



**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: LEIA Holdings Ltd.  
dba Kingswood Pub Beer, Wine & Liquor Store  
10-9371 No. 5 Road  
Richmond, BC V7A 4E1

Case: EH12-200

For the Licensee: Randy Craig

For the Branch: Peter Mior

Enforcement Hearing Adjudicator: Edward Owsianski

Date of Hearing: April 11, 2013

Place of Hearing: Vancouver, BC

Date of Decision: April 30, 2013

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**Liquor Control and  
Licensing Branch**

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## INTRODUCTION

The licensee, LEIA Holdings Ltd, operates Kingswood Pub Beer, Wine & Liquor Store located in Richmond, BC. The licensee holds Licensee Retail Store License No. 195156 for the operation of a licensee retail store, i.e. a private liquor store, with liquor sales from 9:00 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." Randy Craig is the majority shareholder of the corporate licensee (the licensee).

## ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The branch's allegation and proposed penalty is set out in the Notice of Enforcement Action (the "NOEA") dated September 12, 2012. The branch alleges that on August 30, 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 ten to fifteen days and/or a monetary penalty of \$7,500 - \$10,000.

The licensee does not dispute the contravention but has concerns about the recommended penalty.

## 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:** Copy of minor's (agent #14 contracted by the branch) photograph and identification. [Note: these items were ordered to be placed in a sealed envelope, to be opened only upon an order of the Supreme Court of British Columbia or the undersigned hearing delegate.]

**Exhibit No. 3:** Typewritten Doctor's Note.

## **EVIDENCE – THE BRANCH**

**Liquor Inspectors A and B** testified that on August 30, 2012 they were part of an inspection team under the Minors as Agents Program (MAP) monitoring compliance of the Act prohibiting 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. The minors involved in the program are all youthful in appearance and do not appear older than their actual age. All were provided with training by the branch in making observations and writing notes and reports. To ensure that all licensees were 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.

**Inspector A** and the 18 year old female minor agent (identification and photographs at exhibit 2) entered the Kingswood Pub Liquor Store at approximately 5:30 p.m. There was one male cashier on duty. The minor agent was observed to proceed to the coolers area, pick up a six pack of alcohol based coolers (liquor) and proceed to the cashier. The cashier scanned the coolers and placed them into a bag. The cashier then asked the minor agent for two pieces of identification. The minor agent told him that she had left it in her vehicle. He asked her how old she was. She replied that she was 18 years old. The cashier hesitated then completed the sale. The inspector and the minor agent left the store with the liquor and proceeded to the inspector's vehicle where the transaction was documented. The inspector made her notes (exhibit 1, tab 3) and the minor agent completed her notes and the Minor Agent Observation Form (exhibit 1, tab 4).

**Inspector B** and another liquor inspector (did not appear as a witness) entered the liquor store and spoke with the cashier at approximately 5:45 p.m. Inspector B told the cashier that he had sold liquor to a minor agent and that the minor agent had told the cashier that she was only 18 years old. The cashier was visibly upset. He said, "I knew this day would come". The inspector asked the cashier whether he had a "Serving It Right" (SIR) certificate. The cashier said that he did not. The inspector issued a Contravention Notice (CN) (exhibit 1, tab 6) to the cashier. The inspector testified that the SIR program is a mandatory self study program for persons engaged in the sale of liquor. It provides techniques for the safe responsible sale of liquor and deals with liquor related issues including the prohibition of the sale to minors.

Liquor Inspector B in his testimony referred to copies of documents from the Branch file:

- Exhibit 1, 6; the Contravention Notice issued to the licensee.
- Exhibit 1, tab 7; the liquor primary licence in effect at the time of the alleged contravention.

- Exhibit 1, tab 9; a copy of the “Guide” in effect at the time of the alleged contravention. He referred to excerpts from the Guide dealing with: “Your role as a licensee”, “Minors” and “ID Requirements”.
- Exhibit 1, tab 10; Inspection Interview Sheet signed by the licensee. It dealt with the requirements regarding minors and identification.
- Exhibit 1, tab 12; Compliance meeting held with the licensee arising as a result of a complaint received by the branch. The licensee committed to requiring that all staff hold SIR certificates.

A NOEA was prepared with a recommendation for a \$7,500 monetary penalty to reinforce the branch’s mandate and the seriousness of selling liquor to a minor. Selling liquor to a minor is considered a serious public safety issue because of the effect of alcohol consumption on minors and the serious consequences arising.

The inspector testified that he maintains a good relationship with the licensee. During the eight to nine years that he has been the liquor inspector for the area there has been only one previous incident wherein an employee had failed to check identification of a young appearing person. The matter did not proceed to enforcement.

## **EVIDENCE – THE LICENSEE**

**The licensee, witness C**, testified that he has been in the hospitality industry for approximately 36 years and has held a liquor licence for almost 30 years. He was involved in setting up the original SIR program and has been a director of the provincial licensee association. He does not dispute the contravention. The employee making the sale of liquor to the minor agent had been hired at the request of the employee’s father, a regular patron at the establishment for many years. The liquor store was short staffed and the employee needed a job. It was unknown to the licensee that the employee was suffering from health issues at the time. This was the cause of the incident and only came to light afterwards. The employee’s advocate said that the employee could easily

have made a mistake. The licensee placed into evidence a note from the employee's doctor (Exhibit 3).

The licensee testified that he became aware of the contravention when he happened to attend at the liquor store at approximately 8:30 p.m. the night of August 30<sup>th</sup>. The employee was acting strangely. The licensee noticed the CN stuck under the key pad where the employee had hidden it. When asked about it, the employee was shaking like a leaf and stammering. He told the licensee that he has had health issues. He offered to work off the recommended fine. He said that he had wanted to get his SIR certificate but could not afford to do so.

The licensee testified that the employee continues to work at the liquor store. He has obtained his SIR certificate. He no longer works evening shifts and is performing well.

**Witness D** testified that he is the manager of the liquor store and a minority shareholder in the corporate licensee. When the employee was hired he was told to get his SIR certificate. He told the employee that it was easy to get and cost only \$25 so go ahead and do it. He testified that he normally checks an employee's SIR their first day on the job. In this case however he was out of town dealing with family matters. He forgot about it when he later returned to work. He accepts full responsibility and will make certain that it does not occur again. He was not aware of the employee's condition. The employee asked the minor patron for identification, was told her age but still made the sale, an unusual action and an indication that all was not well with the employee.

He wanted to fire the employee as a result of the incident but the licensee said to give him another chance. The employee obtained the SIR certificate immediately following the incident. He has been moved to day shift, has been doing a good job and checks everyone's identification.

Witness D testified that the liquor store has signage from the branch outlining the types of identification required. Staff are told to check for minors. They are given hands-on

training either by himself or a senior employee. They are told to ask young appearing persons for their identification prior to making a sale. The subject employee had worked at the liquor store for approximately two months prior to the incident; he was 21 years old at the time. He had received some training but it was not completed as a result of he, the manager, having to leave to attend to family matters.

He testified that the recommended \$7,500 monetary penalty will have an adverse effect on the business. They are going through tough economic times due to the slow economy and trying to recover from a fire suffered some years ago.

### **SUBMISSIONS – THE BRANCH**

The branch advocate's submission is summarized as follows:

Section 33(1)(a) of the Act prohibits the sale of liquor to a minor. The branch developed a "Minors as Agents Program" and advised all licensees that it would be used to test their compliance with the Act. On August 30, 2012, an 18 year old minor agent of the branch entered and purchased liquor from Kingswood Pub Liquor Store. The minor agent was youthful in appearance and there was no attempt to deceive the licensee as to the minor's age. The employee rang in the sale then asked the minor agent for her identification and her age. She told him that she was 18 years old.

The employee did not hold a SIR certificate and had not received proper training. The licensee did not produce written policies and procedures for the hearing. The licensee's system to monitor staff performance was not effective. The cashier was not distracted in his duties. He made the sale of liquor knowing that the purchaser was only 18 years old.

Selling liquor to a minor is a serious public safety issue. Minors cannot metabolize alcohol in the same way as an adult. Minors consuming liquor can result in serious consequences. In the circumstances, the minimum monetary penalty of \$7,500 is warranted.

## **SUBMISSIONS – THE LICENSEE**

The licensee's submission is summarized as follows:

The licensee has established a good record with the local liquor inspector. Mistakes were made. Human errors are unavoidable. The business has been under financial stress resulting from a fire. The past five years have been difficult ones for the licensee. The licensee has had personal problems and is currently working without pay. The proposed penalty will compound the problems. The branch could have proceeded with a contravention for allowing an employee without a SIR certificate to sell liquor. That would carry only a \$1,000 penalty. The branch could have proceeded by issuing a ticket to the employee for selling liquor to a minor. That would result in a fine of only \$575. Instead, the branch has proceeded with this contravention against the licensee for allowing the sale of liquor to a minor with a monetary penalty of \$7,500. The licensee argued that this was not fair in the circumstances here.

## **REASONS AND DECISION**

I have considered all of the evidence and the submissions of the branch advocate and counsel for the licensee.

I find on a balance of probabilities that the evidence in this case is that an 18 year old minor entered and purchased liquor (alcohol based coolers) at the Kingswood Pub Liquor Store on August 30, 2012. That on its face is a contravention of Section 33(1)(a) of the *Liquor Control and Licensing Act*.

### **Due Diligence**

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

The leading case is: *R v. Sault Ste. Marie* (1979) 2 SCR 1299, where at page 1331, Dickson, J. sets out the test of due diligence:

One comment on the defence of reasonable care in this context should be added. Since the issue is whether the defendant is guilty of an offence, the doctrine of respondent superior has no application. The due diligence which must be established is that of the accused alone. Where an employer is charged in respect of an act committed by an employee acting in the course of employment, the question will be whether the act took place without the accused's direction or approval, thus negating wilful involvement of the accused, and whether the accused exercised all reasonable care by establishing a proper system to prevent commission of the offence and by taking reasonable steps to ensure the effective operation of the system. The availability of the defence to a corporation will depend on whether such due diligence was taken by those who are the directing mind and will of the corporation, whose acts are therefore in law the acts of the corporation itself.

The BC Supreme Court, in *Beverly Corners Liquor Store Ltd. v. British Columbia (Liquor Control and Licensing Branch)*, 2012 BCSC 1851, recently considered and clarified the application of the defence of due diligence in the context of the sale of liquor to a minor contrary to the *Liquor Control and Licensing Act* (see paragraphs 41 to 44).

In these circumstances, the defence of due diligence is to be considered in two stages:

1. Whether the employee who made the sale was a directing mind of the licensee – if so, the defence of due diligence is not available and the inquiry stops there.

2. If the employee who made the sale was not a directing mind of the licensee (and there is no requirement that a "directing mind" must be on the premises when the sale is made), then the questions to be considered and answered are whether licensee had
  - a. implemented adequate training and other systems to prevent the contravention (the sale of liquor to minors), and
  - b. taken reasonable steps to ensure the effective application of that education and the operation of those systems.

Both of these issues are factual, and will depend on the evidence presented. The onus is on a licensee to establish on a balance of probabilities that it had exercised all reasonable care by establishing adequate training and other systems and ensuring effective application of them.

At the time in question in this case there was one employee on duty, the cashier who completed the sale. He was not the directing mind of the corporate licensee. It is necessary thus to determine whether the licensee had exercised reasonable care by establishing adequate training and other systems and ensuring their effective application. We know little of the licensee's training program other than it primarily relied on a new employee working for a period of time with either the manager (witness D) or another senior staff member. No training materials or policy and procedures manuals to guide employees were placed into evidence. We have evidence that the usual training procedure did not occur here. While the subject cashier may have spent some time with the manager upon commencing employment he did not complete the training process due to the manager's absence for family reasons. Further the subject cashier did not complete the SIR training as required. The manager failed to follow up on the training procedure with the employee or on ensuring that the employee obtained a SIR certificate until it was brought to light following the incident giving rise to the contravention.

The licensee has argued that the employee's actions occurred as a result of a health issue. Other than the licensee's assertion on this point the only evidence of this is the doctor's note at exhibit 3. The doctor states that the employee "is juggling two jobs, he has different stressors and this in juxtaposition to night time busyness may have lead to an honest error." I note that the evidence does not support the "busyness" description. At the time of the sale to the minor agent, only she and liquor inspector A were in the liquor store. A previous patron had completed the purchase of liquor and had departed.

Giving consideration to all of the evidence, I find on a balance of probabilities, that the primary cause of the employee's actions was the lack of proper training. He found himself in the position of having scanned in the purchase and bagged the product. He then asked the minor agent's age and was told that she was eighteen, i.e. underage for the lawful purchase/sale of liquor. He hesitated, and then completed the sale by taking her money and giving her the change. Proper training should have precluded this action by the employee.

As a consequence I find that the corporate licensee is not entitled to the benefit of the defence of due diligence.

In conclusion, I find on a balance of probabilities that on August 30, 2012, the corporate licensee contravened section 33(1)(a) of the *Liquor Control & Licensing Act (the Act)* by selling, giving or otherwise supplying liquor to a minor.

## **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.

Here, the branch with a concern that minors are being permitted to purchase liquor in licensed establishments has developed a program aimed at determining whether this is occurring and has taken measures to advise licensees of the seriousness of the problem and to educate them on their responsibilities. Despite those initiatives we have in this case an obviously underage patron being able to purchase liquor. Permitting minors access to liquor can and has resulted in very serious consequences. All reasonable measures to ensure both general and specific deterrence within society at large should be undertaken. Giving consideration to all of the evidence and submissions

and the seriousness of the contravention, 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 argued that the recommended penalty is unfair in the circumstances and may cause financial difficulties to the corporate licensee. 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 finances of the corporate licensee, that in itself is not sufficient reason to avoid imposing the monetary penalty when it is otherwise appropriate in the public interest. In the circumstances here I find that the minimum monetary penalty of \$7,500 is necessary, appropriate and reasonable.

## **ORDER**

Pursuant to Section 20(2) of the *Act*, I order that the Licensee pay a monetary penalty in the sum of \$7,500 (Seven Thousand Five Hundred Dollars) to the general manager of the Liquor Control and Licensing Branch on or before June 3, 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*

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Edward W. Owsianski  
Enforcement Hearing Adjudicator

Date: April 30, 2013

cc: Liquor Control and Licensing Branch, Vancouver Office  
Attention: Donna Lister, Regional Manager

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