



**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:	0734970 B.C. Ltd. dba Mex Pub 1001 Ryan Road Courtenay, BC V9N 3R6
Case:	EH13-131
For the Licensee:	Doreen Tan
For the Branch:	Hugh Trenchard
General Manager's Delegate:	George C.E. Fuller
Date of Hearing:	Written Submissions
Date of Decision:	December 31, 2013

**Liquor Control and
Licensing Branch**

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INTRODUCTION

The Licensee, 0734970 B.C. Ltd. (the "Licensee") owns and operates an establishment known as Mex Pub in Courtenay B.C. The Licensee holds Liquor Primary Licence number 180491 (the "Licence"). The authorized representative of the Licensee is Doreen Tan.

According to the terms of its Licence, the Licensee may sell liquor from 11:00 a.m. to 2:00 a.m., Monday through Saturday, and 11:00 a.m. to midnight on Sunday. The Licensee 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").

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 12, 2013.

The Branch alleges that, on May 30, 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 enforcement action outlined in the NOEA is a \$7,500 monetary penalty. The proposed monetary penalty falls within the penalty range set out in item 2, Schedule 4, of the *Liquor Control and Licensing Regulation* (the "Regulation") for a first contravention of this type. 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 committing the contravention nor is the Licensee pursuing a defence of due diligence. The Licensee disputes the proposed enforcement action and requests that, if a penalty is to be imposed, it be a monetary 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

The following documents were submitted and were considered:

Exhibit 1: The Branch's book of documents, tabs 1 to 13 inclusive.

Exhibit 2: Copy of a written submission to the Branch from the Licensee dated November 19, 2013, setting out its position with respect to the proposed penalty.

EVIDENCE – BRANCH

As previously noted, the Licensee does not dispute that the contravention occurred as alleged. It is deemed, therefore, 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 set out below.

These proceedings arise out of an inspection conducted under the "Minors As Agents Program" (the "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 ("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.

At approximately 14:40 hours the Inspection Team, consisting of Inspectors A, B, C, and Minor Agent #40, attended at Mex Pub. Inspectors A and B remained in the vehicle while Inspector C proceeded into the establishment. Fourteen patrons were noted in the pub and three staff. Inspector C took a seat positioning himself with a clear view of the main service bar and patrons.

At approximately 14:42 hours, Minor Agent #40 entered the establishment joining Inspector C at a table. A female server attended at the table at approximately 14:44 hours and took a drink order. At approximately 14:45 hours the female server returned and served Minor Agent #40 a bottle of Budweiser beer. At no time was any form of identification requested from Minor Agent #40 to confirm his age.

Minor Agent #40 departed Mex Pub at approximately 14:46 hours and proceeded to the Inspection Team vehicle, where Minor Agent #40 recorded his observations. At approximately 14:50 hours the Inspectors moved to the main service bar where they identified themselves to the female server, who had served Minor Agent #40. The female server stated that the Minor Agent had a baby face and she had thought about requesting identification, but failed to do so. Inspector B issued the Contravention Notice and the Inspection Team departed at approximately 15:00 hours.

SUBMISSIONS – BRANCH

The Branch says that the contravention has been proven and that the recommended monetary 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

In its written submission, the Licensee states that it sincerely regrets the contravention and requests leniency in the penalty to be assessed against it. Furthermore, the Licensee advises that the establishment's policies include complying with all rules and regulations of the Act and, accordingly, serve responsibly.

The offending female server stated that she was fully aware of her actions and that it is against the law and the establishment's policy to serve a minor. She explains that she had observed Minor Agent #40 sitting with another customer, both of whom looked to be over nineteen. Minor Agent #40 appeared to her to be in his late twenties.

The Licensee further submitted that, at the time of the contravention, she was advised that the contravention would be dealt with as a warning. The Licensee took immediate steps to re-educate its staff with respect to the responsibilities and consequences for their actions. These steps included reviewing the Serving It Right program and the house policies with staff, as well as requesting that they upgrade their responsible beverage service knowledge. It was also planned to review and improve the Licensee's responsible beverage service program/house rules.

Finally, the Licensee renewed its plea for leniency submitting that the penalty, either monetary or suspension, would cause a profound hardship to the Licensee's business.

ANALYSIS 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 May 30, 2013 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 problems, it must ensure that those procedures are consistently acted upon and problems are dealt with accordingly.

The onus is upon the Licensee to prove this defence on the balance of probabilities. The Licensee did not present a defence of due diligence. I find, therefore, that the Licensee has not established a defence of due diligence.

Accordingly, I find that the Licensee contravened section 33(1)(a) of the Act by selling liquor to a minor on May 30, 2013.

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 a monetary penalty are 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 compliance with the Act, the Regulation, and the terms and conditions of the Licence. Among the factors that I have considered in determining the appropriate penalty in this case are: 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.

Licensees are obligated to comply with the Act, Regulation and the terms and conditions of their Licences. Enforcement actions are intended to both address the Licensee's non-compliance, and to encourage future compliance by way of deterrents.

Sale of liquor to minors is considered a serious contravention, as the range of possible monetary penalties and licence suspensions attests. The Branch recognizes that minors, as a group, are unable to metabolize alcohol in the same manner as an adult, and so may be more susceptible to becoming intoxicated. In this condition, a minor may be at personal risk or constitute a public danger.

There is no record of a proven contravention of the same type for this Licensee at this establishment within the 12 months prior to this incident. Therefore, I find this to be a first contravention for the purposes of reviewing the range of applicable penalties under Schedule 4 of the Regulation. Item 2 in Schedule 4 of the Regulation provides that the penalties for a first contravention of this type are a 10 to 15 day licence suspension and/or a \$7,500 to \$10,000 monetary penalty.

The Licensee has raised an issue of the ability to pay the monetary penalty. Despite the Licensee's assertion that either a suspension or monetary penalty "will cause a profound hardship on our business" the Licensee has not led any convincing evidence in support of that claim. I would have expected, at the very least, that the Licensee would have presented excerpts from the Company's financial records corroborating this bald claim of financial distress. In addition, some considerable time has passed since the committing of the contravention and the issuance of the NOEA, and the Licensee has been aware of the likelihood that this obligation would be forthcoming.

In light of all of the above, I find that the monetary penalty of \$7,500 is appropriate in the circumstances in order to encourage compliance with section 33(1(a) of the Act by this Licensee.

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, and I direct that this monetary penalty be paid to the General Manager on or before January 31, 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 Liquor Control and Licensing Branch inspector, or a police officer.

Original signed by

George C.E. Fuller
General Manager's Delegate

Date: December 31, 2013

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

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