



**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: Yagger's Kitsilano Bistro Ltd.
dba Yagger's Kits Restaurant & Sports Bar
2884 West Broadway
Vancouver, BC V6K 2G7

Case: EH12-205

For the Licensee: Trevor Poirier

For the Branch: Olubode Fagbamiye

Enforcement Hearing Adjudicator: George C.E. Fuller

Date of Hearing: Written Submissions

Date of Decision: April 11, 2013

INTRODUCTION

The Corporate Licensee, Yagger's Kitsilano Bistro Ltd. (the "Licensee") owns and operates an establishment known as Yagger's Kits Restaurant & Sports Bar, at 2884 West Broadway, Vancouver, BC. The Licensee holds Food Primary Licence 021497 (the "Licence"). The authorized representative of the Licensee is Trevor Poirier.

According to the terms of its licence, the Licensee may sell liquor from noon to 2 a.m., Monday through Saturday, and 11:00 am to midnight on Sunday. 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" (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 September 20, 2012.

The Branch alleges that on September 8, 2012, 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 enforcement action outlined in the NOEA is a \$7,500 monetary penalty (item 2, schedule 4 of the *Liquor Control and Licensing Regulation*) (the "Regulation"). The range of penalties for a first contravention of this type is a 10 to 15 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 the Licensee agreed that the hearing would take place by way of written submissions.

RELEVANT STATUTORY PROVISIONS

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

The following documents were submitted and were considered:

Exhibit 1: The Branch's book of documents, Tabs 1 to 16 inclusive.

Exhibit 2: Letter dated February 15, 2013 to the Branch from Trevor Poirier, 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).

The Branch has hired 17 and 18 year old minors, who appear young, as agents to carry out these compliance inspections. No attempt was made to hide the minor's age or otherwise deceive the Licensee. The MAP is intended to test and ensure that liquor is not being sold to minors.

On September 8, 2012, MAP inspections were conducted to assess compliance of several licensed establishments in Vancouver. Regional inspector A and liquor inspector B were the lead Branch personnel accompanying the minor agent on this date (the "Inspection Team"). At the start of the shift, minor agent #33 was photographed and identification was viewed confirming that agent #33 was 17 years of age.

On the evening in question, the Inspection Team attended at the Licensee's establishment for the sole purpose of assessing the establishment for compliance regarding the identifying and requesting identification from a young person under the age of 19 years who has ordered liquor. At approximately 9:11 pm regional inspector A followed the minor agent to the front doors of Yagger's. The minor agent entered the establishment and walked to an empty table in the lounge area of the restaurant. The minor agent was alone. Regional inspector A entered the patio area which was directly behind the minor agent. This position provided inspector A with a clear and un-obstructed view of minor agent #33 throughout the inspection. The male bartender stated to minor agent #33, "hello there". After a few moments the minor agent raised his arm to get the attention of the bartender.

The bartender came to the minor agent's table and minor agent #33 stated, "can I have a Molson Canadian while I wait for my buddy?" The bartender, in return, stated, "Two, one for your buddy?" Minor agent #33 replied, "oh, no thanks, just one for myself right now." The bartender then retrieved a bottle of Molson Canadian beer from behind the bar and placed it in front of minor agent #33.

At no time during this encounter was identification requested by the bartender, in order to verify the age of minor agent #33.

Regional inspector A then advised minor agent #33 to leave the restaurant and inspector B was signalled to come into the restaurant. Regional inspector A and inspector B identified themselves to the bartender who stated his name and that he was working as the bartender/manager on this date. He was then advised by Regional inspector A of the contravention regarding the provision of liquor to a minor.

As a result of evidence secured regarding the contravention of Section 33(1)(a) of the Act, Contravention Notice B016455 was completed and a copy given to the bartender. Regional inspector A and inspector B exited the establishment at 9:30 pm.

SUBMISSIONS OF THE BRANCH

The Branch says that the contravention has been proven and that the recommended penalty is appropriate and necessary in order to ensure voluntary compliance, by this Licensee, with respect to Section 33(1)(a) of the Act, in the future.

SUBMISSIONS OF THE LICENSEE

The Licensee states that this contravention should never have happened. The Licensee's establishment is very diligent about making sure that no minors are ever served. The offending bartender/manager has been in the industry for over 20 years and has, allegedly, never made this mistake before. The bartender/manager is embarrassed that he committed the contravention, because he always checks ID and always makes sure the servers do as well.

The Licensee says that he would have terminated the offending bartender/manager, but was advised such an initiative would not have any effect on the outcome flowing from the contravention.

The Licensee advises that the establishment is a relatively new business that opened in November of 2011 and is now mired in debt and maxed out credit lines, and, therefore, a \$7,500 fine would put the establishment out of business. The Licensee pleads that if there is no way to eliminate the monetary penalty, that the fine be put on a payment plan so the business can survive and can continue to employ 15 people.

In summary, the Licensee invites consideration of its outstanding clear record, the owner's clean record, the knowledge that this will never happen again, and the financial state of the business and pleads for mercy in the selection of an appropriate 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 September 8, 2012 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 the problems, it must ensure that those procedures are consistently acted upon and problems are dealt with accordingly.

Here, there is no evidence before me upon which I can find that the Licensee was duly diligent. The only wisp of evidence in this regard is the bald statement by the Licensee that the bartender/manager had a history of always IDing questionable patrons and that he had encouraged his staff to do the same. In my view, this falls far short of demonstrating that the Licensee in this case took the service of liquor to minors seriously. 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 Regulation or the terms and conditions of the licence, I have discretion to order one or more of the following enforcement actions:

- Take no enforcement action;
- 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 and/or monetary penalty is warranted, I am bound by 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. 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 to achieve voluntary compliance with the Act, the Regulation, and the terms and condition 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 10 to 15 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 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.

In the instant case, the Licensee's main submission is that the imposition of a monetary penalty, in the sum of \$7,500, will create a significant financial hardship which could lead to the bankruptcy of the business. The Licensee failed, however, to place before me any cogent evidence, in the form of financial statements, for example, which could potentially allow me to draw that conclusion. In any event, I am of the view that the relative seriousness of providing liquor to minors, as outlined above, far outweighs financial considerations as a factor in the determination of an appropriate penalty in this case.

Taking into consideration all of the above, I am satisfied that a monetary penalty of \$7,500.00 is necessary in order to bring the Licensee, in this case, into voluntary 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 May 15, 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

George C.E. Fuller
Enforcement Hearing Adjudicator

Date: April 11, 2013

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

Liquor Control and Licensing Branch, Victoria Regional Office
Attn: Olubode Fagbamiye, Branch Advocate