



**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: 0776075 B.C. Ltd.
dba Princeton Liquor Store
199 Highway 3
Princeton, BC V0X 1W0

Case: EH08-100

For the Licensee: David Fulks

For the Branch: Tanya Cogan, branch advocate

Enforcement Hearing Adjudicator: Sheldon M. Seigel

Place of Hearing: Written Submissions

Date of Decision: January 15, 2009

**Ministry of Housing
and Social
Development**

Liquor Control and
Licensing Branch

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INTRODUCTION

This hearing was conducted by way of written submissions by agreement of the Licensee and the General Manager.

The licensee is the owner of an establishment that holds Licensed Retail Store (LRS) Licence No. 195154 in the City of Princeton, British Columbia. The LRS was transferred to the licensee pursuant to a transfer application received by the branch on February 28, 2007. The licensee has operated the LRS since June 2007. Under the current ownership, there is no history of contraventions of the *Liquor Control Act* RSBC 267 (Act) or *The Liquor Control Regulation* (Regulation).

The branch alleges that on August 1, 2008, the licensee contravened section 33 of the *Liquor Control and Licensing Act* by selling, giving or otherwise supplying liquor to a minor. The proposed penalty is a ten (10) day suspension of the liquor licence (item 2, Schedule 4 of the *Regulation*).

The licensee does not dispute that liquor was sold to a minor as alleged but disputes the penalty proposed.

RELEVANT STATUTORY PROVISIONS

Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267 (the Act)

Supplying liquor to minors

33 (1) A person must not

- (a) sell, give or otherwise supply liquor to a minor,
- (b) have liquor in his or her possession for the purpose of selling, giving or otherwise supplying it to a minor, or
- (c) in or at a place under his or her control, permit a minor to consume liquor.

(5) It is a defence to a charge under this section if the defendant satisfies the court that, in reaching the conclusion that the person was not a minor, the defendant

- (a) required that the person produce identification, and
- (b) examined and acted on the authenticity of the identification.

ISSUES

1. Did the licensee contravene section 33 of the *Act*?
2. If the licensee did contravene the *Act*, is a penalty warranted and if so, what is the appropriate penalty?

EXHIBITS

The materials provided for this determination include disclosure documents provided by the branch (Exhibit No. 1) dated November 25, 2008, and the licensee's submissions (Exhibit No. 2) dated December 8, 2008.

FACTS

On the evening of August 1, 2008, an RCMP officer on traffic duty near the LRS noticed a pickup truck parked at the LRS with a young-looking male in the passenger seat. The officer observed a second young-looking male exit the LRS with a case of beer in hand. The second male stowed the beer in the vehicle and proceeded to drive away.

The officer ascertained that the vehicle was registered to an 18 year-old male, and stopped the truck approximately one block from the LRS. The driver and the passenger provided identification. The driver proved to be the 18 year-old owner of the vehicle and the passenger was determined to be 20-years of age. The officer told the minor that he

observed the minor leaving the LRS with a case of beer, and the minor admitted that he had purchased the beer in the LRS. The minor indicated that he made the purchase with the use of his debit card and that the clerk did not request that he produce identification. The minor described the appearance of the clerk in detail.

The officer returned to the LRS, observed one clerk on duty, noted that the clerk fit the description provided by the minor, and approached the clerk. The clerk said she did sell the identified male the case of beer. She also confirmed that she did not check his identification. She did not claim to know the minor's age, but indicated that she had seen him before in the licensee's nearby bar.

The branch issued a Contravention Notice (#AH39471743) and a Notice of Enforcement Action (Dated October 16, 2008), each of which alleged a contravention of section 33 of the *Act* and were duly served.

The licensee and the branch agree to the facts described above.

SUBMISSIONS

The branch submits the following:

Supplying liquor to minors or permitting minors to consume liquor are significant public safety issues because of the effects of alcohol abuse on growing bodies and developing minds. There are significant effects on individuals and society of irresponsible drinking behaviour learned at an early age. Minors may not have the same capacity to metabolize alcohol, as do adults; therefore, liquor may have a more intoxicating effect on minors. Liquor is a significant factor in many crimes committed by youth, including serious driving offences, assault, and theft. The licensee did not check the patron's ID because he had been seen on another occasion in

the pub. They failed to ensure adequate preventive measures were taken to prevent liquor access to minors.

The branch recommends a 10-day suspension and describes it as the minimum for a first contravention in accordance with Schedule 4 of the *Regulation* (item 2).

The licensee submits that the LRS manager has operated the facility with a clean record but for this instance. The licensee also submits that it has learned from the incident and acknowledges that more work is required.

The licensee submits that the LRS is the only non-government liquor store in Princeton and as such many youths in the area “do their best to obtain liquor from the store [after the government store closes].”

Finally, the licensee submits that no penalty is required to secure voluntary compliance with the *Act* and *Regulation*, and it commits to so complying.

FINDINGS ON CONTRAVENTION

The licensee’s submissions neither claim nor establish a defence to the contravention.

I find that the licensee contravened section 33 of the *Act* by supplying liquor to a minor.

ANALYSIS AND DECISION ON PENALTY

The licensee provides no defence to the contravention, and no explanation for why it happened. The RCMP officer’s notes indicate that the clerk told him that she had seen the minor in the licensee’s bar previously. I have no evidence from the clerk, and neither the licensee nor the branch makes submissions with respect to the clerk’s comment. I accept the evidence of the officer that the clerk made the comment as

recorded. However, I do not accept the truth of the comment made. It is uncorroborated hearsay and in the nature of what might be expected of a clerk as a knee-jerk reaction to being caught off-guard and having to explain herself. Without further evidence or submission in that regard, I am unable to rely on the clerk's comment.

The evidence before me is simply that the clerk failed to require a minor to produce identification, and sold him a case of 15 cans of beer.

Pursuant to section 20(2) of the *Act*, I have the discretion to order one or more of the following enforcement actions:

- Impose a suspension of the liquor licence for a period of time
- Cancel a liquor licence
- Impose terms and conditions to a licence or rescind or amend existing terms and conditions
- Impose a monetary penalty
- Order a licensee to transfer a licence

Imposing any penalty is discretionary. However, if I find that either a licence suspension or monetary penalty is warranted, I am bound to follow the minimums set out in Schedule 4 of the *Regulation*. I am not bound to the maximums set out in that Schedule.

The range of penalty for the contravention of section 33 of the *Regulation* in accordance with Schedule 4 is ten (10) to fifteen (15) days suspension, and/or a \$7,500-\$10,000 monetary penalty.

The first question I must consider is whether a penalty is warranted under the circumstances. I accept that providing alcohol to minors is a serious issue, and a contravention of the restrictions on so doing can carry significant consequences to

individuals and the community. The licensee has provided nothing in its submissions that convinces me that a penalty is not appropriate in this instance. I find that a penalty is warranted.

The evidence discloses that the minor purchased the liquor while an adult passenger waited in the vehicle outside. Nothing in the evidence discloses any practical reason for which the adult passenger would have been unable to legally obtain the beer. It appears as though liquor was as easily available to this minor as it would have been to the adult companion. This might speak to a pattern of behaviour of the licensee, or of the particular clerk on duty, that would make a minor comfortable buying liquor in this LRS. This would tend to indicate the appropriateness of a higher penalty than otherwise. There are, however, no submissions before me in this regard, and so I find that the minimum suspension indicated in the *Regulation* is appropriate.

ORDER

Pursuant to section 20(2) of the *Act*, I order a suspension of LRS Licence No. 195154 for a period of ten (10) days to commence at the close of business on Thursday February 12, 2009, and to continue each succeeding business day until the suspension is completed. "Business day" means a day on which the licensee's establishment would normally be open for business (section 67 of the *Regulation*).

Original signed by

Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: January 15, 2009

cc: Princeton RCMP

Liquor Control and Licensing Branch, Victoria Regional office
Attn: Dave Deimling, A/Regional Manager

Liquor Control and Licensing Branch, Vancouver Regional office
Attn: Tanya Cogan, Branch Advocate