



**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:	Scimtar Enterprises Ltd. dba Major League 2 Sports Pub & Restaurant 45768 Gaetz Street Sardis, BC V2R 4E5
Case:	EH14-110
For the Licensee:	Glen Beveridge
For the Branch:	Peter Mior
General Manager's Delegate:	Nerys Poole
Date of Hearing:	April 28, 2015
Date of Decision:	June 9, 2015

**Liquor Control and
Licensing Branch**

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INTRODUCTION

Scimtar Enterprises Ltd. dba Major League 2 Sports Pub & Restaurant (the “licensee”) holds Liquor Primary Licence No. 128033 (the “licence”). Major League 2 Sports Pub & Restaurant (“the Pub”) is located at 45768 Gaetz Street in Sardis. The licence specifies hours of liquor service daily, from 9:00 a.m. to 1:00 a.m.

Glen Beveridge is a principal of the corporate licensee and appeared at the hearing as the licensee’s representative.

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 is alleged to have contravened the *Liquor Control and Licensing Act* (the “Act”) on September 12, 2014, by selling liquor to a minor who was acting as an agent of the branch under the Minors as Agents Program (“MAP”). The licensee admits that its employee sold liquor to the minor agent and accepts the facts as outlined in the Notice of Enforcement Action dated September 22, 2014 (the “NOEA”). However, the licensee disputes the finding of a contravention, on the basis that its policies, practices, procedures and training establish a defence of due diligence.

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Liquor Control and Licensing Branch’s (the “branch”) allegations and proposed penalties are set out in the NOEA.

The proposed enforcement action for the contravention of section 33(1)(a) of the Act is a \$7,500 monetary penalty. Item 2, Schedule 4 of the *Liquor Control and Licensing Regulation* (the "Regulation") sets out 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.

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

Exhibit 1: Branch book of documents, tabs 1 to 17

Exhibit 2: Sealed envelope with photo of minor agent and photocopy of the identification of minor agent

The licensee did not submit any written documentation.

Order to delete any reference to minor agent's name or other identifying factors

With the agreement of the parties, a copy of the minor agent's photo and identification were placed in an envelope and marked as Exhibit 2, with a notation that it is not to be unsealed or disclosed without a court order. Exhibit 2 has been sealed to protect the identity of the minor agent. At the hearing, the branch provided the licensee and its witnesses with an opportunity to view the photo of the minor agent and identification with birth date. The minor agent did not appear as a witness for the branch.

WITNESSES

The branch called two witnesses: the two liquor inspectors who attended the Pub with the minor agent on September 12, 2014 ("Inspector 1" and "Inspector 2").

The licensee called two witnesses: the representative of the corporate licensee and the owner of the Pub, Glen Beveridge (the "Owner"), and the manager of the Pub (the "Manager").

FACTS

The licensee accepts the facts of the contravention as laid out in the NOEA (Exhibit 1, tab 1).

On September 12, 2014, the two inspectors and the minor agent were conducting MAP inspections in the Chilliwack area. Prior to beginning the inspections, Inspector 1 took a photo of the minor agent and photocopied her identification which showed her to be 16 years old on September 12, 2014 (Exhibit 2).

The minor agent entered the Pub at approximately 6:30 p.m., with the two inspectors following closely behind. The minor agent seated herself at the bar in clear view of the two inspectors who were seated at a table directly behind the minor agent, approximately 20 feet away. The female bartender (the "Bartender") approached the minor agent and asked if she could get her anything. The minor agent requested a Smirnoff Ice. The Bartender served her the Smirnoff Ice. At no time did the Bartender or any other staff request identification from the minor agent.

Once the minor agent was served, she looked over at the two inspectors. Inspector 1 approached the bar and took possession of the Smirnoff Ice while Inspector 2 escorted the minor agent back to the vehicle. Inspector 1 spoke to the Bartender who identified herself as the bar manager. Inspector 1 identified himself as a liquor inspector and asked to speak with her in her office. He followed her to the office carrying the Smirnoff Ice. While walking to the office, the Bartender stated "I just sold to your minor, didn't I?" and Inspector 1 replied yes.

Inspector 2 re-entered the Pub and joined Inspector 1 and the Bartender in the office. Inspector 2 had left the minor agent in the vehicle where she completed her observation form and her statement. (Exhibit 1, tabs 5 and 6) The inspectors paid for the Smirnoff Ice and received a receipt from the Bartender. (Exhibit 1, tab 4) Inspector 1 was the author of the NOEA and noted in the NOEA that the Bartender clearly felt badly about the incident. The Bartender told him that she is the one who trains the bar staff to check for identification.

The two inspectors left the Pub at 6:55 p.m.

During his testimony at the hearing, Inspector 1 emphasized how cooperative the Bartender had been with the two inspectors and how sorry she was for having served the minor.

Inspector 1 referred in his testimony to the Final Inspection Interview Sheet dated September 27, 1993, with the licensee applicant as Scimtar Enterprises Ltd. (Exhibit 1, tab 12) Glen Beveridge was the person interviewed and the one who signed the document in 1993. The corporate licensee, with Mr. Beveridge as a principal, has owned the Pub since 1993. (summary of Scimtar Enterprises Ltd. corporate information at Exhibit 1, tab 14)

The NOEA lays out the licensee's compliance history. In his testimony at the hearing, Inspector 1 noted that the finding of a contravention of off-premises sales in 2007 was for another bar and licence held by this licensee, not for the Pub here. The NOEA lists this as a contravention and shows a different licence number from the one here. There are two compliance meetings listed that relate to the licence here, one held in 2009 relating to permitting an intoxicated person to remain (Exhibit 1, tab 15), and the other held in 2012 relating to an advertisement for drink tickets (Exhibit 1, tab 16).

Inspector 1 agreed in cross-examination that this licensee has an excellent record.

LICENSEE'S POLICIES, PROCEDURES AND TRAINING

The licensee's two witnesses gave evidence about the history and management of the Pub, its policies and procedures, the training given to employees, and how the policies are implemented in the Pub.

The Owner stated that he has owned this Pub for 22 years. This is the first contravention against the Pub over that period of time. They have consistently applied a strict policy of not serving minors. The Owner attended the Pub after the incident and spoke with the Bartender.

The Owner and the Manager both testified about the long tenure of their employees. Most have been working in the Pub for ten years. The Bartender has been working for them for over ten years and has been a good employee. The Manager explained that, because of her record as a long-time and reliable employee and because she is a single mother, they decided not to follow their stated policy of termination if an employee serves a minor. Neither the Owner nor the Manager was in the Pub at the time of the incident. When the Manager is not present, the Bartender acts as the manager.

The Manager is the Owner's son. The Manager is responsible for the hiring and firing of staff. He has been the manager for two years and has written new policies and amended ones that were in place with the previous manager to ensure employees are familiar with and follow the liquor laws.

The Bartender helps the Manager to train new staff. The Bartender will shadow a new employee for two shifts and then the Manager will do the same. They watch for and remind new staff about the importance of requesting ID of anyone who appears to be under 30.

The Pub's house policy at the time of the incident required staff to ask for identification of anyone who appears to be under 30. This policy has been in place for at least two years, according to the Manager. Staff are told to request two pieces of ID as set out in branch notices. New hires must sign the house policy acknowledging they have read it.

Management posts branch notices about the types of acceptable identification at two different places in the Pub: at the ATM and at the bar. There is no notice at the entrance to the Pub. Neither of these notices states anything about requesting ID of anyone who appears to be under 30.

The Manager stated that he had heard of a nearby establishment being suspended for ten days for having served a minor. This was about a month prior to the incident on September 12, 2014. As a result of hearing about this, the Manager immediately sent a text to all staff reminding them again to request ID of anyone who appeared to be under 30 and that service to a minor will result in termination of their employment. The licensee did not submit a copy of this text.

The Manager stated that they hold staff meetings every three to four months and have done so since he began his duties as manager. They do not have agendas or minutes for these meetings. At every meeting they emphasize the importance of requesting two pieces of ID. They regularly remind staff of the importance of checking for ID.

Management keeps two copies of the Serving It Right manual behind the bar, available for staff to review. The Manager stated they do not use the Guide at all. He believed he had seen a copy of the Guide but had not looked at it for a few years. They rely on the Serving It Right manual. All the staff, including the Owner and the Manager, have Serving It Right certificates.

The Manager explained that, since the incident, they have changed their policy of requesting ID of anyone who appears to be under 30 and have instructed staff to request ID of anyone who appears to be under the age of 35. They have changed their

written house policy to reflect this. Management has also started using door staff since this incident.

SUBMISSIONS – BRANCH

The branch has provided notice to the industry about the MAP. The branch has also provided copies of the Guide to all licensees. The Guide emphasizes that the best way to check if anyone is under age is to ask for identification. The branch submitted the Supreme Court decision, *Sandman Hotel Langley Inc. v. General Manager of the Liquor Control and Licensing Branch* 2006 BCSC 417, for my consideration. The judge in this case emphasized the need to be cautious in order to avoid selling liquor to minors. The only way to determine someone's age is to ask for ID. The Bartender here was aware of the MAP and she trained the staff. She had no excuse for not asking for ID in this situation.

The branch submits that the sale of liquor to minors is a serious public safety issue. The recommended penalty is the minimum for a first contravention of this type. In the circumstances of this case, it is reasonable and appropriate.

SUBMISSIONS – LICENSEE

The licensee relies on the policies it had in place for checking for identification of anyone under 30. The Bartender made a one-time mistake here and felt very badly for having done so. The licensee further submits that its 22 years of operating this Pub with no contraventions and no compliance meetings with respect to service to minors demonstrate that it makes every effort to comply with the liquor laws. They state that their record alone is evidence of their diligence about ensuring their staff do not serve minors.

The licensee refers to the testimony of the liquor inspector with respect to the Pub's excellent record as a compliant establishment. The Owner stated emphatically in his testimony that this was a onetime mistake and that this contravention would not happen again.

Because of the policies it has in place, the Owner argues that it has established a defence of due diligence. If I do not accept that they have adequately established a defence of due diligence, the Owner submits that I should take into account its long history of compliance with the liquor laws.

REASONS AND DECISION

Contravention

The licensee admits the contravention occurred. I therefore find that the licensee has contravened section 33(1)(a) of the Act.

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 leading case is: *R v. Sault Ste. Marie* (1979) 2 SCR 1299, where at page 1331, Dickson, J. sets out the test of due diligence:

The due diligence which must be established is that of the accused alone. Where an employer is charged in respect of an act committed by an employee acting in the course of employment, the question will be whether the act took place without the accused's direction or approval, thus negating wilful involvement of the accused, and whether the accused exercised all reasonable care by establishing a proper system to prevent commission of the offence and by taking reasonable steps to ensure the effective operation of the system. The availability of the defence to a corporation will depend on whether such due diligence was taken by those who are the directing mind and will of the corporation, whose acts are therefore in law the acts of the corporation itself.

The BC Supreme Court, in *Beverly Corners Liquor Store Ltd. v. British Columbia (Liquor Control and Licensing Branch)*, 2012 BCSC 1851, has considered and clarified the application of the defence of due diligence in the context of the sale of liquor to a minor contrary to the *Liquor Control and Licensing Act* (see paragraphs 41 to 44).

In these circumstances, the defence of due diligence is to be considered in two stages:

1. Whether the employee who made the sale was a directing mind of the licensee – if so, the defence of due diligence is not available and the inquiry stops there.
2. If the employee who made the sale was not a directing mind of the licensee (and there is no requirement that a “directing mind” must be on the premises when the sale is made), then the questions to be considered and answered are whether the licensee had:

- a. implemented adequate training and other systems to prevent the contravention (the sale of liquor to minors); and,
- b. taken reasonable steps to ensure the effective application of that education and the operation of those systems.

Both of these issues are factual, and will depend on the evidence presented. The onus is on a licensee to establish on a balance of probabilities that it had exercised all reasonable care by establishing adequate training and other systems and ensuring effective application of them.

The directing mind

I find that the Bartender who made the sale to the minor agent is not the directing mind of the licensee. The Manager drafted or amended many of the policies. Although the Bartender was responsible for training some of the staff, the Bartender had nothing to do with the development of the policies.

The directing mind was not on site at the time of the contravention.

Adequate training and other systems

The Manager testified about the written house policy with respect to ensuring staff request identification of anyone appearing to be under the age of 30. He said that all staff are required to sign this house policy at the time of hiring. The licensee did not submit a copy of the house policy or any signed statements from staff. Nevertheless, I accept the Manager's testimony and I find that the Pub has such a policy and that staff are required to sign it. It would have assisted me in my conclusions on due diligence to

have seen a signed copy of this house policy. Without this, I do not know the exact wording, how many staff signed it, or when staff signed it. For example, I do not know when the Bartender signed the house policy or if she signed this specific policy, since she has been working at the Pub for over ten years according to the evidence.

The Manager testified that the training of new hires consists of the Manager shadowing new employees for two shifts and the Bartender doing the same. There was no evidence of any written information for new hires to review and to be tested on. Apart from the mention of staff meetings every three to four months, there was no evidence of any ongoing training of staff to ensure they are aware of any changes to the liquor laws or updates from the branch. There was reference to staff being informed during their training about the requirement to request identification but nothing specific about the length of time spent on this or the details about how this was done. As the Bartender trains the staff, her testimony would have been useful to me.

I find that a system of shadowing new employees and verbally commenting on their work at the time is not sufficient to ensure new staff fully understand the house policies or the importance of the liquor laws. I acknowledge the importance of having new staff sign its house policy. I accept that all the staff in the Pub have their Serving It Right certificates, despite the absence of written documentation on this. However, in addition to this, management should consider testing new staff in either a written format or through verbal review of issues of key importance, like the types of acceptable ID, how to identify fake ID, how to determine if someone is over or under 30, etc.

I find that the licensee had a policy with respect to requesting identification of anyone who appears under 30. However, I find that the evidence of the staff training falls short of establishing that the training was adequate to prevent the contravention of selling liquor to minors.

Effective Application and Operation of the Systems

The licensee's evidence was that they hold staff meetings every three to four months. They do not keep a record of these meetings, either with minutes or agendas. The Manager testified that they regularly emphasize at these meetings the importance of requesting identification of anyone under 30 and the two types of ID that are acceptable.

The Manager and the Owner testified about the two signs they have in place in the Pub. These are signs issued by the branch that state the law about not serving to anyone under 19 and the requirement for two pieces of acceptable identification. These signs are located at the bar and at the ATM. I find that two signs are insufficient to notify both staff and patrons of the importance of not serving minors. I further find that the absence of any sign about requesting ID of anyone under 30 (as was the stated house policy) is a further deficiency in the licensee's implementation of its systems for ensuring ID is requested. Warning patrons that ID will be requested if they appear to be under 30 is an effective way of assisting staff to do just that. It also helps ensure that patrons are prepared to produce ID if they appear to be under 30.

The licensee presented no evidence about training staff on how to assess patrons to determine whether or not they are under 30. I agree that following a policy of asking anyone who appears to be under 30 assists a licensee to ensure its staff do not serve minors. However, it is important for staff to receive some training on tips about assessing people's age and for them to be encouraged to err on the side of caution.

I note the Manager's evidence that, since the incident, staff have been told to ask for ID of anyone appearing to be under the age of 35. This change will assist further as long as staff are trained to consider aspects of a person's appearance that may help them determine if someone is under 35.

Assessing age is a purely subjective exercise and impossible to determine with a consistent degree of success, as stated in the *Sandman* decision (para.30). The judge in this case noted that the only way to be sure is to ask in every single case. This may appear extreme when patrons are clearly over 50 or even 40. However, this is why it is important for a licensee to train its staff in how to assess an individual's appearance to determine if someone is under 30. Without some training on what to look for, a young server in particular may be unequipped to know when to ask for ID.

The Manager was not very familiar with the Guide (Exhibit 1, tab 11), stating that he had probably seen it a few years before. The Guide is an essential tool for a licensee and its staff. It reminds licensees that it is their responsibility to ensure its staff are aware of the liquor laws. It also provides guidance on requesting ID, stating that a licensee "must do an initial assessment of every patron before allowing them to enter. . .or before selling or serving them liquor." The Guide sets out the types of acceptable identification (as noted on the signage from the branch) and provides tips on how to verify identification.

The licensee here placed reliance on the Serving It Right manual and the fact that its staff all have their Serving It Right certificates, and have passed the tests to obtain them. This is one tool for licensees and staff but does not eliminate the importance of ensuring ongoing training on an establishment's own house policies as well as updating staff regularly on any changes to the liquor laws.

The Manager's evidence about his text to staff, when he learned of the suspension imposed on a nearby establishment for service to a minor, demonstrates that he gave a reminder to his staff on the importance of not serving minors, just a month prior to the incident. However, I heard no evidence to show any previous communications to staff about the MAP despite the fact the branch has sent out considerable information about it to licensees. The Bartender here indicated to the liquor inspectors that she was aware of the MAP, probably as a result of receiving this text just a month before. As the Bartender did not testify, I can only surmise this.

In addition to warning staff about the potential for a minor agent to enter the Pub, management should also follow up with information on why it is important not to serve minors and why the branch considers this to be a serious public safety issue.

Understanding this will assist staff to request identification whenever they may be in doubt about a person's age, and not just to comply in order to avoid the penalty consequences.

As noted above, the onus is on a licensee to establish on a balance of probabilities that it had exercised all reasonable care by establishing adequate training and other systems and ensuring effective application of them. I find that there are weaknesses in the licensee's system and implementation of its policies which include:

- No documentary evidence to show how many current employees signed the house policy prior to the incident, when they signed the house policy, and whether long-time employees signed an updated house policy
- Only two notices in the Pub about requesting ID, with none at the entrance door
- No notices about requesting ID of anyone who appears under 30
- No evidence of training staff on how to identify persons under 30
- No written testing of employees and little evidence of verbal testing
- Manager's unfamiliarity with the Guide
- No evidence about specific communication or training of staff about why service to minors is considered a serious public safety issue.

As well as ensuring that all staff have their Serving It Right certificates, management had introduced, prior to the incident, some positive steps to help prevent service to minors:

- House policy in place at the time of the incident of requesting ID of anyone who appears under 30
- Requirement for new hires to sign this house policy
- Some training at time of hiring with some emphasis on requesting ID
- Regular staff meetings and reminders to staff about requesting ID

I find that there are deficiencies in the licensee's systems. I conclude that the licensee has not met the onus of establishing due diligence. Part of the difficulty for me, in making a fair determination on this issue, is the absence of any written documentation from the licensee. The branch registrar, in her notice of hearing letter addressed to the licensee and dated November 18, 2014, sets out the final date of disclosure of all documents on which the licensee will be relying at the hearing, and states further:

“Where supporting documents and evidence are available, it is the branch’s expectation that this will be provided during disclosure and presented at the hearing. If this information is not produced, this could affect the weight or admissibility of the evidence.”

The licensee in the hearing relied only on the verbal testimony of the two witnesses to make its case for due diligence. I have made findings of fact based on the oral testimony, but without seeing the written policies or signed statements of staff, am unable to fully know their contents. Licensees must be prepared to submit written documentation of their policies if they are making a due diligence defence.

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 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 has consistently indicated that the sale of alcohol to minors is a significant public safety issue and a high priority for enforcement. The NOEA outlines why the branch considers this a significant public safety issue:

- The effects of alcohol on growing bodies and developing minds.
- The effects on individuals and society of irresponsible drinking behaviour learned at an early age.
- A minor's lack of capacity to metabolize alcohol in the same manner as an adult; therefore, liquor has a more intoxicating effect on minors.
- Liquor is a significant factor in many crimes committed by youth, including serious driving offences, assault, sexual assault, and theft.

The MAP demonstrates the branch's intention to ensure that licensees are not serving or selling liquor to minors. The branch has taken measures to advise licensees of the seriousness of the problem and to educate them on their responsibilities. Despite those initiatives, a 16 year old minor was able to purchase liquor, without being asked to produce any proof of age. The Bartender here was immediately aware that she had served a minor agent, and was very apologetic but had no excuse for her lack of judgement in doing so. She mentioned to the liquor inspectors that she was responsible for training staff. Despite that, she still served the 16 year old minor agent.

The branch treats these 'service to minors' contraventions very seriously. As a delegate of the General Manager, I have discretion as to whether or not a penalty is warranted in any given situation. I have considered the licensee's length of time in operating this Pub and its record of compliance during that time. The licensee here has an "excellent record" as noted by Inspector 1. This licensee has had no contraventions with respect to this licence and the branch has held only two compliance meetings about this licence, neither of which relate to service to minors.

I have given considerable thought to whether this record of compliance is sufficient to override the seriousness of the contravention here and to exercise my discretion not to impose any penalty. As well as the licensee's history of compliance with the liquor laws, I have also considered the evidence of due diligence in my efforts to be fair on the question as to whether a penalty is warranted. I have concluded that there are more than a few weaknesses in the licensee's system and implementation of its policies, as noted above. The licensee chose not to provide me with written documentation to support its efforts to establish due diligence.

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

I find that a penalty is warranted here.

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.

Having found that a penalty is warranted, I am required to impose at least the minimum, which is a \$7,500 monetary penalty for a first contravention. I therefore find that this minimum penalty is appropriate, given the importance of ensuring minors do not have easy access to liquor, to encourage future voluntary compliance from the licensee and to ensure specific and general deterrence in society at large.

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 July 9, 2015.

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

Nerys Poole
General Manager's Delegate

Date: June 9, 2015

cc: Liquor Control and Licensing Branch, Surrey Office
Attn: Rupi Gill, Regional Manager

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