



**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: Pontell Enterprises Ltd.  
dba Jesters Beer 'N' Wine  
3502 Skaha Lake Road  
Penticton, BC V2A 6G7

Case: EH12-117

For the Licensee: Malvindar Randhawa

For the Branch: Peter Mior

Enforcement Hearing Adjudicator: Dianne Flood

Place of Hearing: Written Submissions

Date of Decision: December 21, 2012

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**Liquor Control and  
Licensing Branch**

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## INTRODUCTION

The licensee, Pontell Enterprises Ltd., operates a licensee retail store under the name of Jesters Beer 'N' Wine store, at 3502 Skaha Lake Road, Penticton, BC under Licensee Retail Store Licence 195158. Under the licence, liquor sales are permitted from 9:00 a.m. to 11:00 p.m., seven days a week. 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").

Malvindar Randhawa made a written submission on behalf of the Licensee.

## ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Liquor Control and Licensing Branch's (the "Branch") allegations and proposed penalties are set out in the Notice of Enforcement Action (the "NOEA") dated June 14, 2012. The Branch alleges that on May 23, 2012, the Licensee contravened section 33(1)(a) of the *Liquor Control and Licensing Act* (the "Act"), sell, give or otherwise supply liquor to a minor. The proposed penalty is a monetary penalty of \$7500 (item 2, Schedule 4, of the *Liquor Control and Licensing Regulation*).

The Licensee does not dispute the contravention but does dispute the imposition of a penalty.

## RELEVANT STATUTORY PROVISIONS

The *Liquor Control and Licensing Act*, R.S.B.C. 1996, c. 267 provides:

### Supplying liquor to minors

**33** (1) A person must not

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

**Sections 65, 66 and 68 of the *Liquor Control and Licensing Regulation*:****Imposition of enforcement actions**

**65** (1) If, under section 20 of the Act, the general manager determines that a licensee has committed a contravention as a result of which one or more enforcement actions may be taken against the licensee, and if the licensee has not, in respect of that contravention, provided to the general manager a notice of waiver in accordance with section 64 (3) of this regulation, the general manager may, under section 20 of the Act, take the enforcement actions, if any, against the licensee that the general manager considers appropriate as a result of the contravention and, in so doing, may but need not take the enforcement actions specified under section 64 (2) (a) of this regulation.

**Suspensions**

**66** (1) If, in relation to a contravention, the enforcement actions specified under section 64 (2) (a) or referred to in section 65 (1) include a suspension, the period of the suspension must, subject to subsection (2) of this section, fall within the range established for the contravention under Schedule 4.

(2) If, in the circumstances of a contravention and the compliance history of the licensee, the general manager considers that a longer period of suspension is warranted than that established for the contravention under Schedule 4, the suspension period may extend as far beyond the range established under Schedule 4 as the general manager considers appropriate.

(3) If the general manager determines that a licensee has committed more than one contravention for which suspensions should be assessed, the period of the suspension determined in relation to those contraventions must be the sum of the suspension periods determined for each of the contraventions.

## **Monetary penalties**

**68** (1) The enforcement actions specified under section 64 (2) (a) or referred to in section 65 (1) that apply to a contravention that is a first contravention within the meaning of section 1 (1) (b) (i) of Schedule 4 include, but for any other contraventions do not include, a monetary penalty, and the amount of the monetary penalty that may be imposed in relation to a first contravention must, subject to subsection (2) of this section, fall within the range, if any, established for the contravention under Schedule 4.

(2) If, in the circumstances of a contravention and the compliance history of the licensee, the general manager considers that a monetary penalty in an amount that exceeds the amount established for the contravention under Schedule 4 is warranted, the monetary penalty may, subject to section 20 (2.3) of the Act, extend beyond the range established under Schedule 4.

## **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 1:** The Branch's Book of Documents

**Exhibit 2:** The Licensee's written submission, dated October 15, 2012

## **Evidence**

Under the Branch's "Minors as Agents Program", minors under the age of 19 have been hired to test compliance with the Act's prohibition on selling liquor to minors. The Branch says that on May 23, 2012, as part of a series of routine inspections, two liquor Inspectors attended at the premises at about 8:10 p.m., together with a minor hired as an agent ("the minor"). One inspector entered the premises, and proceeded to

browse the products. The minor entered the premises shortly after the inspector, proceeded directly to the cooler, removed a one litre bottle of a cooler product, and proceeded to the cash register. She was not asked for any identification; she purchased the liquor with cash and left the store. The inspector had a clear view of the entire transaction, and she then also left the store. Both the inspector and the minor made notes of the event. A Contravention Notice was issued and provided to the cashier that evening.

The Licensee admits to and does not dispute the facts as set out in the NOEA. The Licensee says that it hires employees through interviews and makes character and reference checks. It also requires that the employees have a "Serving It Right" certificate. The Licensee also says it provides training and a probationary period of "on the job guidance", but gave no details about either. The Licensee also says that the cashier who sold the liquor to the minor had good references, came from a prominent local family, had previous liquor store experience, and also possessed a Serving It Right certificate. When hired, she was given a manual to read and orally tested on it.

## **SUBMISSIONS**

### Branch submissions

The Branch says that at the time of the contravention the minor was 17 years old, youthful in appearance, she was able to enter the store and purchase liquor without being asked for identification or deliberately attempting to deceive the store worker or conceal her age. The Branch also says that selling, giving or otherwise supplying liquor to minors is a significant public safety issue.

The Branch says it made significant efforts to ensure that licensees were aware of the use of minors as agents, including press releases, letters, an article in the major trade publication and the Branch newsletter for licensees. The Branch also says that licensees, and liquor store workers, must be responsible and prevent the sale of liquor to minors.

### Licensee submissions

The Licensee does not dispute the sale of liquor to the minor but submits that it should not have to pay a penalty as the employee was acting contrary to the Licensee's directions. The Licensee says that it does not make sense for a licensee to promote staff to serve minor as the consequences of that are too serious. The Licensee says that the three most important rules are ID requirements, minors and over serving and that it should be a routine part of the job and easy for an employee to apply these rules as an everyday part of their job. As such, the Licensee says it ought not be required to pay a penalty and if there is to be a penalty, the employee who sold the liquor to the minor should be made responsible to pay all or part of it.

More specifically, the Licensee says that despite all efforts a Licensee can make to ensure staff is trained not to sell to a minor, an employee may still act on their own and so it is the employee the Branch should hold accountable. Otherwise, the Licensee says it has all of the responsibility and bears all of the consequences. While the Licensee may terminate the employee, the employee can simply get another job elsewhere, without any personal consequences. In this case, the Licensee says it did terminate the employee, who showed no personal responsibility for her actions. The Licensee compares its responsibility with that of the head of the RCMP for the actions of members, suggesting that the head of the RCMP is not held responsible for members' actions and that it is only the members who are held responsible for their actions.

The Licensee also suggests that by the Serving it Right program, government is licensing and certifying the persons licensees hire, and licensees rely on that program when hiring staff.

The Licensee says that if a penalty is to be imposed upon it, a one day suspension should be imposed instead as being less of a hardship on the business of the Licensee. It also says that a suspension would make employees more directly responsible as they will also suffer the effect of a loss of pay. The Licensee says making it pay a monetary penalty will be “invisible” to employees who are responsible for the sale.

Finally the Licensee says that unless the Act is amended to make the person who sells to minors personally responsible, the aim of public safety will not be achieved. The Licensee wants to partner with the Branch to achieve that goal.

## **REASONS AND DECISION**

The Licensee does not dispute that on May 23, 2012, a minor was allowed to buy liquor from the Licensee’s retail liquor store, and as such I find that the Licensee contravened the Act and the terms of its licence.

### **Due Diligence**

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

The Licensee did refer to its reliance on personal references and a Serving it Right Certificate when hiring and also to training and probationary “job guidance”. However, the Licensee provided no other details of its policies or procedures or of the training or orientation of employees, or of any continuing follow up with employees with respect to the requirements of the Act and the Regulations or the steps to prevent contraventions.

As such, without specific, detailed evidence of both the procedures and that the procedures are consistently acted upon and problems dealt with, I find the defence of due diligence is not available to the Licensee.

## **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 and that a defence of due diligence is not available, 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. The factors that are considered in determining the appropriate penalty 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 12 months of this incident. Therefore, I find this to be a first contravention for the purposes of Schedule 4 and calculating a penalty. Item 2 in Schedule 4 of the Regulation provides a range of penalties for a first contravention of this type: a 10-15 day licence suspension and/or a \$7,500 to \$10,000 penalty. If I impose a penalty, these are the minimums that I can impose.

The threat of serious consequences to youth and to the public in general, as a result of the sale of liquor to minors is significant. Those consequences include:

- 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,
- that because minors lack of capacity to metabolize alcohol in the same manner as an adult, 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 seriousness of these impacts is indicated by the Branch's special attention to this issue and the development and use of the Minors as Agents Program. Licensees have been given a series of notices about the Program to reinforce the need verify age in order to prevent the sale of liquor to minors. In this case, the minor was clearly underage, no identification was asked for to verify if she was of legal age, and liquor was sold to her. I find that a penalty is warranted for the sale of liquor to a minor.

In considering the Licensee's submission that it is the employee who sells the liquor to the minor, not the Licensee, who ought to be responsible for any penalty, I find that the legislation does not permit me to make such an order in an enforcement proceeding. While under the Act a person who sells liquor to a minor commits an offence and may be liable to a fine, the Regulation is clear that in an enforcement action it is the Licensee who is responsible for complying with the Act and Regulations as part of the terms and conditions of its licence and that it is the Licensee upon whom any enforcement penalty

is to be imposed. To impose an enforcement action penalty on an employee instead of the Licensee would require express legislative language which is not there. As such, under an enforcement action, I have no authority or discretion to impose a penalty on an employee instead of the Licensee. Under the Act and Regulations, I find the Licensee responsible for the penalty in this enforcement action.

Further, comparing the responsibility of other employers for the actions of their employees to the responsibilities of Licensees for their employees is not helpful. What is applicable is the Act and Regulations and as found above, in an enforcement action I have no authority under either to make an employee personally responsible for a contravention - that responsibility is, by law, the Licensee's and only the Licensee's.

I also find that the Licensee is not entitled to rely on the Serving It Right program as a certification by the government of an employee's reliability and ability to act responsibly. The Licensee has the responsibility to actively and effectively reinforce with its employees the requirements of the Act and Regulation and what the employees need to do to ensure compliance with the legislation and the terms and conditions of the licence.

In considering the penalty that ought to be imposed to achieve compliance by this Licensee and other licensees with their responsibility not to sell liquor to minors, I have considered the Licensee's submission about the lack of negative impacts of a monetary penalty on its staff, and the submission that a suspension is more appropriate to achieve voluntary compliance. However the Licensee makes this submission based on a suggested one day suspension. If I make an order for a suspension, I am bound by the minimum set by the Regulation – 10 days. I also note that the employee who sold the liquor was terminated, so that any impact of the penalty would be on other employees who did not make the sale. There are other ways to reinforce with staff their responsibilities to comply with the legislation and the terms and conditions of the licence. As such, I find that the appropriate penalty in this case is a monetary penalty of \$7500.

**ORDER**

Pursuant to section 20(2) of the Act, I order that the Licensee pay a monetary penalty in the sum of \$7500 to the general manager of the Liquor Control and Licensing Branch on or before January 30, 2013.

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*

Dianne Flood  
Enforcement Hearing Adjudicator

Date: December 21, 2012

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

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