



**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:	Hellenic Canadian Congress of B.C. dba Public "Greek Day" 129-4500 Arbutus Street Vancouver, BC V6J 4A2
Case:	EH12-117440
For the Licensee:	Michael Christopoulos, President Hellenic Canadian Congress of B.C.
For the Branch:	Peter Mior
General Manager's Delegate:	Nerys Poole
Date of Hearing:	Written Submissions
Date of Decision:	January 21, 2013

Liquor Control and
Licensing Branch

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INTRODUCTION

The licensee, Hellenic Canadian Congress of B.C., holds Special Occasion Licence No.117440 for an event held on June 24, 2012 from 11:00 a.m. to 8:00 p.m. This public event is described as Greek Day and is located on West Broadway Avenue in Vancouver, from Macdonald to Blenheim, encompassing the 2800 to 3600 blocks of West Broadway.

Special occasion licence holders are subject to the same enforcement penalties for liquor infractions as commercial bar owners. These licensees are liable for any contraventions which occur while the licence is in effect. The licensee's liability for any contraventions during the scheduled event continues, provided that the General Manager commences enforcement action against the person within six months after the expiry of the licence. In February of 2011, the *Liquor Control and Licensing Act* (the "Act") was amended to allow for the General Manager to take enforcement action against special occasion licence holders after the licence expired.

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Liquor Control and Licensing Branch's (the "branch") allegation and proposed penalty are set out in the Notice of Enforcement Action dated October 24, 2012 (the "NOEA"). The branch alleges that on June 24, 2012, the licensee contravened section 33(1)(a) of the Act by selling, giving or otherwise supplying liquor to a minor. The proposed penalty is a \$7,500 monetary penalty.

For a first contravention of this type, Item 2 of Schedule 4 of the *Liquor Control and Licensing Regulation* (the "Regulation"), provides a range of penalties: a licence suspension for 10 to 15 days and/or a monetary penalty of \$7,500 - \$10,000.

The licensee does not dispute that two staff members contravened section 33(1)(a) of the Act. The licensee accepts responsibility for the contravention. However, the licensee is disputing the monetary penalty of \$7,500, saying that such a penalty would render their non-profit organization insolvent and would effectively cause them to lose their ability to continue their charitable efforts.

It was agreed that the hearing on what penalty, if any, would take place by way of written submissions.

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 Licensee established a defence to the contravention?
3. If the contravention is proven, what penalty, if any, is appropriate?

EXHIBITS

Exhibit No. 1: Branch's book of Documents, tabs 1 to 9

Exhibit No. 2: Licensee's Submission, dated December 1, 2012

EVIDENCE

The licensee does not dispute the contravention nor does it disagree with any of the details as set out in the NOEA. The following is a summary of the facts as set out in the NOEA.

On June 24, 2012, the branch conducted a Minor's as Agents Program ("MAP") inspection at Greek Day on West Broadway. The entire area of the Greek Day event was licensed for liquor service. Within the area were multiple food and liquor booths. People who wished to purchase liquor were required to purchase food as well. In order for people to purchase food and liquor, they were required to pay for and obtain tickets at a cashier and then exchange the tickets for their food and liquor items.

The branch MAP inspections are used to test compliance with the Act's prohibition against selling or supplying liquor to minors. The branch hires minors to carry out these covert inspections.

In this case, two agents were used: one who is described in the NOEA as Agent #14 and a second as Agent #7. Agent #14 was 18 years old on June 24, 2012 and therefore a minor under the Act. Agent #7 was 19 years old and had previously worked as a minor agent. The branch's practice is to sometimes continue a contract with a previously underage agent in order for him or her to act as a mentor to other minor agents and to accompany the minor agent on inspections. The identification for Agent #14 is included in exhibit 1 and shows that she was 18 years old at the time of this contravention.

At 1:25 p.m. on June 24, 2012, agents #14 and #7 approached a ticket booth identified as the "Messinian Brotherhood of BC." This booth was located on the south side of West Broadway, between the streets of Balaklava and Bayswater. Two liquor inspectors, A and B, stood a few feet away from the front of the booth, and were able to maintain a line of sight of the agents and the booth.

Minor Agent #14 approached a female who was seated behind the booth's table and ordered two beers and a souvlaki. The female staff clarified the order of two beers, and then called out to a male behind her for two beers. The female staff then proceeded to provide minor Agent #14 with the tickets for her order. Minor Agent #14 paid for the order and then moved a few steps to the left of the female staff, at the same booth. A male staff provided her with two cups filled with amber coloured liquid on the table. The two agents #14 and #7 walked away from the booth and gave the beers to the two liquor inspectors. The two liquor inspectors smelled the liquid and confirmed that it was beer. One of the inspectors took a picture of the purchased beer for evidentiary purposes.

At no time did either the female staff or the male staff request identification from the minor Agent #14 or Agent #7 accompanying her.

At 2:46 p.m., the two liquor inspectors A and B met with an individual whose name was on the Special Occasion Licence and application and who is identified in the licensee's submission as a co-chairperson of Greek Day (the "co-chairperson"). The liquor inspectors served a contravention notice on the co-chairperson and advised him that enforcement action would be taken. The branch re-issued the contravention notice on October 24, 2012 and amended the NOEA to reflect that the co-chairperson had applied for the Special Occasion Licence under the organization name, Hellenic Canadian Congress of B.C.

The two liquor inspectors had reviewed the Security Management Plan for Greek Day; something that is required for a large public event where over 500 persons may attend. The Security Management Plan detailed how the event would be carried out, including liquor service and checking identification. The plan indicated there were two ID check points to ensure minors are not served liquor: one at the time of purchasing the food and liquor tickets and the second when the tickets were exchanged for the liquor. Under the protocols in the Security Management Plan: "no alcohol will be served to minors. Identification will be checked by the Serve Right Licence holder that will be stationed where alcohol is served." One of the liquor inspectors confirmed this process of checking identification with the co-chairperson in a telephone conversation prior to the event.

SUBMISSIONS

The branch submits that this contravention is a significant public safety issue. The facts demonstrate that two staff members made no attempt to ask for identification of the 18 year old female who purchased the beer. The branch further states that this event has been running every year since 2005, as well as for a period from 1974 to 1988, at which point it was cancelled due to public safety issues. Despite the licensee's security plan, which purported to implement a two stage age verification system, once at the ticket purchase and again, if warranted, at the exchange of the ticket for liquor, neither of these checks occurred.

The branch says that a monetary penalty of \$7,500 is considered appropriate to reinforce the seriousness of selling liquor to minors.

The licensee, as noted, does not dispute that the contravention occurred. The licensee focuses on the nature of the event, the history of the event and the nature of the organization that puts on this event, to argue that the proposed monetary penalty should be waived. The licensee states that payment of this \$7,500 penalty will render their organization insolvent and that they would effectively lose their ability to continue with their charitable projects.

In its submissions, the licensee indicates that the Hellenic Canadian Congress of B.C. is a non-profit organization that is staffed entirely by volunteers. It is also a registered charitable organization that is actively involved in numerous community endeavours that benefit all British Columbians. Greek Day is the largest one-day ethnic festival of its kind in Canada and is supported by the federal government, the provincial government, the City of Vancouver and many reputable sponsors.

The licensee emphasizes how Greek Heritage Month and Greek Day allow the organization to support and partner with numerous organizations who are able to showcase their socially responsible projects to the festival crowds. With the money earned at the Greek Day festivals, the organization and its members donate to a number of charities, as well as providing funding for numerous scholarship and educational initiatives.

The licensee refers to its previous record of no infractions or contraventions of any law, and to the statement in the NOEA that refers to the event being in place since 2005 and states that "there is no prior history of proven contraventions on this issue." The licensee says that, in the last seven years alone, they have welcomed over 700,000 visitors without a single blemish on their record.

The licensee expresses the extreme regret felt by all in their organization about this contravention. The licensee states that they go to great lengths to ensure that all vendors are aware of all the laws and regulations pertaining to alcohol and food service. The licensee demands that all vendors ensure that only volunteers with *Serving It Right* accreditation sell and serve any alcoholic beverages. In the many meetings prior to the event, the licensee makes sure that all vendors are up to speed with the latest regulations. On the day when beer and wine are distributed, officials of the licensee are present to issue verbal instructions and to distribute warning posters to each vendor which are placed at all sales points and clearly indicate that valid identification is required to purchase alcohol. On the day of the event, just prior to the opening of sales, the chairpersons go from vendor to vendor to ensure that these posters are in place and they reiterate the laws and regulations regarding safe alcohol service.

With respect to selling to minors, the licensee says it has held several meetings regarding this issue, since the contravention. Further, the licensee says new measures have been enacted to prevent any potential infractions from occurring in the future: additional professional security staff – with proper training – will be allocated to each sales point in the effort to supplement existing volunteers. Prior to the official opening of the Greek Day event, no booth shall be allowed to sell any food or alcohol until it is verified by festival executives that all appropriately trained staff regarding liquor sales are present and all signage regarding liquor sales and identification is clearly visible at each station.

The licensee says in the future they will be checking the identification of all patrons who wish to purchase and be served alcohol, thereby ensuring no minor is served. In addition, for those that wish to purchase liquor, identification booths will be placed in various points throughout the festival. Each patron wishing to purchase alcohol from a vendor must appear at one of these booths, produce proper identification, and have an identifying wrist band placed on their wrist. This wrist band will be shown at the vendor booth for the purchase of liquor with food. The vendors will still be required to ID all customers in the event of any suspicious activity (i.e. giving a wrist band to a minor).

The licensee summarizes by stating that safeguards and preventative measures are now in place and that the actions taken since the contravention support their request that the penalty be waived.

REASONS AND DECISION

The licensee does not dispute the facts of the contravention nor that the contravention occurred. I find that the licensee contravened section 33(1)(a) of the Act on June 24, 2012.

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.

The licensee admits the contravention occurred and does not provide a defence of due diligence. The licensee presented no evidence to show that these two staff members had received training or had been instructed about the process for ensuring minors were asked for identification.

I therefore find that the licensee is not entitled to the defence of due diligence.

PENALTY

Pursuant to section 20(2) of the Act, having found that the licensee has contravened the Act, the Regulations 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 Notice of Enforcement Action. 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. The factors that are considered 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.

The licensee has pointed to its "unblemished record" at previous Greek Days to argue for a waiver of the penalty. The licensee reports its history as a non-profit charitable organization that is supported by various levels of government and other organizations and that is "actively involved in numerous community endeavours that benefit all British Columbians." The licensee further submits that the efforts it has taken post-contravention and the measures it has enacted to prevent any future potential contraventions should be considered in support of its request to have the penalty waived.

I have considered the submission of the licensee and its arguments for waiving the penalty in this particular case.

Permitting minors access to liquor is a significant public safety issue. The Minors as Agents program demonstrates the branch's intention to ensure that licensees are not serving or selling liquor to minors. All reasonable measures to ensure both general and specific deterrence within society at large should be undertaken.

In the present case, the minor agent was 18 years old. Neither the ticket seller nor the staff member serving the beer made any attempt to ask for any identification. Despite the Security Management Plan which emphasized that there were two checkpoints for ensuring minors were not served liquor, the two staff members were not implementing these guidelines for checking identification. It is reasonable to expect that, even with minimal training, an individual responsible for the service or sale of liquor, would be well versed in his/her responsibility to prevent the sale of liquor to minors. The licensee has clearly failed in its responsibility to ensure those who are selling liquor are knowledgeable and well trained to prevent this type of contravention. Society expects and demands that licensees will provide the leadership to guard against minors purchasing liquor and the subsequent problems that arise from minors consuming liquor. This applies to one-time events using volunteers as much as it does to other licensed facilities in the province.

The licensee refers to the efforts it is taking to ensure that such contraventions do not occur again. The post-contravention actions taken by a licensee to prevent further contraventions are what the branch expects when enforcement action is taken. Such post-contravention actions may achieve the branch's goal of voluntary compliance but do not absolve a licensee of the contravention nor of the imposition of a branch penalty. In addition, the new measures that the licensee intends to take in future events demonstrate the inadequacy of the policies and procedures in place at the time of this contravention.

With respect to its "unblemished record", the branch has only had the authority to take enforcement action against special occasion licence holders since February 2011. Thus, given the inability of the branch to take enforcement action against special occasion licence holders, I do not rely on past history to determine whether this is a situation where the penalty should be waived. Further, given that this licensee has at least seven years of experience in the application of the laws that apply to special occasion licences, this licensee is expected to be highly knowledgeable and experienced in the application of the rules. Age verification is one of the most rudimentary and commonly known rules, and yet there was no effort made to request identification of the female minor.

With respect to the licensee's submission that the penalty should be waived because of its status as a non-profit charitable organization that is actively involved in supporting many community endeavours, I find that this licensee, like all licensees in British Columbia, is responsible for complying with the law and is subject to the same penalties as other licensees. Any organization or individual that applies for a special occasion licence becomes responsible for knowing the Act and ensuring its employees and/or volunteers know their responsibilities as well. The special occasion licence signed by the applicant, the co-chairperson, states that he received a copy of the policies and regulations applicable to the licence and agrees to abide by them (tab 8 of exhibit 1).

Once a contravention occurs, the particular status of an organization, whether for profit or not for profit, is not a primary factor in determining whether or not a penalty should be imposed. The branch's goal in bringing enforcement action and imposing penalties is to achieve voluntary compliance from all licensees.

With respect to the licensee's statement that the \$7,500 penalty will render the organization insolvent, I have no evidence before me, in the form of financial statements or otherwise, to support this submission. It is unfortunate if the licensee's fundraising efforts and charitable giving will be negatively affected by the payment of this penalty. However, the selling of liquor to minors is a serious public safety issue and one that the branch takes very seriously as is evidenced by the introduction of the MAP inspections to monitor compliance.

I therefore find that a penalty is warranted to meet the branch goals of achieving voluntary compliance and protecting the public interest.

Having found that a penalty is warranted on the facts of this case, I am bound to follow the minimums in Schedule 4 of the Regulation. There is no prior history of proven contraventions on this issue. There is no record of a proven contravention of the same type for this licensee 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 to 15 day licence suspension and/or a \$7,500 to \$10,000 monetary penalty. I find that the minimum monetary penalty of \$7,500 is reasonable and appropriate to reinforce the seriousness of selling liquor to minors.

ORDER

Pursuant to section 20(2) of the Act, I order that the Licensee pay a monetary penalty in the sum of \$7500 to the general manager of the Liquor Control and Licensing Branch on or before February 25, 2013.

Original signed by

Nerys Poole
Enforcement Hearing Adjudicator

Date: January 21, 2013

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

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