



**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:                       | Abbotsford International Airshow Society<br>dba Abbotsford Airshow<br>1464 Tower Street<br>Abbotsford, BC V2T 6H5 |
| Case:                           | EH12-149520   |
| For the Licensee:               | Kathryn Witoszkin   |
| For the Branch:                 | Peter Mior  |
| Enforcement Hearing Adjudicator | George C.E. Fuller  |
| Place of Hearing:               | Written Submissions   |
| Date of Decision:               | January 25, 2013  |

## **INTRODUCTION**

The Corporate Licensee, the Abbotsford International Airshow Society (the "Society") operates an international airshow festival (the "Airshow") on an annual basis. In 2012, the Airshow operated on August 10, 11 and 12, 2012. The Licensee holds Special Occasion Licence No. 149520 (the "Licence"). The authorized representative of the Licensee is Kathryn Witoszkin.

According to the terms of its licence, the Licensee may sell liquor from 10:00 am to 6:30 pm, on August 10, 11 and 12, 2012. The licence is endorsed with an acknowledgment by the Licensee of the receipt of a copy of the policies and regulations applicable to this licence and by executing the licence agrees to abide by them.

## **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 11, 2012.

The Branch alleges that on August 10 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") for a first contravention of this type.

The Licensee does not dispute that the contravention occurred as alleged. However, it disputes the proposed penalty. The Branch and Licensee agreed that the hearing 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. Was the Licensee duly diligent?
3. If the Licensee was not diligent, is a penalty warranted under the circumstances?
4. If a penalty is warranted, what is the appropriate penalty?

**EXHIBITS**

The following documents were submitted and were considered:

**Exhibit 1:** The Branch's book of documents, Tabs 1 to 9 inclusive.

**Exhibit 2:** Letter dated November 19, 2012 to the Branch from the Licensee's representative.

**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 with 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 19 (minors).

On August 10, 2012, MAP inspections were conducted to test compliance in several licensed establishments, including the Airshow. At the start of the shift, the minor agent ("Agent #21") was photographed and identification was viewed confirming him to be 18 years of age.

According to the NOEA, the Special Occasion Licence (the "SOL") policy specifies that this type of licence prohibits minors from consuming, serving or handling liquor. In addition, anyone serving liquor must assure themselves that a patron is not a minor. Where identification is required to confirm that a patron is 19 years old or older, two pieces of identification are required.

The inspection team in this case, being inspectors 1, 2 and 3, and Agent #21 attended at the Airshow at approximately 3:05 pm. Inspectors' 1 and 3 accompanied Agent #21 to the beer garden area. They followed directly behind Agent #21 as he walked by the security personnel and approached the beer ticket sales area at approximately 3:10 pm. Agent #21 requested 1 ticket at a cost of \$5.00. One of the Airshow's staff took \$20.00 from Agent #21 and returned \$15.00 in change. The other Airshow staff member handed the ticket to Agent #21. There was no request for any identification at this time. Inspector 1 then purchased 2 tickets for herself and Inspector 3.

Inspectors 1 and 3 then accompanied Agent #21 to the table where the tickets were exchanged for alcoholic beverages. Agent #21 requested a Coors Light beer which was handed to him by one of the event staff. Once again no request was made for identification. Inspector 1 and Inspector 3 then followed Agent #21 to the fenced beer garden area and it was noted that no security personnel were posted at the entrance to that area.

At approximately 3:15 pm Inspector 1 and Inspector 3 directed Agent #21 to leave and rejoin Inspector 2 who was standing just outside the beer garden area. A few minutes later Inspector 1 and Inspector 3 left the beer garden and joined up with Inspector 2 and Agent #21.

Inspector 2 then contacted the Licensee's representative and arrangements were made to meet with her and other members of the Society, at the Society's offsite offices. During that meeting, the inspectors explained the operation of the MAP and gave further details of the contravention which they had witnessed. The board members of the Society then committed to following up by communicating with all staff the requirement to ensure that they were checking identification of all young looking individuals.

## **SUBMISSIONS OF THE BRANCH**

The Branch says that, on a balance of probabilities, the elements of the contravention had clearly been proven and that the proposed penalty is appropriate in the circumstances.

## **SUBMISSIONS OF THE LICENSEE**

The Licensee requests that the recommended monetary penalty of \$7,500 be revoked in its entirety. In support of this request the Licensee relies on three factors.

Firstly, the Licensee refers to the fact that the Airshow has not had any prior contraventions for at least ten years. Due to the fact that the Airshow is a community event, there is significant importance placed on this site being safe and family orientated. Accordingly, the Licensee has put in place well established onsite policies surrounding liquor security and consumption which contribute to this positive and pro-social atmosphere.

Secondly, the Licensee notes that Section 33(6) of the Act establishes a fine of not less than \$500 for a breach of this provision, whereas Schedule 4, item 2, provides a range of between \$7,500 and \$10,000 for a first contravention of Section 33 of the Act. The Licensee submits that a \$500 monetary penalty would establish a justifiable deterrent, whereas a \$7,500 fine would create a significant financial blow to most community and non-profit groups.

Thirdly, the Licensee submits that it has taken seriously the gravity of the contravention and had acted immediately to implement measures in order to correct the weak points in the system. Those measures included communication to the service groups directly responsible for the contravention; reiteration of the responsibilities of each single "position" in the Licensee's organization and the critical role each places in the success of the security plan as a whole; and implementation of an hourly check-in system for the onsite supervisors to ensure that each location was running as prescribed.

The Licensee says that the changes were so dramatic that they caused Inspector 2, two days after the contravention, to comment in his notes that, "observed enhanced procedures, more staff, being more diligent. Issues likely resolved." The Licensee says that at a further meeting, on August 22, 2012, Inspectors 1 and 2 noted further that, "no staff socializing was seen and multiple id checks at each location were in place."

The Licensee concludes that awareness and constant vigilance are key in the plans for upcoming events and the lesson has been of extreme value.

### **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 August 10, 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.

[1] Although the Licensee claims to have "well established onsite policies surrounding liquor, security and consumption" it did not lead any detailed evidence to allow me to conclude that such was the case. There was no reference to policy and procedure manuals, significant training, incident logs, serving it right certificates, written tests, etc. The fact, in and of itself, that the entrance to the beer garden was completely unattended for a period of time belies the assertion that "well established on site policies" were in place.

[2] The Licensee has put forward a rather novel argument. It asserts that, as Section 33(6) of the Act and Schedule 4, Item 2 of the Regulation, provides alternate, minimum mandatory penalties for the same offense (\$500 versus \$7,500 respectively) and, because the Licensee is a community, or non-profit group, then only the minimum fine of \$500 should be levied against it.

Section 33(6) of the Act refers to an offence and does not apply to the General Manager's authority to take action against a Licensee. The General Manager's authority to impose a monetary penalty is set out in Section 20 of the Act, and Sections 65, 68 and Schedule 4 of the Regulation. Under Section 20(2)(c) the General Manager may impose a monetary penalty on the Licensee in accordance with the prescribed schedule of penalties (Schedule 1 of the Regulation). Section 68(1) of the Regulation provides that, once the General Manager determines that a monetary penalty is warranted, the penalty must fall within the range established for the contravention under Schedule 4. Section 68(2) of the Regulation provides the circumstances under which the General Manager may exceed the amount established for the contravention under Schedule 4. In summary, Section 33(6) of the Act applies to offences under the Act, a different process from the administrative process undertaken by the General Manger to determine if an administrative penalty should be imposed on a Licensee. Accordingly, the Licensee's position on this point must fail.

[3] Although the Licensee says that it has made many changes to its operations since the contravention, I have interpreted that as an admission that, at the time of this contravention, the Licensee was not operating within the Act and Regulations and that there was more the Licensee reasonably could have done to prevent it. 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.

## **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.

There is virtually no evidence upon which I can find that the Licensee was duly diligent. Accordingly, I have concluded, therefore, that the Licensee in this case, 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 a monetary penalty is warranted, I am bound by the minimum 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 conditions 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 monetary penalty for these particular contraventions.

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 the 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, resulting in concerns about minors becoming involved in serious crimes, such as assault, sexual assault, theft and property damage.

Taking into consideration all of the above, I am satisfied that a monetary penalty of \$7,500 is necessary in order to bring the Licensee into 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 March 1, 2013.



George C.E. Fuller  
Enforcement Hearing Adjudicator

Date: January 25, 2013

cc: Liquor Control and Licensing Branch, Surrey Regional Office  
Attn: Michael Clark, Regional Manager

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