



**DECISION OF THE  
GENERAL MANAGER  
LIQUOR AND CANNABIS REGULATION 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: Sing Sing Bar Enterprises Ltd.  
dba Sing Sing Restaurant  
2718 Main Street  
Vancouver, BC V5T 3E8

Case: EH19-112

For the Licensee: Reid Ogdon

For the Branch: Hugh Trenchard

General Manager's Delegate: Nerys Poole

Date of Hearing: Written Submissions

Date of Decision: February 5, 2020

---

**Liquor and Cannabis  
Regulation Branch**

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

Location:  
Fourth Floor, 645 Tye Road  
Victoria, BC V9A 6X5

[www.gov.bc.ca/liquorregulationandlicensing](http://www.gov.bc.ca/liquorregulationandlicensing)

## INTRODUCTION

Sing Sing Bar Enterprises Ltd. (the "Licensee"), operates a licensed establishment under the name of Sing Sing Restaurant, at 2718 Main Street in Vancouver, (the "Establishment"). The Licensee has a Food Primary Licence No. 213081 (the "Licence").

Mr. Reid Ogdon represented the Licensee at the December 9, 2019 telephone pre-hearing conference. At the pre-hearing conference call, summarized in the Branch's letter of December 11, 2019, Mr. Ogdon stated that the Licensee:

- Admits the contravention as alleged in the Notice of Enforcement Action dated November 7, 2019 (the "NOEA");
- Is not pursuing the defence of due diligence;
- Is only disputing the proposed enforcement action.

This matter has therefore proceeded as a penalty-only written submission.

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*.

The Licence permits liquor sales from 9:00 a.m. to 1:00 a.m., from Sunday to Thursday and from 9:00 a.m. to 2:00 a.m. on Fridays and Saturdays. The Licence is, as are all liquor licenses issued in the Province of British Columbia, subject to the terms and conditions contained in the publication "Food Primary Terms and Conditions", (the "Handbook").

## ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Liquor and Cannabis Regulation Branch's (the "Branch") allegations and proposed penalty are set out in the NOEA, (Exhibit 1, tab 1).

The Branch alleges that, on October 21, 2019, 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 7 to 11-day licence suspension or a \$7,000 to \$11,000 monetary penalty, (item 7 of Schedule 2 of the *Liquor Control and Licensing Regulation*). The Branch recommends either a seven-day suspension or a monetary penalty of \$7,000.

As noted above, the Licensee does not dispute that an employee sold liquor to the minor, nor is the Licensee pursuing a due diligence defence. The Licensee is only disputing the penalty and submits that no penalty is warranted.

## 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,

## ISSUES

As the Licensee admits the contravention occurred and is presenting no defence to the contravention, this matter has proceeded as a penalty-only written submission.

Therefore, the two issues for my consideration are:

1. Is a penalty warranted?
2. If a penalty is warranted, is the minimum under item 7 of Schedule 2 appropriate?

## EXHIBITS

- Exhibit 1: Branch's book of documents, tabs 1 to 15
- Exhibit 2: Licensee's Submission dated January 6, 2020, with attachments, Schedules A to E
- Exhibit 3: String of 5 emails between Reid Ogdon and branch registrar, all dated January 6, 2020

- Exhibit 4: String of 4 emails re. exchange of written submissions, with three emails dated January 8, 2020 and 4<sup>th</sup> email dated January 6, 2020
- Exhibit 5: Donnelly Group Orientation booklet

## SUMMARY OF RELEVANT FACTS

As the Licensee admits the contravention occurred, the Licensee accepts the following facts as set out in the NOEA.

At the time of the contravention on October 21, 2019, the Licensee held a valid Food Primary Licence No. 213081, expiring on August 31, 2020.

On October 21, 2019, the Branch conducted Minors as Agents Program inspections of several licensed establishments in Vancouver. Before the inspections took place, liquor inspectors photographed the minor agent and examined her identification confirming she was 17 years old on that date. At approximately 11:46 a.m. on October 21, 2019, two liquor inspectors ("liquor inspectors 1 and 2") entered the Establishment and sat at a long table close to the bar in the middle of the service area. At approximately 11:47 a.m., the minor agent entered the Establishment and sat at the bar. A third liquor inspector ("liquor inspector 3") entered the Establishment and joined the other two inspectors at about 11:48 a.m. The liquor inspectors had a clear and unobstructed view of the minor agent.

At 11:50 a.m., the minor agent ordered a Tofino Tuff Pale Ale beer from a male server. The same server poured the beer and placed the liquor in front of the minor agent. The minor agent got up from her seat and exited the Establishment. At no time did the server or anyone else ask the minor agent for identification. At 11:52 a.m., liquor inspectors 2 and 3 exited the Establishment with the minor agent.

Liquor inspector 1 identified himself to the server and advised him that he had just served liquor to a minor. The server identified himself, stating he was the manager on duty. He provided his Serving It Right certification number to liquor inspector 1. The server admitted he did not ask the minor agent for ID.

The liquor purchased by the minor agent was a Tofino Tuff Session American Pale Ale. Liquor inspector 1 paid for the liquor, obtained the sales receipt and photographed the liquor. The liquor was \$5.75, and he received change of \$14.25.

At 12:02 p.m., liquor inspectors 2 and 3 returned with a contravention notice (exhibit 1, tab 2). The server signed for receipt of the contravention notice and received a copy. The liquor inspectors departed at 12:06 p.m.

### **SUBMISSIONS – BRANCH**

The Branch has submitted the book of documents (Exhibit 1) with the NOEA at tab 1, which outlines the elements of the contravention and summarizes the facts as noted above.

In the NOEA, the Branch sets out its reasons for pursuing enforcement. The Branch emphasizes that serving liquor to minors is a significant public safety issue and one that the Branch and the public take very seriously.

In the present case, the minor agent was below the legal drinking age, only seventeen years of age. The minor agent made no attempt to deceive or mislead the server to make the purchase.

The Branch sets out its reasons for the proposed recommended penalty in the NOEA:

The recommended suspension or monetary penalty fall within the penalty range set out in Schedule 2, item 7 of the *Regulation* for a first contravention of this type. In consideration of the compliance history of the licensee, the minimum penalties for a first contravention are considered appropriate to reinforce the seriousness of the violation and to gain compliance in the future.

### **SUBMISSIONS – LICENSEE**

As noted, the Licensee does not dispute that its employee sold liquor to the minor agent. The Licensee is not pursuing a defence of due diligence. The Licensee provided a written submission, arguing that a penalty is not warranted as:

- The Licensee provides extensive training to its managers and staff;
- The Licensee's representative, Mr. Ogdon sent a note to its senior management team, including the General Manager of Sing Sing, on October 4<sup>th</sup>, 2019, advising them of the Minors as Agents Program and that they should expect visits from inspectors, (Exhibit 2, schedule A);
- The Director of Products sent an accompanying note to all managers and staff referring to the Minors as Agents Program and reminding them to ID all patrons who look under 30 (Exhibit 2, schedule B);
- On October 7, 2019, the Director of Operations advised the management team that they would review procedures at the next day's meeting with all levels of management, referring to the Minors as Agents Program, (Exhibit 2, schedule C);
- At the meeting on October 8 with the managers, they focused on refreshing the managers' responsibility to follow the policies of the Donnelly Group's orientation package (Exhibit 2, schedule D), and they reviewed the Responsible Service at page 11 and discussed their policy of IDing under age patrons.

The Licensee submits that the Donnelly Group is very well informed of the policies of the Branch and stated they provide on-going awareness to management and staff. In April of 2019, their Director of Beverages began a Slack conversation with their bar managers to bring them up to speed on all LCRB policies, as well as telling them to remind staff to ID everyone. At that time, the bar manager at the establishment agreed that she understood the policy on asking for ID, (Exhibit 2, schedule E)

The Licensee stated in its submission that they terminated the server for failure to follow the terms and conditions of his employment which requires responsible beverage service.

The branch registrar emailed the Licensee on January 6, 2020, noting that much of its submission raised the characteristics of a due diligence defence and asked the Licensee again to confirm that they were not raising a defence of due diligence. The branch registrar pointed out that a "due diligence defence is factual and evidentiary and must be weighed at an oral hearing where the branch advocate will have the opportunity to test your evidence by cross-examination." The branch registrar also requested that the Licensee indicates its preference for a suspension or a monetary penalty in the event the

delegate decided to impose a penalty. The Licensee responded to this email, stating “we are not pursuing a due diligence defence” and adding that they would prefer a monetary fine to a closure.

## **REASONS AND DECISION**

### **Contravention**

The Licensee has admitted that its employee sold liquor to the minor agent. I therefore find that the Licensee has contravened section 77(1)(a) of the *Act*.

### **Due Diligence**

By requesting a penalty-only hearing, the Licensee agreed and stated that it was not pursuing a defence of due diligence.

## **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

### **Issue 1: Is a penalty warranted?**

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.

The Licensee has referred to meetings, reminders, chats on Slack where the managers, including the manager of the establishment were given reminders about the Minors as Agents Program and about the policy with respect to requesting ID of patrons. The Licensee was given more than one opportunity to state whether or not he wished to pursue a due diligence defence and declined to do so. The branch registrar reminded the Licensee of the importance of presenting any factual evidence relating to due diligence in an oral hearing.

Although the evidence presented by the Licensee focuses on the factors considered in a due diligence defence, the Licensee has presented this as reasons for not imposing a penalty. Again, I reiterate what the branch registrar emphasised to the Licensee – this is factual evidence that must be tested in an oral hearing. Nevertheless, even accepting these facts as true, I find that this evidence of the Licensee's policies and reminders to staff is sparse.

Based on the seriousness of this public safety contravention, the fact that an employee served beer to a 17 year old without any request for identification, and the limited evidence of the training of employees and procedures in place at the Establishment, I find that a penalty is warranted.

A penalty is warranted to remind the Licensee of the importance of adequate training and regular reminders of its policies on checking for ID, as well as a deterrent to other licensees. Licensees are obliged to comply with the legislation and the terms and conditions of their licenses. Enforcement action is intended to both redress the licensee's non-compliance, and to encourage future compliance by way of deterrence.

I turn now to the appropriateness of the recommended penalty.

**ISSUE 2: If a penalty is warranted, is the minimum under item 7 of Schedule 2 appropriate?**

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 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.

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.

As noted above, having found that a penalty is warranted, I am bound to follow the minimums for a first contravention in Schedule 2 of the *Regulation*. There are no factors that would support an increase to the recommended penalty. The minimum penalty as recommended by the Branch is appropriate and reasonable. The Licensee expressed a preference for a monetary penalty.

I therefore find that the proposed monetary penalty of \$7,000 will achieve the Branch's objectives with respect to general and specific deterrence.

**ORDER**

Pursuant to section 51(2)(b) of the *Act*, I order that the Licensee pay a monetary penalty in the sum of \$ 7,000 to the General Manager of the Liquor and Cannabis Regulation Branch on or before March 6, 2020.

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 and Cannabis Regulation Branch inspector or a police officer.

*Original signed by*

\_\_\_\_\_  
Nerys Poole  
General Manager's Delegate

Date: February 5, 2020

cc: Liquor and Cannabis Regulation Branch, Vancouver Office  
Attn: Peter Mior, Regional Manager

Liquor and Cannabis Regulation Branch, Victoria Office  
Attn: Hugh Trenchard, Branch Advocate