



**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:	Brew Street Craft and Kitchen Ltd. dba Brew Street Craft and Kitchen 3224 St. John's Street Port Moody, BC V3H 2C9
Case:	EH17-014
For the Licensee:	No appearance
For the Branch:	Maria Caduhada
General Manager's Delegate:	Nerys Poole
Date of Hearing:	November 8, 2017
Date of Decision:	November 24, 2017

**Liquor Control and
Licensing Branch**

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INTRODUCTION

Brew Street Craft and Kitchen Ltd. dba Brew Street Craft and Kitchen (the "licensee") owns and operates a liquor primary establishment, with liquor primary licence number 144144 (the "licence") at 3224 St. John's Street in Port Moody ("the establishment").

According to the terms of its licence, the licensee may sell liquor from 9:00 a.m. to 2:00 a.m. Monday to Sunday. The licence has a Family Foodservice term on its licence. This term permits minors accompanied by a parent or guardian in all licensed areas until 10 p.m. when meal service is available.

The licence is subject to the terms and conditions contained in the publication "Liquor Primary Terms and Conditions" (the "Guide").

The branch approved the transfer of the licence from Golden Spike Inn Ltd. to the licensee on October 2, 2017. (Exhibit 8) Below I explain the timing of the transfer application and the provision of the *Liquor Control and Licensing Act* S.B.C. 2015 c. 19 (the "Act") deeming the licensee to be Brew Street Craft and Kitchen Ltd. at the time of the alleged contravention.

The licensee is alleged to have contravened the Act on February 18, 2017, by selling liquor to a minor who was acting as an agent of the branch under the Minors as Agents Program ("MAP"). At the prehearing conference held on June 12, 2017, the licensee's legal counsel at the time, Mr. Andrew D. Gay, indicated that the licensee might not dispute the sale of liquor to a minor, subject to his reviewing the inspectors' notes and the minor agent's ID. He stated the licensee would be making a due diligence defence.

No one appeared at the hearing on behalf of the licensee. The licensee presented no documents or submissions. Below I set out my reasons for proceeding with the hearing in the absence of the licensee.

For the purposes of this hearing, and in accordance with section 5 of the Act, the general manager has delegated to me the powers, duties and functions provided to the general manager by section 51 of the Act and Part 6 of the *Liquor Control and Licensing Regulation*.

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 March 23, 2017 (the "NOEA"). (Exhibit 4, tab 1)

The branch alleges that on February 18, 2017, the licensee contravened section 77(1)(a) of the Act, by selling, giving or otherwise supplying liquor to a minor. 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 (item 3 of Schedule 2 of the *Liquor Control and Licensing Regulation*). The branch recommends either a ten day suspension or a monetary penalty of \$7,500.

RELEVANT STATUTORY PROVISIONS***Liquor Control and Licensing Act, S.B.C. 2015, c. 19*****Supplying liquor to minors**

77 (1) Subject to the regulations, a person must not

(a) sell, give or otherwise supply liquor to a minor,

PRELIMINARY ISSUE – DECISION TO PROCEED WITH HEARING IN ABSENCE OF LICENSEE

The scheduled hearing start time was 9:30 a.m. on November 8, 2017. At 10:10 a.m. the branch advocate informed me that she had attempted to contact the licensee without success. I asked the branch advocate to make a submission on whether or not to proceed in the absence of the licensee or representative.

After hearing from the branch advocate, I made the decision to proceed with the hearing without the licensee or a representative. I set out the facts and my reasons in a letter to the licensee dated November 9, 2017. The following is the letter addressed to Brew Street Craft and Kitchen Ltd. c/o David James, sent to his two email addresses:

On August 8, 2017, I was appointed as a delegate of the General Manager pursuant to section 51 of the *Liquor Control and Licensing Act*, S.B.C. 2015, c.19 (the "Act") to conduct the enforcement hearing into the alleged contravention against Brew Street Craft and Kitchen Ltd. dba Brew Street Craft and Kitchen (the "licensee"). The Liquor Control and Licensing Branch (the "branch") alleges

that the licensee contravened section 77(1)(a) of the Act on February 18, 2017. The hearing was scheduled for November 8, 2017.

On November 8, 2017, I attended the Surrey office of the branch for a 9:30 a.m. start of the hearing. At 10:00 a.m., no one had appeared on behalf of the licensee. The branch advocate made a submission that the hearing proceed in the absence of the licensee. I heard the submission from the branch advocate and at 10:45 a.m. made a ruling that the hearing should proceed in the absence of the licensee.

Following are my reasons for this ruling.

Under section 12 (2)(d) of the Enforcement Hearing Rules, I have the authority to

Proceed in the absence of the licensee or other party or in the absence of any submissions from the licensee or other party where the party has had notice of the proceeding

Under section 15 of the Enforcement Hearing Rules, I also have the authority to adjourn a hearing on my own initiative.

Evidence of Notice to the Licensee about the November 8 Date

1. Until October 23, 2017, the licensee was represented by legal counsel, Andrew D. Gay. Mr. Gay participated in the prehearing conference held on June 12, 2017 and was the addressee on the Notice of Hearing dated August 3, 2017.

2. At 12:58 p.m. on October 23, 2017, the branch advocate received an email from Mr. Gay notifying her that he was no longer representing the licensee in relation to this November 8 hearing and requesting her to send any documents to David James at Brew Street Craft and Kitchen Ltd.
3. David James is a primary shareholder of the licensee and was the contact person at the time that the liquor inspector provided him with an amended contravention notice on April 10, 2017 on the alleged contravention. (Exhibit 12 and Exhibit 4, tab 13)
4. At 1:31 p.m. on October 23, 2017, the branch advocate sent an email to Mr. James' business email, stating

Further to the email below of Andrew Gay, I am forwarding you copies of the Branch's disclosure for purposes of the enforcement hearing on November 8. Can you kindly advise if you will be disputing the alleged contravention of selling liquor to a minor? If you have any questions, please contact me directly. I look forward to receiving your documents no later than tomorrow, Oct. 25.

5. At 10:51 a.m. on October 31, 2017, she sent the following email to the same business email:

Just a follow up of my email below with respect to the hearing on Nov.8.

I would like to request if you can please provide me **no later than tomorrow, Nov.1**, with copies of any documents that the licensee intends to rely on during the hearing. The disclosure of documents is part of the process and final date of the disclosure of documents was set to Nov.8 as outlined in the Aug.3, 2017 letter of the Registrar, Peter

Mior. However, I am willing to accept your documents **on or before Nov.1** (bold and underlining in original)

If you have any question, please feel free to contact me directly.

6. At 1:01 p.m. on October 31, 2017, the branch advocate corrected the date for original disclosure, sending the following email to the same business email:

Sorry, the final date for disclosure is not Nov.8 as I indicated by mistake in my email below. It was due last **Oct.25** per the attached letter of Mr. Mior.

(the attached letter being the Notice of Hearing letter dated August 3, 2017, originally sent to Mr. Andrew Gay, and clearly setting out the date of hearing as November 8, 2017)

7. At 7:23 a.m. on November 2, 2017, David James sent an email to the branch advocate from another email address, a hotmail address, stating:

Hi Maria

I see the date change now. I just received this email. Is it possible we can have the day today to put what we have together and send by end of the day tomorrow?

8. At 9:12 a.m. on November 2, 2017, the branch advocate responded saying

Thank you for your email. Yes, please send your documents to me by tomorrow.

9. At 10:16 a.m. on November 2, 2017, David James sent an email from his hotmail address to the branch advocate saying "Thank you. I appreciate it."
(above email chain marked as Exhibit 3)
10. The branch advocate heard nothing further from David James. She did not receive any documents.
11. At 9:39 a.m. and at 9:46 a.m. on November 8, the branch advocate sent an email to both addresses for David James reminding him the hearing was to start at 9:30 a.m.

Reasons for Ruling to Proceed

Given the above evidence of notice to the licensee about the November 8 date and evidence of the lack of response from the licensee with respect to disclosure of documents, I elected to proceed with the hearing in the absence of the licensee.

I acknowledge that the initial communications with respect to the hearing date were between the branch and the licensee's legal counsel, Andrew Gay.

However, once Mr. Gay announced he was no longer representing the licensee, the branch advocate immediately corresponded directly with David James.

Mr. James was aware that the branch advocate was granting him an extension for the disclosure of documents and promised to send documents to her by November 3, 2017. The branch advocate received nothing further from David James. In the communications via email with David James, the branch advocate referred several times to the hearing date on November 8, 2017.

I heard the branch's evidence of the alleged contravention and will be writing my decision based on this evidence.

I have considered the fact that the licensee had no opportunity to make a submission and have decided to invite a "penalty only" submission from the licensee. If I conclude that the contravention has been proven, the licensee has an option of choosing a ten day suspension or a monetary penalty of \$7500.

I ask the licensee to provide me with a written submission on penalty and the choice of penalty by end of day on **Thursday, November 16, 2017**.

The branch advocate may have an opportunity to reply to this submission by end of day on **Monday, November 20, 2017**

Any further reply from the licensee must be submitted by **Wednesday, November 22, 2017**.

In the absence of any written submission from the licensee, I will make the choice as to penalty, if I conclude the contravention has been proven.

The licensee did not respond to this letter nor did the licensee provide any submission on penalty by the deadline of November 16, 2017.

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: letter dated June 14, 2018 from the branch to the licensee c/o of Andrew D. Gay, summarizing the telephone pre-hearing conference on June 12, 2017
- Exhibit 2: letter dated August 3, 2017 from the branch to the licensee c/o of Andrew D. Gay, setting out the enforcement hearing date of November 8, 2017 and the date of October 25, 2017 for disclosure of documents
- Exhibit 3: email string between the branch advocate and Mr. Andrew Gay and between the branch advocate and Mr. David James, with email dates from June 28, 2017 to November 2, 2017
- Exhibit 4: branch book of documents, tabs 1 to 16
- Exhibit 5: letter dated February 11, 2015 from the branch to Golden Spike Inn Ltd. re: approval of third party operator
- Exhibit 6: letter dated May 2, 2016 from the branch to Golden Spike Inn Ltd, approving the name change to Brew Street Craft and Kitchen
- Exhibit 7: email dated April 10, 2017 from the branch to the representative of Golden Spike Inn Ltd., regarding the deemed licensee and the withdrawal of the NOEA issued to Golden Spike Inn Ltd.
- Exhibit 8: letter dated October 2, 2017 from the branch to Mr. David James of Brew Street Craft & Kitchen Ltd. approving the transfer of LP licence #144144

- Exhibit 9: LP Licence #144144 issued to Brew Street Craft and Kitchen Ltd. with expiry date of July 31, 2018
- Exhibit 10: Amended Contravention Notice No. B006871 issued on April 10, 2017 to Brew Street Craft and Kitchen Ltd. regarding alleged contravention on February 18, 2017
- Exhibit 11: Notes of Compliance Meeting held November 16, 2016 regarding administrative requirements and Contravention Notice #B011319 with third party operator representative, Mr. David James, present at meeting
- Exhibit 12: branch 'posse' entry, entered April 18, 2017 re: Conduct Inspection on April 10, 2017 describing meeting with Mr. David James and amended Contravention Notice regarding the MAP contravention and a second alleged contravention with a note about need for a future compliance meeting.

BRANCH EVIDENCE OF THE ALLEGED CONTRAVENTION

The liquor inspector who attended the establishment on the evening of February 18, 2017 and was the author of the NOEA testified for the branch ("liquor inspector 1").

She explained the history of the MAP and the inspections of licensed establishments on February 18, 2017. Liquor inspector 1 and another liquor inspector ("liquor inspector 2") met with the minor agent on that date at their regional office. They photographed the minor agent and her ID and confirmed that she was 17 years old. (Exhibit 4, tab 7)

The two liquor inspectors and the minor agent were conducting inspections of licensed establishments in the Surrey, Port Moody, Coquitlam and Port Coquitlam area to test compliance with identification checks.

At approximately 8:49 p.m., the minor agent entered the establishment followed closely by liquor inspector 1. Liquor inspector 2 remained in the vehicle. The minor agent stopped at the host stand and spoke with a young looking male. She continued to enter and walked towards the bar. Liquor inspector 1 followed slightly behind the minor agent.

Liquor inspector 1 and the minor agent sat down at the bar. A male bartender approached the minor agent and asked for a drink order. The minor agent asked what was on tap. The bartender provided the minor agent with paper menus and also placed one in front of liquor inspector 1. The bartender then walked away and returned in a few minutes. The minor agent ordered two cream ale beers. Liquor inspector 1 did not place the order or have any conversation with the bartender.

Liquor inspector 1 and the minor agent saw the bartender pouring amber liquid from a tap located on the wall. The bartender walked back to the minor agent and liquor inspector 1 and placed two glasses, both filled with beer, on coasters in front of them. He then walked away.

At no time did the bartender request any identification from the minor agent.

The minor agent waited approximately one minute and provided the money to liquor inspector 1 to pay for the beer. Liquor inspector 1 sent liquor inspector 2 a text message, advising her of the sale to the minor agent and that the minor agent was leaving the establishment. The minor agent went to meet with liquor inspector 2 in the government vehicle. The minor agent filled out the observation sheet and composed her written statement. (Exhibit 4, tabs 4 and 5) Liquor inspector 1 waited at the bar for liquor inspector 2 to enter.

Liquor inspector 2 entered at approximately 8:59 p.m. and met up with liquor inspector 1. Liquor inspector 1 took photos of the beer for evidence. (Exhibit 4, tab 6) Liquor inspector 2 spoke with the bartender and identified herself as a liquor inspector and informed him that he had served a minor. She asked to speak with the manager on duty.

The bartender provided his Serving It Right number. There were two managers on duty at the time. The first manager advised that hosts do not request identification at the door. It is up to the serving staff to do so. Liquor inspector 1 requested a receipt for the beers, which was provided. (Exhibit 4, tab 8)

The two managers accompanied the two liquor inspectors upstairs to the office for more privacy. Liquor inspector 1 filled out the contravention notice, CN B006852. The first manager signed the contravention notice indicating acknowledgement of its receipt. Liquor inspector 1 asked the manager to advise the licensee of the contravention as liquor inspector 1 would be following up with the licensee on the Monday.

The two liquor inspectors exited the establishment at 9:25 p.m.

BRANCH HISTORY OF THE LICENCE AND ITS TRANSFER

The branch book of documents, Exhibit 4, tab 10, has LP Licence #144144 current at the time of the alleged contravention on February 18, 2017, with expiry date of July 31, 2017. This licence shows that the licence was issued to Golden Spike Inn Ltd. with a third party operator as Woodferg James Group Holdings Ltd. and the establishment name as Brew Street Craft and Kitchen.

The Contravention Notice #B006852 for the alleged contravention was issued to Golden Spike Inn Ltd. as the name of the licensee on the licence at the time of the issuance of the Contravention Notice on February 18, 2017 (Exhibit 4, tab 9 and 10). The branch issued amended Contravention Notice #B006871 on April 10, 2017, with the licensee name as Brew Street Craft and Kitchen Ltd.

As a result of the changes to the *Liquor Control and Licensing Act* that came into force on January 23, 2017, Brew Street Craft and Kitchen Ltd. was a “deemed licensee” at the time of the alleged contravention on February 18, 2017. Brew Street Craft and Kitchen Ltd. had applied for a transfer of the licence prior to the date of the alleged contravention. As noted in section 22(3) of the new Act:

The proposed transferee referred to in subsection (2) is conclusively deemed, for all purposes under this Act, to be the licensee under the licence that is the subject of the transfer application, from the notice date until, subject to subsection (5), the date on which the general manager

- (a) transfers the licence, or
- (b) refuses to transfer the licence.

In the email dated April 10, 2017, from the branch to a representative of Golden Spike Inn Ltd., the branch informed him that:

Golden Spike Inn Ltd is no longer legally responsible for the above noted licence. As a result, the NOEA issued to Golden Spike Inn Ltd. will be withdrawn.
(Exhibit 7)

The branch issued the amended contravention notice on April 10, 2017 to Brew Street Craft and Kitchen Ltd. (Exhibit 10) The branch “posse” notes titled a ‘Conduct Inspection’ indicate that liquor inspector 2 met with David James on April 10, 2017, explained the deemed transfer provision of the Act and provided him with the

amended contravention notice. (Exhibit 12) Prior to the transfer application, Mr. David James had been actively involved with the establishment as the representative of the third party operator as shown by his presence at the compliance meeting of November 16, 2016. (Exhibit 11)

SUBMISSIONS – BRANCH

The branch advocate made a brief submission summarizing the branch evidence of the alleged contravention on February 18, 2017. The minor agent was 17 years old on that date. The bartender served her a cream ale without requesting any identification. Thus, the contravention of section 77(1)(a) of the Act has been proven.

The licensee did not attend the hearing and provided no evidence or documents to support a defence of due diligence.

LICENSEE

As the licensee did not appear at the hearing, there was no evidence or submissions made by the licensee. The licensee did not respond to the letter from me dated November 9, 2017 requesting a submission on penalty only by November 16, 2017.

REASONS AND DECISION

Contravention

I find that the licensee contravened section 77(1)(a) of the Act on February 18, 2017.

As the licensee provided me with no evidence of due diligence, I find that this defence fails.

PENALTY

Pursuant to section 51(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 2 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 indicated 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

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 bartender, without being asked to produce any proof of age.

Given the seriousness of service to minors and no evidence with respect to due diligence, I find that a penalty is warranted here.

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.

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.

There is no record of a proven contravention of the same type for this licensee at this establishment within the preceding twelve months of this incident. Therefore, I find this to be a first contravention for the purposes of Schedule 2 and calculating a penalty. Item 3 in Schedule 2 provides a range of penalties for a first contravention of this type: a ten day licence suspension and/or a \$7500 penalty.

Despite being given the opportunity to provide me with a submission on penalty, the licensee has not done so. I am therefore left with choosing between a monetary penalty and a ten day suspension.

I impose a \$7,500 monetary penalty. I find this to be reasonable and appropriate given the importance of ensuring minors do not have easy access to liquor, to encourage future voluntary compliance from the licensee and to ensure specific and general deterrence in society at large.

ORDER

Pursuant to section 51 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 **December 22, 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

Nerys Poole
General Manager's Delegate

Date: November 24, 2017

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

Liquor Control and Licensing Branch, Vancouver Office
Attn: Maria Caduhada, Branch Advocate