



**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:	Brownco Holdings Ltd. dba The Local Bar and Grill 1205 Wharf Street Victoria, BC V8W 1T9
Case:	EH16-128
For the Licensee:	Nav Parhar, Barrister
For the Branch:	Hugh Trenchard
General Manager's Delegate:	A. Paul Devine
Date of Hearing:	Written Submission
Date of Decision:	February 2, 2017

**Liquor Control and
Licensing Branch**

Mailing Address:
PO Box 9292 Stn Prov Govt
Victoria BC V8W 9J8
Telephone: 250 952-5787
Facsimile: 250 952-7066

Location:
Fourth Floor, 3350 Douglas Street
Victoria BC

<http://www2.gov.bc.ca/gov/content/employment-business/business/liquor-regulation-licensing>

INTRODUCTION:

The Licensee operates a food primary establishment located at 1205 Wharf Street in Victoria B.C. The liquor licence for the facility is recorded by the Liquor Control and Licensing Branch ("branch") under License Number 302531. Under the terms of this licence, the Licensee is authorized to sell all types of liquor with a primary focus on the service of food between the hours of 9:00 a.m. to Midnight Monday - Thursday and Sunday, and from 9:00 a.m. to 1:00 a.m. Friday - Saturday.

The Food Primary Terms and Conditions Guide ("Guide") published by the branch is applicable to licences of this type. The Guide outlines the requirements of both the Liquor Control and Licensing Act ("Act") and the Liquor Control and Licensing Regulation ("Regulation") which apply to the serving and consuming of liquor in food primary establishments.

ALLEGED CONTRAVENTION AND PROPOSED PENALTY:

The allegations of the branch are set out in the Notice of Enforcement Action ("NOEA") dated September 28, 2016. The branch alleges that on September 16, 2016 the Licensee contravened section 33(1)(a) of the Act by selling, giving, or otherwise supplying liquor to a person who was a minor. The minor in question was engaged by the branch under the "Minors as Agents Program" or "MAP". Following changes to the Act made in 2010, the branch can engage the services of minors to test the compliance of licensees with the provisions in the Act prohibiting the sale of alcohol to individuals under the age of 19.

The NOEA asserts that three of the branch's liquor inspectors were conducting MAP inspections in the Victoria area on September 16, 2016. An 18 year old minor identified as Minor Agent #75 was engaged by the branch for these inspections. The Minor Agent entered the premises of the Licensee in the company of a liquor inspector at 11:07 p.m. They were seated by a hostess, and a server provided menus. The server asked if they wanted a drink. The Minor Agent ordered a beer. The server returned with an open beer and placed it in front of the Minor Agent. Later the Minor Agent said he had to go,

and paid for the beer and for a pretzel that had been ordered by the liquor inspector. The Minor Agent was not asked for identification during the entire transaction.

The branch elected to proceed by way of enforcement action given the seriousness of the issue of selling liquor to minors. A suspension of the liquor licence of the licensee for 10 days was proposed. This is the minimum suspension set out in the Regulation for a first contravention of section 33(1)(a) of the Act for selling liquor to a minor.

EVIDENCE:

EXHIBIT 1: Book of Documents of the branch

POSITION OF THE LICENSEE:

The Licensee does not dispute that a clerk in its employ sold liquor to the Minor Agent as alleged. Nor does it argue that it acted with due diligence notwithstanding the contravention. Instead, it intends to argue that the proposed penalty is inappropriate.

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 <i>Act</i> (Selling liquor to minors)	10-15	20-30	30-60	\$7,500- \$10,000
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SUBMISSIONS:

The branch notes that the Licensee is proceeding on a penalty-only written submission. As such, it admits it contravened the Act as alleged in the NOEA, is not pursuing a defence of due diligence to the contravention, and only disputes the proposed enforcement action (the penalty). The submissions of the branch are contained in the book of documents marked as Exhibit 1.

Counsel for the Licensee provided a written submission on December 10, 2016. In an overview, the restaurant has been in business since 2007. Because it is located near the Victoria Harbor, customer traffic is heavily influenced by out-of-town visitors. The busy time for the restaurant is during the tourist season which normally runs from March or April through September. It is also popular for locals in the age 25 and older demographic who wish a vibrant but relaxed evening atmosphere for food and drink. The restaurant is located near several nightlife establishments, and so enjoys night time popularity.

During peak months, the restaurant typically employs 30 – 35 service staff, 5 – 10 bar staff, and 30 – 35 kitchen staff. In off-peak months, hours of operation are reduced to evenings on Monday through Thursday, while weekend operations remain unchanged. During the off-peak season, there are roughly 30 – 40 employees in total. The majority of the staff of the restaurant at all times consists of students or young adults aged 19 to 30.

The Licensee does not dispute that an employee breached the Act on September 16, 2016 by selling, giving or supplying liquor to a minor. Nor does the Licensee rely on a due diligence defence. Instead, it disputes the recommended or proposed enforcement action of a ten-day license suspension. If a penalty is found to be warranted, it should in the circumstances be a monetary minimum of \$7500 and not a licence suspension.

The Licensee submits there is no similar contravention history as this is the first of its kind in the history of the operation of the restaurant. During nine years of being in business, hundreds of young adults have worked as bartenders and servers, and thousands of young patrons over and under the age of 19 have frequented the restaurant. It is also frequented by young adults who have attended at some of the liquor primary establishments located nearby. While due diligence is not relied upon, the lack of a negative compliance history notwithstanding the nature of the business of the restaurant speaks to the continued adherence of the Licensee to liquor control and licensing standards.

The suspension of the liquor licence of the Licensee would visit a detrimental impact on its employees. The majority of staff for the facility are students or young adults who rely on wages and tips from their employment to fund education or accommodation, or to make ends meet generally. They would suffer without a paycheque for almost two weeks if the Licence is suspended.

The contravention was a mistake but is one blemish on an otherwise pristine history. Because of the contravention, the Licensee has revisited and revised its policy manuals and procedures, including reinforcement of the liquor control and licensing standards that staff are expected to meet or exceed at regular staff meetings.

In response, the branch submits in reply that the Licensee's overall compliance history should be reviewed along with Policy Directive No. 16 – 19. This Policy Directive sets out Compliance and Enforcement policy changes which came into effect on January 23, 2017. It provides for a new policy wherein a licensee may be permitted to choose either

a monetary or a licence suspension if the contravention is the first during the 12 months preceding the event in question. It also provides that the minimum of either a monetary or suspension penalty as prescribed in the penalty schedule in the Regulation is suitable, providing the licensee signs a waiver agreeing that the contravention occurred.

The Licensee submits in surreply that the Policy Directive is not yet in effect but if it was, choice of penalty would result in a monetary penalty instead of a suspension.

ANALYSIS AND DECISION:

Section 33(1)(a) of the Act was affected by changes to the Act brought about under the provisions of Bill 27 of 2015 which came into effect on January 23, 2017 (see B.C. Regulation No. 241 of 2016). While the relevant section number has changed, there was no substantive change to the provisions against selling, giving, or otherwise supplying liquor to a minor. In any event, the provisions of the Act which were in effect at the time of the contravention are applicable to this decision.

In view of the admission to the contravention by counsel for the Licensee, I find that one of its employees breached section 33(1)(a) of the Act on September 16, 2016 by selling, giving, or otherwise supplying liquor to a person who was a minor. Because the Licensee did not pursue a defence of due diligence, the only issue remaining is what if any penalty is appropriate? I turn therefore to consider the issue of 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 its Licence, I may do one or more of the following:

1. Take no enforcement action;
2. Impose terms and conditions on the licence or rescind or amend existing terms and conditions;
3. Impose a monetary penalty on the licensee;
4. Suspend all or any part of the licence;
5. Cancel all or any part of the licence;
6. 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 monetary penalty is 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.

The primary goal of the branch in bringing enforcement action and imposing penalties is to achieve voluntary compliance. The factors that are considered in determining the appropriate penalty include whether there is a proven history of compliance, a past history of warnings by the branch and/or police, the seriousness of the contravention, the threat to the public safety, and the wellbeing of the community.

The compliance history of the Licensee includes a \$7500.00 fine in 2012 for operating contrary to the primary purpose of a food primary under section 20 of the Act. A similar breach is recorded in May of 2013 but no enforcement action was recommended. In March 2014, allowing liquor consumption beyond the time permitted under the Licence resulted in a compliance review but no enforcement action was taken.

There was no record of a proven contravention of the same type as the one in question by the Licensee within the preceding 12 months prior to September 16, 2016. The contravention is therefore treated as a first one for purposes of determining penalty.

The Licensee acknowledges that a penalty is a likely outcome in the circumstances of the contravention in question. It submits that a monetary penalty would be more appropriate than a suspension because of the undue hardship that a suspension would visit on its employees.

Under the Policy Directive which came into effect on January 23, 2017, the Licensee is able to choose whether a monetary penalty or a suspension should apply. Since the contravention and the proposed penalty predated this Policy Directive, the Licensee is not able to make a choice in respect of penalty. As earlier noted, however, I may choose the appropriate penalty subject to the minimums set out in the Regulation.

I am satisfied that the Licensee has provided sufficient reasons for consideration of a monetary penalty instead of a suspension. As counsel for the Licensee noted, apart from this incident, there was no prior history of selling liquor to minors in the operation of the licensed establishment. The hardship which a suspension would visit on all of the Licensee's employees employed in disparate positions such as kitchen staff as well as servers satisfies me that a monetary penalty is more appropriate in this case.

I conclude that a monetary penalty of \$7500.00 is the appropriate penalty in the circumstances of this case. This is the minimum monetary penalty set out for a contravention of section 33(1)(a) of the Act under the Regulation.

ORDER:

Pursuant to section 20(2) of the Act, I order that the Licensee pay a monetary penalty of seven thousand five hundred dollars (\$7500.00) to the General Manager of the Liquor Control and Licensing Branch on or before March 4, 2017.

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

A. P. Devine
General Manager's Delegate

Date: February 2, 2017

cc: Liquor Control and Licensing Branch, Victoria Office
Attn: Stephen Hitchcock, Regional Manager

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