



**DECISION OF THE
GENERAL MANAGER
LIQUOR CONTROL AND LICENCING BRANCH
IN THE MATTER OF
A hearing pursuant to Section 20 of
*The Liquor Control and Licensing Act RSBC c. 267***

Licensee:	Reda Enterprises Ltd., dba Fulford Beer, Wine & Spirits 2661 Fulford-Ganges Road Salt Spring Island, BC V8K 1Z4
Case:	EH11-131
For the Licensee:	Jordan Durham
For the Branch:	Peter Mior
Enforcement Hearing Adjudicator	George C.E. Fuller
Place of Hearing:	Written Submissions
Date of Decision:	March 12, 2012

INTRODUCTION

The Corporate Licensee, Reda Enterprises Ltd., (the "Licensee") owns and operates an establishment known as Fulford Beer, Wine & Spirits, at Fulford Harbour on Salt Spring Island, B.C. The Licensee holds Licensee Retail Store 195104 (the "licence"). The authorized representative of the Licensee is Jordan Durham.

According to the terms of its licence, the Licensee may sell liquor from 9:00 am to 11:00 pm Monday through Sunday. The licence is, as are all liquor licences issued in the Province, subject to the terms and conditions contained in the publication "Guide for Liquor Licensees in British Columbia" (the "Guide").

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 (the "NOEA") dated November 15, 2011.

The Branch alleges that on August 31, 2011, the Licensee contravened section 33(1)(a) of the *Liquor Control and Licensing Act* (the "Act"), by selling, giving or otherwise supplying liquor to a minor. The proposed penalty is \$7,500 (item 2, Schedule 4 of the Regulation). The range of penalties for a first contravention of this type is a ten to fifteen day licence suspension and/or a \$7,500 to \$10,000 monetary penalty.

The Licensee does not dispute that the contravention occurred. However, it disputes the proposed penalty. The Branch and Licensee agreed that the hearing would take place by way of written submissions.

RELEVANT STATUTORY PROVISIONS***Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267*****Supplying Liquor to Minors**

33 (1) A person must not

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

ISSUES

1. Did the contravention occur?
2. Was the Licensee duly diligent?
3. If the Licensee was not diligent, is a penalty warranted under the circumstances?
4. If a penalty is warranted, what is the appropriate penalty?

EXHIBITS

The following documents were submitted and were considered:

Exhibit 1: The Branch's book of documents, Tabs 1 to 14 inclusive.

Exhibit 2: Letter dated February 12, 2012 to the Branch from Jordan Durham, the representative of the Licensee's establishment.

EVIDENCE OF THE BRANCH

As previously noted, the Licensee does not dispute that the contravention occurred as alleged, and, therefore, it is deemed to accept the facts as put forward by the Branch with respect to the issue of whether the contravention occurred. The Licensee has, however, made submissions in respect to the appropriateness and fairness of the penalty which the Branch has recommended.

Accordingly, the evidence may be summarized as follows:

These proceedings arise out of an inspection conducted under the "Minors as Agents Program" (MAP). These types of inspections are utilized by the Branch in order to monitor compliance with the Act's prohibition against selling liquor to persons under the age of 19 (minors).

On August 31, 2011, MAP inspections were conducted to test compliance in several Retail Liquor Store (LRS) and Government Liquor Store (GLS) outlets on Saanich Peninsula and Salt Spring Island, B.C. Inspector 1 and Inspector 2 were the lead inspectors accompanying the minor agent (Agent 02) on that date. It was confirmed that Agent 02 was under 19 years of age. At approximately 2:53 pm, inspector 2 remained outside and inspector 1 entered and moved throughout the store and Agent 02 followed closely behind him. The lighting within the store was adequate for detailed observation. Agent 02 then went to the cooler close to the register, removed a package of six cans of Lucky Lager beer and moved to stand in line at the register. At this time, inspector 1 was located approximately 10 to 12 feet from the register, with an unobstructed view of the impending transaction.

Agent 02 approached the register and placed the beer on the counter, gave \$20.00 cash to the Licensee's staff member and received \$7.75 in change. Agent 02 received a bag and a receipt and then put the beer into the bag and left the store. At no time throughout this transaction was Agent 02 requested to produce identification by any staff member of the Licensee, nor did the staff member question Agent 02 in regard to his age.

Inspectors 1, 2 and Agent 02 then proceeded to the nearby ferry terminal and compiled their notes, which notes are completely consistent with the narrative of events set out in the NOEA

SUBMISSIONS OF THE BRANCH

The Branch says that the contravention has been proven and that the proposed penalty is appropriate in the circumstances, in order to bring the Licensee into voluntary compliance with the Act. The Branch notes that the supplying of liquor to minors carries with it significant public safety issues. The staff person involved in this incident was qualified through the Serving It Right Program and had worked at the establishment since 2010. Policies were in place to identify young persons and prevent the sale of liquor to minors but, despite this, the staff member made no attempt to request identification from Agent 02, or question his age.

In this case, the monetary penalty of \$7,500 is considered appropriate in order to reinforce the seriousness of selling alcohol to minors. There is no prior history of proven contraventions of this type for this establishment. Accordingly, it is expected that the Licensee will emerge from this enforcement action with the purpose of enhancing the existing policies regarding thorough identification of minors and prohibiting sales to minors.

SUBMISSIONS OF THE LICENSEE

The Licensee, in its submission of February 12, 2012, indicates that it is fully contrite and accepts that the contravention was a serious matter requiring changes to its policies. In fact, the Licensee has implemented policy changes in order to attempt to prevent any repetition of the contravention. It is the full intention of the Licensee to be a good and responsible corporate entity. Notwithstanding these sentiments, the Licensee does ask for leniency in the penalty to be imposed. In this regard, the Licensee says that a \$7,500 fine would be very damaging to the business and, therefore, requests that a short suspension be substituted for the monetary penalty.

ANALYSIS AND DECISION

The Licensee has admitted to the contravention. Having considered all of the evidence, and the submissions filed in these proceedings, I find that on August 31, 2011, the Licensee contravened section 33(1)(a) of the Act and the terms and conditions of the licence by selling, giving or otherwise supplying liquor to a minor.

DUE DILIGENCE

The Licensee is entitled to a defence to the contravention, 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 the existence of procedures to identify and deal with problems, it must ensure that those procedures are consistently acted upon and problems are dealt with.

Here there is virtually no evidence upon which I can find that the Licensee was duly diligent. Although the Licensee had established some policies with regard to service of liquor to minors, those measures were clearly inadequate in failing to prevent a blatant contravention of section 33(1)(a) of the Act. I have concluded, therefore, that the Licensee, in this case, is not entitled to the benefit of the defence of due diligence.

PENALTY

Pursuant to section 20(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 Notice of Enforcement Action. 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 4 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's primary goal in bringing enforcement action and imposing penalties is to achieve voluntary compliance with the Act, the Regulation, and the terms and conditions of the licence. Among the factors that are considered in determining the appropriate penalty is: whether there is a past history of warnings by the Branch and/or the police, the seriousness of the contravention, the threat to public safety and the well-being of the community.

Item 2 of Schedule 4 of the Regulation, sets out penalties for first contraventions of section 33(1)(a) of the Act, a licence suspension of ten to fifteen days and/or a monetary penalty of between \$7,500 and \$10,000. The Branch has recommended a monetary penalty of \$7,500, which is the minimum monetary penalty for this particular contravention.

There can be no doubt but that a contravention of section 33(1)(a) of the Act is at the high end of the seriousness scale and, therefore, this contravention should be dealt with accordingly. The corruption of minors through provision to them of liquor can lead to a host of social ills. Reports of fatal automobile accidents involving minors, where liquor was a factor, have, unfortunately, become common place. Furthermore, given the fact that minors metabolize alcohol at a much faster rate than adults, normal inhibitions are loosened. This has resulted in minors becoming increasingly involved in serious crimes, such as assault, sexual assault, theft and property damage.

Taking into consideration all of the above, I am satisfied that a monetary penalty of \$7,500 is necessary in order to bring the Licensee in this case into compliance.

ORDER

Pursuant to section 20(2) 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 April 10, 2012.

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

George C.E. Fuller
Enforcement Hearing Adjudicator

Date: May 29, 2012

cc: Liquor Control and Licensing Branch, Victoria Regional Office
Attn: Gary Barker, Regional Manager

Liquor Control and Licensing Branch, Vancouver Regional Office
Attn: Peter Mior, Branch Advocate