



**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:	Omas Holdings Ltd. dba Locus Cafe 4121 Main Street Vancouver, BC V5V 3P6
Case:	EH12-253
For the Licensee:	Frederic Miller
For the Branch:	Peter Mior
General Manager's Delegate:	George C.E. Fuller
Date of Hearing:	Written Submissions
Date of Decision:	May 27, 2013

INTRODUCTION

The Corporate Licensee, Omas Holdings Ltd. (the "Licensee") owns and operates an establishment known as Locus Cafe, at 4121 Main Street, Vancouver, BC. The Licensee holds Food Primary Licence Number 181301 (the "Licence"). The authorized representative of the Licensee is Frederic Miller.

According to the terms of its licence, the Licensee may sell liquor from noon to 2 a.m., seven days a 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" (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 13, 2012.

The Branch alleges that on November 3, 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. This proposed monetary penalty falls within the penalty range set out in 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

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,

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 No. 1: The Branch's book of documents, Tabs 1 to 13 inclusive.

Exhibit No.2: Letter dated April 9, 2013 to the Branch from Frederic Miller, 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 nineteen (Minors).

The Branch has hired seventeen and eighteen 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 November 3, 2012, MAP inspections were conducted to assess compliance of several licensed establishments in the Vancouver area. Regional Inspector 1 and Regional Inspector 2 were the lead personnel accompanying the minor agent on this date (the "Inspection Team"). At the start of the shift, female minor agent #34 (Agent 34) was photographed and identification was viewed confirming that agent to be seventeen years of age.

On November 3, 2012, Regional Inspectors 1 and 2 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 nineteen years.

At approximately 8:28 p.m. Agent 34 spoke to a waitress at the entrance of the establishment and stated that she would sit at a bar stool to wait for some friends. The waitress agreed and Agent 34 walked to an empty bar stool and sat down. The lone bartender approached Agent 34 and provided a liquor menu and a food menu. The bartender then explained the specials for that evening.

Agent 34 asked the bartender for a "Smirnoff Ice", but the bartender stated that the establishment did not sell that particular product. Eventually Agent 34 ordered a "Corona beer" and responded positively that she would prefer a glass. At 8:33 p.m., the bartender brought Agent 34 the Corona beer and placed it in front of her. At no time during this transaction was Agent 34 asked for any identification to verify her age by the bartender.

The Inspection Team departed the premises. Regional Inspector 1 and 2 then met with the server/bartender and advised him of the contravention. The manager of the Licensee's establishment then joined the meeting and was also advised of the contravention. Regional Inspectors 1 and 2 exited the establishment at 9:00 p.m.

As a result of evidence secured regarding the contravention of Section 33(1)(a) of the Act, Contravention Notice B008803 was completed and provided to the manager.

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 future voluntary compliance by this Licensee, with respect to Section 33(1)(a) of the Act.

SUBMISSIONS OF THE LICENSEE

The Licensee says that the Locus Café has been in operation since 1998 and during that time there have never been any incidents involving the Branch. The Licensee says that the reason for this blemish free record is the fact that both the Licensee and its management team take the responsibilities with regard to serving liquor to minors very seriously by: ensuring that all serving staff have their Serving It Right certificates, and placing reminders in prominent places such as in the staff room. Furthermore, the Licensee submitted that this issue is always on the agenda at staff meetings and the

Licensee ensures that managers constantly provide verbal reminders to their staff during shifts. Since the contravention, the Licensee has reinforced the seriousness of this issue to his staff, including the intended dismissal of the offending server/bartender.

The Licensee submits that he has done everything in his power to keep his staff informed with regard to the seriousness of serving liquor to minors and related offences. The Licensee questions how far he must go before contraventions become the responsibility of the staff and not the Licensee. Finally, the Licensee, in recognizing the seriousness of the offence, asks that the fine of \$7,500 be replaced with a more reasonable penalty, or perhaps a specific agreed date to suspend the operations of the establishment.

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 November 3, 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 very little evidence upon which I can find that the Licensee was duly diligent. The only hint of such evidence is the bald assertion of the Licensee that it took the matter of serving liquor to minors seriously and, in turn, had impressed that degree of seriousness upon staff of the establishment. Taking those efforts in their totality, however, I am not satisfied that the Licensee in this case had taken reasonable steps to prevent the contravention from occurring. Accordingly, I have concluded therefore that the Licensee 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.

What is particularly disturbing with regard to this contravention is the fact that the Licensee, in its submission of April 9, 2013, asked to be informed of the point at which responsibility for a contravention transferred from the Licensee to its staff. The answer, of course, is that under the British Columbia legislative scheme the Licensee always remains responsible and it is up to the Licensee to ensure that staff are properly trained in order to prevent contraventions from occurring. The mere fact that the Licensee, in the instant case, even posed such a question demonstrates that this Licensee wholly misunderstood its obligations and responsibilities under the Act and the Regulation.

Accordingly, taking into consideration all of the above, I am satisfied that a monetary penalty of \$7,500 is appropriate and necessary in order to bring this Licensee 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 June 28, 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: May 27, 2013

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

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