



**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: Sanard Enterprises Ltd.
dba Hitchin Post Cold Beer, Wine & Spirits
2901 Pinnacles Road
Quesnel, BC V2J 7G9

Case: EH12-108

For the Licensee: Judy MacEwan

For the Branch: Peter Mior

Enforcement Hearing Adjudicator: Edward Owsianski

Date of Hearing: Written Submissions

Date of Decision: September 28, 2012

**Liquor Control and
Licensing Branch**

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

Location:
Fourth Floor, 3350 Douglas Street
Victoria BC
<http://www.pssg.gov.bc.ca/lclb/>

INTRODUCTION

The licensee, Sanard Enterprises Ltd, operates Hitchin Post Cold Beer, Wine and Spirits located in Quesnel, BC. The licensee holds Licensee Retail Store Licence No. 195113 for the operation of a licensee retail store with liquor sales from 9 a.m. to 11:00 pm seven days per week. The licence is, as are all liquor licenses issued in the province, subject to the terms and conditions contained in the publication "Guide for Liquor Licensees in British Columbia."

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The branch's allegation and proposed penalty is set out in the Notice of Enforcement Action (the "NOEA") dated May 23, 2012. The branch alleges that on May 5, 2012, the licensee contravened section 33(1)(a) of the *Liquor Control & Licensing Act (the Act)* by selling, giving or otherwise supplying liquor to a minor. The proposed penalty is a \$7,500 monetary penalty (item 2 of Schedule 4 of the *Liquor Control and Licensing Regulation (the Regulation)*).

Item 2 provides a range of penalties for a first contravention of a licence suspension for 10-15 days and/or a monetary penalty of \$7,500 - \$10,000.

The licensee does not dispute that the contravention took place, just the penalty proposed. It was agreed that this 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. 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 No. 1:** Branch's book of documents, tabs 1 - 13.
- Exhibit No. 2:** Branch's Prehearing Conference letter dated June 26, 2012.
- Exhibit No. 3:** Branch's Reporting out Letters dated July 16 and 24, 2012.
- Exhibit No. 4:** Licensee's written submissions dated September 7, 2012 with attachment.

EVIDENCE & SUBMISSIONS

The branch's evidence and submissions are summarized as follows:

In 2011 the branch undertook a "Minors as Agents Program" (MAP) to monitor compliance with the Act which prohibits the sale of liquor to minors by licensed establishments. The program involves the hiring of minors by the branch to test whether individual licensed establishments are willing to sell liquor to a minor. To ensure that all licensees are aware of the program and of their responsibilities under the Act, the branch issued a general press release followed by written notification to all

licensees that minors under the supervision of a liquor inspector would be visiting government and private liquor stores and attempting to purchase liquor. Care is taken by the branch to ensure that the underage minors appear to be their actual age and no attempt is made to deceive or mislead in order to make a purchase of liquor.

On May 5, 2012 at approximately 1:56 p.m. a 17 year old female employed as an agent by the branch entered the Hitchin Post Cold Beer, Wine and Spirits liquor store closely followed by a branch inspector. The agent proceeded to the area where the beer was stored and picked up a six pack of beer (liquor). She proceeded to the counter where she paid the clerk for the beer. She was not asked her age nor requested to produce identification. She left the store with the beer at 1:57 p.m., followed by the inspector. The agent and the inspector proceeded to their vehicle where the transaction was documented and individual notes made.

The inspector accompanied by another liquor inspector attended the liquor store later that night, advised the clerk that he had sold liquor to a minor and issued him a contravention notice. The store manager acting on behalf of the corporate licensee was later advised of the alleged contravention.

A NOEA was prepared with a recommendation for a \$7,500 monetary penalty. The inspector provided several reasons for her recommendation. The inspector was concerned that selling liquor to a minor is a serious public safety issue which can result in serious consequences. Here the minor agent was only 17 years of age and youthful in appearance. Despite this the liquor store employee did not request her identification. The branch has made its concerns known to licensees and advised them of the MAP program. This is a first contravention of this type, the minimum monetary penalty is appropriate to reinforce the seriousness of selling liquor to minors and provide opportunity to the licensee to enhance its policies and procedures to bring about voluntary compliance.

The licensee's evidence and submissions were made by the manager of the liquor store acting on behalf of the corporate licensee and are summarized as follows:

The contravention and its seriousness is admitted, adequate measures have been taken to ensure that it doesn't happen again. A ten day licence suspension rather than a monetary penalty is more reasonable in the circumstances here. The liquor store is located in a remote area outside of Quesnel and suffered a break and entry in December of last year leaving employees concerned about working evening shifts. The employee on duty at the time of the contravention was particularly concerned for his safety and was disgruntled about having to work evenings. When questioned about how the contravention had occurred he stated that he believed that the inspector, who had entered shortly after the minor agent, was the agent's mother. He quit his job at the liquor store shortly after the incident. The liquor store profit margin for 2011 was \$17,600; a monetary penalty of \$7500 represents almost one-half of that. Additionally the branch documents contain errors relating to the time of the contravention that differ from notes made by the manager and also contain mistakes related to the spelling of names and titles leading to confusion.

REASONS AND DECISION

The licensee has admitted the contravention. Having considered all of the evidence, I find that on May 5, 2012, the licensee contravened section 33(1)(a) of the *Liquor Control & Licensing Act (the Act)* by selling, giving or otherwise supplying liquor to a minor.

DUE DILIGENCE

The licensee is entitled to a defence to the allegations of the contraventions, if it can be shown that it was duly diligent in taking reasonable steps to prevent the contraventions 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 dealt with.

Here, there is little evidence upon which I can find that the licensee was duly diligent. There is no evidence of what training the employee received. There is no evidence of what policies and procedures were in place to guide staff in performing their duties. The employee on duty did not take any action to prevent the contravention from occurring.

In conclusion, I find that the licensee has not been duly diligent.

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 have 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 by the maximums and may impose higher penalties when it is in the public interest to do so, and I am not bound to order the penalty proposed in the Notice of Enforcement Action.

The branch's primary goal in bringing enforcement action and imposing penalties is achieving voluntary compliance. 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 the public safety and the well being of the community.

There is no record of prior proven contraventions, offences or enforcement actions of the same type for this licensee for this licence within the year preceding this incident. I therefore find this to be a first contravention for the purposes of Schedule 4 and calculating a penalty.

In the circumstances of this case, I am satisfied that the licensee has not successfully or sufficiently stressed upon its employee the need to fully and conscientiously carry out his duties and a penalty is necessary to ensure future compliance. Due to concerns that minors are being allowed to purchase liquor in licensed establishments, the Branch developed a program to detect if this is occurring and to educate licensees about the seriousness of the problem and their responsibility to prevent it. Despite those initiatives we have in this case an obviously youthful patron being able to purchase liquor without being asked to produce any proof of age. Giving consideration to all of the evidence and submissions, I find that a penalty is necessary to ensure future voluntary compliance.

Any penalty imposed must be sufficient to ensure compliance in the future. Schedule 4 of the Regulations provides a range of penalties for a first contravention of this type. The branch has proposed the minimum monetary penalty suspension for a first contravention of this type. The licensee has requested the minimum licence suspension penalty of ten days. Schedule 4, item 2 provides a range of penalties for a first contravention of a licence suspension for 10-15 days and/or a monetary penalty of \$7,500 - \$10,000 and I am bound by the minimum penalties. In the circumstances here, I find that the minimum monetary penalty of \$7,500 is necessary, appropriate and reasonable. The branch has consistently applied the minimum monetary penalty to similar cases and I am not persuaded that the circumstances here provide sufficient reason to depart from those precedents. While the minimum monetary penalty may have a significant effect on the profit margin for the liquor store that in itself is not sufficient reason to avoid imposing the monetary penalty when it is otherwise appropriate in the public interest.

I have considered the licensee's argument that the branch documents contained errors related to the time of the contravention. I note that in the "Narrative" portion of the NOEA the inspector has stated that the agent and inspector entered the liquor store at 5:26 p.m. and left at 5:27 p.m. This differs from the entry in the "Alleged Contravention(s)" portion of the NOEA which gives the date and time of the contravention as being May 5, 2012 at 1:57 p.m. The evidence provided in the inspector's and minor agent's notes (exhibit 1, tabs 2 and 3) gives the times as 1:56 p.m. in and 1:57 p.m. out. The cash receipt (exhibit 1, tab 4) for the minor agent's purchase of the beer shows it being completed at 1:57 p.m. I am satisfied that the times recorded in the narrative are thus incorrectly stated. While the errors are unfortunate, I do not find that when giving consideration to all of the evidence and information presented the errors may fairly be considered as being prejudicial or misleading to the licensee. The evidence as a whole supports the contravention as having occurred at 1:57 p.m. May 5, 2012. I further find that any errors in the names or titles to be inconsequential and without prejudice to the licensee.

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 November 5, 2012.

Original signed by

Edward W. Owsianski
Enforcement Hearing Adjudicator

Date: September 28, 2012

cc: Liquor Control and Licensing Branch, Surrey Office
Attention: Michael Clark, Regional Manager

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