



**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:	G.S.W. Enterprises Ltd. dba Pemberton Hotel 7423 Frontier Street Pemberton, BC V0N 2L0
Case:	EH13-006
For the Licensee:	Sohan Gill
For the Branch:	Cristal Scheer
General Manager's Delegate:	Daniel M. Graham
Date of Hearing:	Written Submissions
Date of Decision:	June 28, 2013

**Liquor Control and
Licensing Branch**

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INTRODUCTION

G.S.W. Enterprises Ltd., (the "Licensee") operates the Pemberton Hotel (the "Hotel") under Liquor Primary Licence Number 028760 (the "Licence"). The Hotel is located at 7423 Frontier Street in Pemberton, B.C.

The Licence specifies hours of liquor service Monday through Thursday from 11:00 am to 1:00 am, Friday and Saturday from noon to 2:00 am, and Sunday from 11:00 am to midnight. 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").

The Licensee's owner/manager, Mr. Sohan Gill, represented the Licensee for purposes of this hearing.

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 January 17, 2013. The Branch alleges that on December 15, 2012, the Licensee contravened s. 33(1)(c) of the *Liquor Control and Licensing Act* (the "Act") by permitting a minor to consume liquor at the Hotel.

The proposed sanction 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, but proposes that the enforcement action should be a suspension of the Licence rather than a monetary penalty.

For the purposes of this hearing, and in accordance with s. 3 of the Regulation, the general manager has delegated to me the powers, duties and functions provided to the general manager by s. 20 of the Act and ss. 65-69 of the Regulation.

RELEVANT STATUTORY PROVISIONS

Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267

33 (1) A person must not

...

(c) in or at a place under his or her control, permit a minor to consume liquor.

Liquor Control and Licensing Regulation, B.C. Reg. 244/2002

Schedule 4

Enforcement Actions

Minors

Item	Contravention	Period of Suspension (Days)			Monetary Penalty
		First Contravention	Second Contravention	Subsequent Contraventions	
2	A breach of section 33 of the Act (<i>Selling liquor to minors</i>)	10-15	20-30	30-60	\$7,500- \$10,000

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: The Branch's Book of Documents, Tabs 1 to 13 inclusive.

Exhibit No. 2: The Licensee's written submission dated April 18, 2013.

EVIDENCE – THE BRANCH

The evidence set out in the NOEA is that on Saturday, December 15, 2012 at just after 1:00 am the local RCMP detachment received a call from someone within the Hotel saying that there were minors in the establishment. An RCMP officer ("the Officer") attended the Hotel almost immediately as she was just around the corner from the Hotel.

Upon entering the Hotel the Officer spoke to the doorman who stated that he had just been hired that day. The Officer observed that there were approximately 30 patrons in the bar. The table closest to the bar consisted of the largest group of people, who ranged in age from "young looking" to "a couple in their 50's". In response to a question from the Officer, the doorman stated that the group was celebrating a birthday.

The Officer approached the table and observed that a male ("Male A") had a Pilsner beer bottle in his hand, that the corners of the label were frayed as if he had been peeling at it, and that there was liquid in the bottle. When the Officer requested that Male A produce identification, he stated that he'd left his wallet at home and that he didn't need identification because the "bouncer" knew him and had let him in. He did not name the "bouncer".

In response to questions from the officer, Male A eventually provided his name and stated that his birthdate was January 28, 1993. A check of the police records system identified a male with a local address and having the name provided by Male A, but with a birthdate indicating that Male A was 18 years of age.

The Officer asked Male A to accompany her out of the Hotel. He drank the remainder of the beer from the bottle he held in his hand and slowly stood and walked out of the Hotel with her. Eventually Male A produced to the Officer a wallet with a university student identification card, and an expired paper copy BC driver's license in his name. The driver's license indicated that Male A's date of birth was the same as the birthdate provided by the police records system. The Officer issued Male A with a violation ticket for Minor in Liquor Establishment contrary to s. 34(2) of the Act, carrying a fine of \$230.00.

At 1:45 am the Officer spoke with the doorman outside the bar. The doorman indicated that he did not know Male A and asked what Male A's name was. Upon hearing Male A's name, the doorman said that Male A had produced identification but he didn't think that was the name that was on the identification.

At 2:03 am the Officer met with the Hotel bartender and served her with a Police Licensed Premises Check (B157153) for Minor in Premises contrary to s. 35 of the Act. On January 7, 2013, a Branch inspector attended the Hotel and issued Contravention Notice B0066249 – for Permitting a Minor to Consume Liquor.

EVIDENCE – THE LICENSEE

The Licensee does not dispute that the contravention occurred and has provided no evidence in its defence, other than its written submission regarding its penalty proposal.

SUBMISSIONS – THE BRANCH

The Branch submits that a monetary penalty of \$7,500 is the appropriate sanction to hopefully achieve voluntary compliance in the future. According to the Branch, there is some question as to whether the Hotel will actually remain open; therefore a Licence suspension would not be appropriate.

SUBMISSIONS – THE LICENSEE

In its submission the Licensee confirmed that it does not dispute that the contravention occurred. The Licensee does, however, request that the penalty be a Licence suspension rather than a monetary penalty.

The Licensee says that contrary to the Branch's speculation that the Hotel may not remain open, the Licensee has no intention of closing the Hotel. The Licensee's rationale for its penalty proposal is that a monetary penalty only affects the management of the Hotel, whereas a suspension will directly impact the Hotel staff and will show them that there will be negative consequences for them if they allow a contravention to occur. The Licensee argues that "The action, or inaction of our staff members was instrumental in creating this issue, and we would like them to see that along with the Pub facing the hardship of punishment, so must they. If the Pub has to remain closed as a penalty and they are without their shifts for the duration of the closure they will share in the hardship of the Pub. Perhaps if they understand the full impact of their actions they will be more diligent in the course of their duties."

REASONS AND DECISION

Contravention

The Licensee has admitted to the contravention. Having considered all of the evidence and the submissions filed in these proceedings, I find that on December 15, 2012, the Licensee contravened section 33(1)(c) of the Act by allowing a minor to consume liquor at the Hotel.

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.

In this case, the Licensee has admitted the contravention occurred and has provided no evidence to demonstrate due diligence. The Licensee has, indeed, submitted that the actions of its staff fell short in terms of diligence. Considering the evidence before me, I conclude that it does not support a defence of due diligence.

PENALTY

Pursuant to section 20(2) of the Act, having found that the Licensee has contravened the Act, the Regulation and/or the terms and conditions of the Licence, 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 NOEA. 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 achieving voluntary compliance with the Act, the Regulation, and with the terms and condition of the Licence. The factors that I am to consider 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 provides a range of penalties for a first contravention of this type: a 10-15 day Licence suspension and/or a monetary penalty of \$7,500 to \$10,000.

The Branch has recommended a penalty of \$7,500, which is the minimum monetary penalty applicable in the circumstances. The Licensee has recommended an unspecified period of suspension, rationalizing that the loss of paid shifts will encourage its staff to be more diligent with respect to compliance.

It is clear that allowing consumption of liquor by minors contrary to the Act is a serious contravention giving rise to significant public safety concerns. Early learned behaviour with respect to abuse of alcohol, and less effective metabolism of alcohol by minors cause liquor to be a factor in many crimes committed by youth, including assault and driving offences.

I note that while this is the Licensee's first contravention with respect to section 33(1)(c) of the Act, the Licensee does have a fairly significant compliance history dating from 2003 to the present. In February 2011 the Licensee was issued a 4 day suspension of its Licence for a contravention of section 35 of the Act for permitting a minor to enter or be on the premises. The fact that the current contravention, also involving a minor, occurred little more than a year later indicates that the Licensee has not taken the appropriate steps to ensure that its staff are properly identifying minors.

The Licensee has suggested that a suspension will cause its staff to share the "punishment" for the contravention, and will give them an incentive to be more diligent in the future. Section 20 of the Act authorizes the general manager to take enforcement action against licensees. Accordingly, it would be improper for me to take enforcement action against the Licensee for the purpose of disciplining the Licensee's employees. A primary purpose of the penalty regime in the Act and Regulation is to provide a deterrent for the Licensee so as to encourage voluntary compliance. It is the Licensee's responsibility to discipline its staff to ensure that its employees work in accordance with the provisions of the Act, the Licence and the *Serving It Right* program.

In this case there were at least two opportunities for the Licensee's staff to identify Male A as a minor - once when he entered the Hotel and once when he was served the alcohol. The Licensee has provided no evidence to indicate that it has taken any steps to improve its or its staff's level of diligence in the future, apparently preferring to rely on the forced imposition of a Licence suspension to provide the necessary incentive.

Since it appears that a 4 day suspension imposed in 2011 was not sufficient to encourage the Licensee to improve its performance with respect to the identification of minors, and in the absence of any evidence that the proposed monetary penalty will cause undue or disproportionate hardship to the Licensee, I am satisfied that a monetary penalty of \$7,500 is appropriate and necessary for the Licensee to bring itself 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 (Seven Thousand Five Hundred Dollars) to the general manager of the Branch on or before July 29, 2013.

Signs satisfactory to the general manager showing that a monetary penalty has been imposed will be placed in a prominent location in the Hotel by a Branch inspector or a police officer.

Original signed by

Daniel M. Graham
General Manager's Delegate

Date: June 28, 2013

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

Liquor Control and Licensing Branch, Vancouver Regional Office
Attention: Cristal Scheer, Branch Advocate