



**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: Mr. Mikes Restaurants Corporation dba Mr. Mikes (Cranbrook)
Case: EH17-027
For the Licensee: Warren Goss and Tony Zidar
For the Branch: Maria Caduhada
General Manager's Delegate: A. Paul Devine
Hearing: Written Submissions
Date of Decision: July 25, 2017

**Liquor Control and
Licensing Branch**

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INTRODUCTION

The Licensee operates a food primary business under the name “Mr. Mikes”, Cranbrook. The business is located at 1028 Cranbrook Street North in Cranbrook British Columbia. Under the terms of Food Primary Licence #180423, the Licensee is entitled to sell liquor from 11 AM to 1 AM Monday-Saturday inclusive, and on Sunday from 11 AM to midnight.

The Licence is, as with all similar licences issued in the province, subject to the Food Primary Terms and Conditions Licence Handbook (the “Handbook”).

For the purposes of this hearing, and in accordance with section 5 of the *Liquor Control and Licencing Act* (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* (“Regulation”).

ALLEGED CONTRAVENTION:

The allegations of the branch in respect of the licensee are contained in a Notice of Enforcement Action dated April 3, 2017 (the NOEA”.) Since 2011, the branch has been able to employ minors to test the compliance of licensees in the Province with respect to the prohibition in the *Act* against selling liquor to minors. The branch has employed 16 – 18 year old minors for this purpose in its Minors as Agents Program (“MAP”).

On March 30, 2017 MAP inspections were carried out in the Cranbrook area. The services of a minor agent described as “Minor Agent #103” were used for these inspections. The Minor Agent entered the establishment of the Licensee (known locally as “Mikes Steakhouse Casual”) with a liquor inspector at about 4:25 p.m. In the licensed establishment the Minor Agent and the Liquor Inspector were seated in the bar area. A server asked if they wanted a drink, and the Minor Agent ordered two pilsner beers. No ID was requested. Two cans of beer were placed before the Minor Agent and the Inspector. Shortly afterwards, the Minor Agent said they had to leave. The server said “too bad – two full beers.” She asked if they wanted a glass to guzzle the beers. They said no, and the Minor Agent paid for the beer with a \$20 bill. After change was provided, the Minor Agent and the Inspector left the establishment. At no time was the Minor Agent asked to produce ID.

The Liquor Inspector spoke to the Day Manager for the Licensee on the following day. The Day Manager said the server who provided beer to the Minor Agent informed her

that she might have served a minor the previous day without asking for ID. A Contravention Notice was served on the Licensee by the Liquor Inspector.

The Liquor Inspector decided to pursue enforcement action against the Licensee because of the significant public safety issues arising from the sale of liquor to minors. A licence suspension of fifteen days was proposed. The proposed suspension fell within the range of this type falling within a 12 month period. The selected penalty took into account the fact that the Licensee has failed a MAP inspection in May 2015. At that time, the Licensee had paid a monetary penalty for the contravention, and was warned there was a likelihood of further MAP inspections to test compliance. In view of this, it was felt a suspension would be better to achieve compliance instead of a further monetary penalty.

EVIDENCE

Exhibit 1 – Book of Documents (Branch)

Exhibit 2 – Documents of the Licensee Tabs A to F inclusive.

STATUTORY PROVISIONS

Liquor Control and Licensing Act SBC 2015, c 19

s. 77(1) Subject to the regulations, a person must not
 (a) Sell or otherwise supply liquor to a minor,

Liquor Control and Licensing Regulation, B.C. Reg. 241/2016 Schedule 2 – Monetary Penalties and Licence Suspensions

Table

Item	Contravention	Period of Suspension (Days)			Monetary Penalty
		First Contravention	Second Contravention	Subsequent Contraventions	
Minors					
3	Contravention of section 77 of the Act [<i>supplying liquor to minors</i>]	10-15	20-30	30-60	\$7500 - \$10 000

SUBMISSIONS

Licensee

The Licensee acknowledges that it contravened section 77(1)(a) of the *Act* as alleged in the NOEA. As well, the Licensee is not pursuing a due diligence defence to the contravention. Instead, it disputes the proposed enforcement action for the contravention of a 15 day licence suspension.

The Licensee acknowledges that a penalty is warranted as a consequence of its breach of the *Act*. It submits, however, that a monetary penalty of \$7,500.00 is more appropriate in all the circumstances. To begin, the Policy Directive No. 16 – 19 of the branch permits a licensee to choose between a monetary penalty and a license suspension in the following circumstances:

- a. the contravention is the first in the 12 month period preceding the contravention,
- b. the minimum of either a monetary or a license suspension prescribed in the penalty schedule is suitable,
- c. and the licensee signs a waiver agreeing that the contravention occurred.

The Licensee submits that a suspension would cause significant hardship for its employees and customers. The restaurant operated by the Licensee employs 30 to 40 persons at any time. Since it opened in 2006, the restaurant has employed over 100 persons as bartenders and servers, and over 1 million guests have dined at the restaurant. Many of its employees rely on their wages and tips as their primary source of income. Some require their wages to fund their education and housing, and others to feed their children and support their families. The Licensee is concerned that if there was a suspension, it would lose some of its employees to other employers.

While acknowledging that there was a prior contravention in 2015, the Licensee submits that it has no other contraventions of any type since it opened in 2006. Further, it takes its obligations under the *Act* seriously, and is continuously making efforts to improve its high standards and operating procedures. This includes training. All employees whose job entails sale, service or pouring of alcohol must obtain and maintain the Serving It Right (SIR) Certification. After the 2015 contravention, the Licensee developed and implemented additional training and procedures. Included in this is an Identification Policy (Exhibit 2 – A) which all new employees must review and acknowledge they are aware of and understand it. A copy of the Policy is posted on the employee Bulletin Board in the restaurants.

There is also a Front of House Training Manual which outlines the obligations of the Licensee and its employees with respect to serving alcohol responsibly. The section of the Policy Manual dealing with responsible service was provided as Exhibit 2-B. All new employees must review the Training Manual during their training, and sign an acknowledgement confirming they have reviewed it and understand it.

There are also daily, monthly and quarterly training reminders for all employees regarding the important mandatory requirements applicable to serving alcohol responsibly, and of adhering strictly to identification requirements. There are daily "pre-shift" meetings with employees where the Identification Policy is discussed. As well, employees must also review and sign the Responsible Alcohol Service Training Document (Exhibit 2-D). A new copy of this is posted monthly, and all employees are asked to read it, discuss it with their manager, and sign off on it. This serves as a monthly reminder regarding obligations with respect to obtaining proper identification.

In addition, there are posters provided by the Branch which are displayed in prominent locations in the restaurant to provide daily reminders to employees concerning their obligations when it comes to serving alcohol to customers. Photographs of the posters were included in the submission of the Licensee: see Exhibit 2-E.

Immediately after the recent contravention, a new course was added to the Licensee's online training entitled "Serving Alcohol to Minors Sign-off". This reviews the Identification Policy of the Licensee, and requires employees to complete a quiz to test their understanding of the policy. This is also required of the managers of the Licensee. A copy of the checklist and a summary of the current completion status of the employees of the Licensee is provided as Exhibit 2-C.

The Licensee submits that the employee who was involved in the recent contravention was properly trained, and had the necessary knowledge, tools and support to do her job properly. She made a poor decision in not asking for identification before she served the Minor Agent. As a result, her employment was terminated.

It is submitted that this was an isolated incident, and the Licensee will continue to develop and enhance its training programs and procedures to ensure that all team members fully appreciate the importance of following the Identification Policy whenever they are asked to serve liquor to a customer. The Licensee submits it fully appreciates the significant public safety concerns associated with the sale of alcohol to minors, and is doing everything it can to ensure the policies and practices it uses will prevent this in the future.

Branch

The Branch did not respond directly to the submissions of the Licensee. Instead, the Branch provided its documents in Exhibit 1 which included the NOEA as well as the Compliance History of the Licensee. The History includes a prior incident on May 7, 2015 in which the Licensee failed a MAP inspection, and a monetary penalty of \$7500 was assessed. The Branch also noted that for a licensee to choose a monetary penalty instead of a suspension, all three elements of Policy Directive No. 16 – 19 must be present.

ANALYSIS AND DECISION

The usual issues addressed in matters such as this are threefold. First, did a contravention occur? If so, the second question is did the Licensee act with due diligence? Third, if the answer to the second question is no, what penalty if any is appropriate? In view of the concessions made by the Licensee, only the third question remains to determine. As well, the Licensee concedes that some form of penalty is appropriate in the circumstances, but argues that a monetary penalty should apply instead of a suspension of its Licence.

Once a finding of a contravention is made, followed by a finding that the Licensee did not act with due diligence, the issue that remains is what if any penalty is appropriate? While I may increase a penalty or waive a penalty altogether, I am not authorized to depart from the range of penalties set out in the Schedule to the *Regulation*.

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 may include 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 well-being of the community.

The contravention in this case was a first within a 12 month period. Therefore, it is treated as a first contravention for the determination of the applicable penalty. There is, however, range of penalties for a first contravention, and factors such as a prior contravention are taken into account when determining the appropriate penalty.

The Licensee prefers a monetary penalty rather than a suspension. It has met criteria one and three of the Branch Policy Directive No. 16 – 19. The second criteria, however, is whether a monetary penalty at the lower end of the range is “suitable” in all of the circumstances. The question of “suitability” is determined by reference to the factors outlined earlier. In this case, the prior contravention following a MAP inspection caused

the Liquor Inspector to consider that a suspension instead of a monetary penalty would encourage future compliance. Given the acknowledged public safety issues that attach to the sale of liquor to minors, taking additional steps to encourage compliance by the Licensee is a valid consideration.

There are, however, factors which bear consideration on whether a monetary penalty might still be appropriate. One factor advanced by the Licensee is the hardship which will be visited on its employees if there is a suspension of its Licence. This is a somewhat neutral factor because employees must expect to bear the consequences of a contravention by one of its members. Nevertheless, some weight can attach to this factor given that there are a large number of employees who may be negatively impacted by a suspension.

Another important factor is found in the steps taken by the Licensee since the earlier contravention. It has developed an ID policy which all employees must review and sign to acknowledge their understanding. There are pre-shift meetings where the identification policy of the Licensee is discussed. As well, employees must review and sign off on the Serving Alcohol Responsibly Policy. This outlines the legal obligations of employees who are engaged in serving liquor to customers. It specifically includes a discussion about avoiding service to minors, and about the Licensee's policy of asking for identification from anyone who appears to be under the age of 30. Types of acceptable identification are discussed. Employees are advised that the failure to follow the policy may result in the termination of their employment.

Since the most recent contravention, the Licensee developed a new on-line module entitled "Serving Alcohol to Minors Sign-off". Employees are required to test themselves on the ID policy of the Licensee in respect of service to minors. Managers must complete the quiz as well.

It appears from the foregoing that the Licensee has continued to work proactively to address the problem of employees not appropriately applying its ID policy. These steps appear to represent an ongoing commitment by the Licensee to train and regularly review with its employees the obligations that they bear when serving liquor to the public. In view of this ongoing commitment, I conclude that it is appropriate to apply a monetary penalty instead of a suspension notwithstanding the contravention that occurred following the MAP inspection on March 30, 2017. Taking into account the licensee's prior non-compliance with the service of liquor to a minor in 2015, a monetary penalty at the low end of the range is not appropriate. Instead, a monetary penalty at the high end of the range would better serve to encourage the Licensee to continue its efforts to achieve voluntary compliance.

I therefore direct that the Licensee pay a monetary penalty in the amount of \$10,000.00 on the terms set out below.

ORDER

Pursuant to section 51 of the *Act*, I order that the Licensee pay a monetary penalty of ten thousand dollars (\$10,000.00) to the General Manager of the Liquor Control and Licensing Branch on or before August 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 establishment by a Liquor Control and Licensing Branch inspector or a police officer

Dated this 25th day of July, 2017.

Andrew Paul Devine

Original signed by

Delegate of the General Manager

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