



**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:	Station House Entertainment Inc. dba Station House Pub 2835 Bryn Maur Road Langford, BC V9B 2X4
Case:	EH13-110
For the Licensee:	Bill Beadle
For the Branch:	Hugh Trenchard
General Manager's Delegate:	Daniel M. Graham
Date of Hearing:	Written submissions
Date of Decision:	December 16, 2013

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**Liquor Control and  
Licensing Branch**

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## INTRODUCTION

Station House Entertainment Inc. (the "Licensee") operates Station House Pub (the "Establishment") under Liquor Primary Licence 212732 (the "Licence"). The Establishment is located at 2835 Bryn Maur Road, Langford, B.C.

The Licence specifies hours of liquor service daily, seven days a week, from 11:00 a.m. to 1:00 a.m., except for Fridays and Saturdays when the Establishment may stay open until 2:00 a.m.

The Licence is, as are all liquor licences 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 principal, Bill Beadle, represented the corporate Licensee for the 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 August 14, 2013. The Branch alleges that on May 9, 2013, 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 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 admits that the contravention occurred and is not making a due diligence defence, but does dispute the proposed monetary penalty.

For the purposes of this hearing, and in accordance with section 3 of the Regulation, the general manager has delegated to me the powers, duties and functions provided to the general manager by section 20 of the Act and sections 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

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

### *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 1:** The Branch's Book of Documents, tabs 1 to 18 inclusive.
- Exhibit 2:** The Licensee's written submission dated October 12, 2013, including a subsequent e-mail statement of the server who allegedly committed the contravention (the "Server"), and covering e-mails.

## EVIDENCE – BRANCH

The evidence set out in the NOEA is that the alleged contravention occurred during 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 years.

The Branch has hired 16 to 18 year old minors as agents to carry out these compliance inspections. No attempt is 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 May 9, 2013, MAP inspections were conducted to test compliance of several Liquor and Food Primary establishments in Victoria and Langford. Two Branch inspectors ("Inspector A" and "Inspector B") accompanied a minor agent ("Minor Agent #49") for these inspections. At the start of the shift, Minor Agent #49 was photographed and identification was reviewed which confirmed that the Agent was under 19 years of age.

At 7:55 p.m. Inspectors A and B, along with Minor Agent #49, entered the Establishment and sat in a booth near the front door. At 7:57 p.m. they ordered drinks from the Server. In particular, Minor Agent #49 ordered a Smirnoff Ice. At 8:00 p.m. the Server returned with the drinks and placed the Smirnoff Ice directly in front of Minor Agent #49. Smirnoff Ice has an alcohol content of 5%. At no time during this transaction, or at any time, did the Server (or any other employee of the Licensee) ask Minor Agent #49 for any form of identification.

Subsequent to service of the Smirnoff Ice to Minor Agent #49, she and Inspector B left the Establishment. Inspector A took the bottle of Smirnoff Ice to the Server and explained what had happened. The bartender and a manager were subsequently engaged in discussion with Inspector A. Inspector A (and Inspector B, who had by then re-entered the Establishment) issued a contravention notice regarding section 33(1)(a) of the Act and left it with the Server.

## **EVIDENCE – LICENSEE**

### **The Server**

In an e-mail to the Licensee, included as part of the Licensee's written submission, the Server wrote that at the time of the alleged contravention she was just getting off shift and had started a new table for one of the other servers before she left. She indicated that Inspectors A and B and Minor Agent #49 all appeared to be of age so she did not ask any of them for identification. The Server confirmed that Minor Agent #49 asked for a Smirnoff Ice and that the Server served the requested drink.

### **The Licensee**

In its written submission the Licensee admitted the alleged contravention. The Licensee wrote that the Establishment is the only pub outside the City of Victoria in the Greater Victoria Region that voluntarily uses an electronic ID scanner, but it only does so on Friday and Saturday nights. Had the system been in operation on the night of the alleged contravention, the Licensee stated that Minor Agent #49 would not have been allowed entry.

The Licensee reported that upon receiving notification of the proposed monetary penalty, the Server (who had been employed by the Licensee for two years) was terminated. Since then the Licensee has advised its staff that its policy is to ID any patron who appears to be under 30 years old.

## **SUBMISSIONS – BRANCH**

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

## **SUBMISSIONS – LICENSEE**

The Licensee says that this is its first offence. The Licensee has suffered financially from a July 2013 decision to reduce its hours of operation to respond to noise complaints. It says that the proposed \$7,500 monetary penalty will cause further financial distress, and that the Licensee's admission of the contravention has minimized the cost and time to the Branch.

The Licensee submits that in its circumstances, no monetary penalty should be levied. Alternatively, the Licensee argues, a reduced monetary penalty and/or a minimal period of suspension should apply. The Licensee submits that a 10 day suspension is not an option.

## **REASONS AND DECISION**

### **Contravention**

The Licensee has admitted to the contravention. The evidence and the submissions filed in these proceedings demonstrate that, with reference to section 33(1)(a) of the Act:

- a person (the Licensee, acting through its employee the Server)
- sold liquor (Smirnoff Ice)
- to a minor (Minor Agent #49)

Accordingly, I find that on May 9, 2013 the Licensee contravened section 33(1)(a) of the Act 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 problems, it must ensure that those procedures are consistently acted upon and problems are dealt with accordingly.

There is little evidence before me upon which I can find that the Licensee was duly diligent in this case. The Licensee advised that it uses an electronic ID scanner on Fridays and Saturdays, that it terminated the Server (presumably partly as a deterrent for other employees), and has imposed a stricter policy with respect to requesting identification from patrons. However, there was no description of the type and depth of training that the Licensee provided to its employees with respect to the issue of identifying underage patrons.

It is my view, therefore, that the evidence falls far short of that which would be necessary to successfully establish 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 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 factors that I have considered in determining the appropriate penalty in this case 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.

Licensees are obliged to comply with the legislation and the terms and conditions of their licences. Enforcement action is intended to both redress the Licensee's non-compliance, and to encourage future compliance by way of deterrence.

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 of Schedule 4 provides a range of penalties for a first contravention of this type: a 10 to 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 requested no monetary penalty, or alternatively a reduced monetary penalty and/or suspension for some unspecified period of time less than ten days.

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.



These public safety factors, coupled with the limited evidence of due diligence, lead me to the conclusion that a monetary penalty is warranted. Having reached this conclusion, I am bound to apply at least the minimum penalty prescribed by the Regulation. Accordingly, I find that a monetary penalty of \$7,500 is necessary and warranted 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 to the General Manager of the Branch on or before January 17, 2014.

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 Branch inspector or a police officer.

*Original signed by*

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Daniel M. Graham  
General Manager's Delegate

Date: December 16, 2013

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

Liquor Control and Licensing Branch, Victoria Office  
Attention: Hugh Trenchard, Branch Advocate