to a minor, the most important of these factors is the public safety issue because of:

- The effects of alcohol on growing bodies and developing minds;
- The effects on individuals and society of irresponsible drinking behavior learned at an early age;
- A minor's lack of capacity to metabolize alcohol in the same manner as an adult with the result being a more intoxicating effect on minors; and
- Liquor being a significant factor in many crimes committed by youth, including serious driving offences, assault, sexual assault and theft.

I find that a penalty is warranted here.

There is no record of a proven contravention of the same type as dealt with here for the Licensee 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.

Item 2 in Schedule 4 provides a range of penalties for a first contravention of this type of contravention to be a 10 to 15 day suspension of the Licence and/or a \$7,500 to \$10,000 monetary penalty.

Having found that a penalty is warranted, I am required to impose at least the minimum for a first contravention, which is either a \$7,500 monetary penalty or a 10 day suspension of the Licence. Inspector A has recommended a monetary penalty of \$7,500.

I find that an appropriate penalty is a monetary penalty of \$7,500.

#### **ORDER**

Pursuant to section 20(2) of the Former Act, I order that the Licensee pay a monetary penalty of \$7,500 to the General Manager of the Branch on or before April 26, 2017.

Signs satisfactory to the General Manager notifying the public that such 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*

\_\_\_\_\_  
R. John Rogers  
General Manager's Delegate

Date: March 27, 2017

cc: Liquor Control and Licensing Branch, Surrey Office  
Attn: Rupi Gill, Regional Manager

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