



**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:	Grizzly Sports Bar & Grill Ltd. dba Last Call Liquor Store 110 Boyle Avenue Revelstoke, B.C. V0E 2S0
Case:	EH16-106
For the Licensee:	Claudio Brunetti
For the Branch:	Maria Caduhada
General Manager's Delegate:	Daniel M. Graham
Date of Hearing:	Written submissions
Date of Decision:	May 1, 2017

**Liquor Control and
Licensing Branch**

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INTRODUCTION

Grizzly Sports Pub & Grill Ltd. (the "Licensee") operates the Last Call Liquor Store (the "Store") under Licensee Retail Store Licence #195273 (the "Licence"). The Store is located at 110 Boyle Avenue, Revelstoke, B.C.

The Licence specifies hours of liquor service of 9:00 a.m. to 11:00 p.m. seven days a week. 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"), (as of January 23, 2017 called the "Terms and Conditions Handbook").

C.B. represented the Licensee for the purposes of this hearing. Throughout these reasons for decision, C.B. and the corporate Licensee - individually or collectively - may be referred to as "the Licensee" as the context requires.

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 August 31, 2016 (the "NOEA"). The Branch alleges that on July 22, 2016 the Licensee contravened section 33(1)(a) of the *Liquor Control and Licensing Act* [RSBC 1996] c. 267 (the "Former Act") by selling, giving or otherwise supplying liquor to a minor who was acting as an agent of the Branch under the Minors as Agents Program ("MAP").

The proposed penalty is a \$7,500 monetary penalty, which falls within the penalty range set out in item 2, schedule 4 of the *Liquor Control and Licensing Regulation*, B.C. Reg. 244/2002 (the "Former 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 March 21, 2017 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.

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 Former 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 and Part 6 of the current *Liquor Control and Licensing 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 16 inclusive.
- Exhibit 2: The Licensee's written submission in the form of an e-mail from the Licensee to Branch staff dated March 28, 2017.

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 July 22, 2016, two liquor inspectors ("Inspector 1" and "Inspector 2") and a minor agent conducted a MAP inspection of the Store. 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 Store, the minor agent was photographed and his identification was viewed and photocopied. (Exhibit 1, tab 7) The minor agent was 17 years old on the date of the alleged contravention.

On July 22 at 12:30 p.m. Inspector 1 entered the Store, followed shortly by the minor agent. The minor agent picked up a 6 pack of Budweiser beer in cans and took the product to the counter. A male clerk accepted payment for the beer from the minor agent and provided change. The minor agent then left the Store with the beer. At no time did the clerk request identification from the minor agent.

At 2:00 p.m. Inspector 2 returned to the Store and spoke to the Licensee, who confirmed that he had been on the till at the time of the alleged contravention and had sold the beer to the minor agent. At that time Inspector 2 issued Contravention Notice #B018009 to the Licensee (Exhibit 1, tab 8).

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 his written submission the Licensee stated that he had used poor judgement when he sold beer to the minor agent – he explained that he thought he had served the minor agent previously and so decided not to check for identification. He stated that it is his usual practice to ask for identification from anyone who appears to be under the age of 35.

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

- This was the Licensee's first contravention after operating the Store for 13 years, and other licensed establishments for 20 years.
- He has gone "above and beyond" with himself and his staff to make sure that no minors are ever served on his premises.

The Licensee argued that in consideration of these factors and the currently slow season at the Store, a warning would be an appropriate outcome in this case.

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 Former Act:

- a person (the Licensee)
- supplied liquor (a 6-pack of Budweiser beer)
- to a minor (the minor agent).

Accordingly, I find that on July 22, 2016 the Licensee contravened section 33(1)(a) of the Former 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. There is no evidence before me with respect to efforts made by the Licensee to exercise due diligence before the contravention occurred.

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 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.

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 served liquor to a 17 year old without any request for identification. 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 the Licensee served liquor to a 17 year old without any request for identification, and the lack of evidence of due diligence, 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 Store 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.

There is no evidence before me of any other material compliance history involving the Licensee. The Licensee's unsupported statement about the slowness of the season at the Store is not a factor that warrants waiving a penalty.

In consideration of:

- the serious public safety concerns related to selling alcohol to minors; and
- the insufficiency of evidence of training or systems to reasonably reduce the risk of the contravention occurring;
- as mitigated by the Licensee's 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.

ORDER

Pursuant to section 51(2)(b) of the Current 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 May 31, 2017.

Signs satisfactory to the general manager showing that a monetary penalty has been imposed will be placed in a prominent location in the Store by a Branch inspector or a police officer.

Original signed by

Daniel M. Graham
General Manager's Delegate

Date: May 1, 2017

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

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