



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: Troller Pub (2013) Ltd.
dba Troller Ale House
6342 Bay Street
West Vancouver, BC

Case: EH14-141

For the Licensee: Christopher Greenfield

For the Branch: Hugh Trenchard

General Manager's Delegate: Nerys Poole

Date of Hearing: Written Submissions

Date of Decision: February 11, 2015

**Liquor Control and
Licensing Branch**

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INTRODUCTION

Troller Pub (2103) Ltd. dba Troller Ale House (the "Pub") holds liquor primary licence No. 038029 (the "licence"). The Pub is located at 6342 Bay Street in Horseshoe Bay, West Vancouver.

The licence specifies hours of liquor service daily, from 10:00 a.m. to midnight. The licence person capacity is 121 inside and 36 on the patio.

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").

Christopher Greenfield is the managing partner of the Pub and signed the written submission on behalf of the corporate licensee.

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 dated November 5, 2014 (the "NOEA"). The branch alleges that on October 4, 2014 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. 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.

On November 25, 2014, the licensee advised the branch that he wished to proceed with a written submission hearing. The licensee does not dispute that the contravention took place. In agreeing to a written submission hearing, the licensee agrees that the contravention occurred as alleged in the NOEA and that the licensee is not pursuing a due diligence defence to the contravention. The licensee only disputes the proposed penalty of \$7,500 and asks that the penalty be waived.

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's book of documents, tabs 1 to 14

Exhibit 2: Licensee's two-page written submission, undated

FACTS

The licensee does not dispute the contravention and therefore accepts the facts as laid out in the NOEA (Exhibit 1, tab 1). The following is a summary of the facts from the NOEA.

On October 4, 2014, two liquor inspectors and a minor agent were conducting minor agent inspections within West Vancouver. The Minors as Agents Program (MAP) inspections are used to test compliance with the Act's prohibition against selling or supplying liquor to persons under the age of 19.

Prior to going to the Pub, the minor agent was photographed and her identification was photocopied. The liquor inspectors confirmed that the minor agent was 17 years old on the date of the contravention (redacted copy of identification and photo at Exhibit 1, tabs 10 and 11).

The minor agent entered the Pub at approximately 8:15 p.m. on October 4, 2014. She entered through the front doors and sat down on a stool at the bar directly across from the entrance doors. The two liquor inspectors followed approximately five seconds later. The liquor inspectors positioned themselves in front of the glass entrance doors with a clear and direct line of sight to the minor agent. A female server who was tending the bar approached the minor agent. Within seconds, the female server placed a bottle of Smirnoff Ice and a glass with ice and a lime wedge in front of the minor agent. The female server did not request any identification from the minor agent.

The minor agent left the Pub and returned to the parked branch vehicle. The first liquor inspector took possession of the liquor while the second liquor inspector left the Pub to ensure the minor agent made it safely back to the vehicle. The minor agent immediately completed the minor agent's observation form and the minor agent's statement regarding the service of liquor to a minor (Exhibit 1, tabs 8 and 9).

The first liquor inspector advised the female server that she had just served a minor. The female server confirmed she was an employee and gave her name. She provided the first liquor inspector with a copy of the liquor licence and her Serving It Right number. At approximately 8:33 p.m., the first liquor inspector spoke with the managing partner of the Pub, Mr. Greenfield, by telephone and explained the contravention and the process.

The second liquor inspector filled out the contravention notice #B005545 (Exhibit 1, tab 2) and reviewed it with the female server. The female server acknowledged receipt of the contravention notice and signed at the bottom. The second liquor inspector asked for the receipt for the liquor served to the minor agent. The female server provided a receipt for \$6.96 and the second liquor inspector paid for it with a ten dollar bill. The two liquor inspectors left the Pub at 8:44 p.m.

SUBMISSIONS – BRANCH

The branch has submitted the book of documents (Exhibit 1) with the NOEA at tab 1, which outlines the elements of the contravention, as follows:

- The person in question is a minor
- The 17 year old minor entered the Pub and purchased liquor without being asked for any identification
- The licensee directly or by way of its staff sold or supplied the liquor to the minor

The branch sets out its reasons for the proposed enforcement action, stating that a monetary penalty of \$7,500 is considered appropriate to reinforce the seriousness of selling liquor to minors.

SUBMISSIONS – LICENSEE

As noted above, the licensee admits the contravention and is not making a due diligence defence.

The licensee asks that the penalty of \$7,500 be waived. To support this request, the licensee refers to its long-standing history of compliance dating back to its opening in 1977. The licence has been under its current ownership for over 16 years and the licensee says there have never been any compliance issues or contraventions.

As owners and managers, the licensee says they take matters of liquor compliance very seriously and take steps to ensure their staff is always up-to-date on the rules and regulations of the branch. As a member of ABLE BC, the licensee is constantly being reminded of the regulations and informed of any new policy changes and programs. They share this information with their staff in staff meetings and training. The licensee also posts signs in the Pub stating that they request identification of anyone who appears to be under the age of 25 and that two pieces of identification are required.

The licensee submits that the recommended penalty of \$7,500 does not entirely serve the purpose of reinforcing the seriousness of selling liquor to a minor. The licensee agrees that a fine or possibility of a closure certainly sends a strong message to ownership and acts as a deterrent for most staff. However, the licensee submits that the staff member who actually committed the contravention should receive a monetary penalty. The licensee agrees that the majority of the responsibility should fall on the establishment but that there should also be consequences to the individual who decides not to follow protocol or has a brief lack of judgment.

The licensee says that their staff are well informed and constantly reminded of the severity of serving alcohol to minors. In summary, the licensee asks that the penalty be waived or reduced for the following reasons:

1. There is a long-standing history of compliance with the licence.
2. The possibility of a 30-day closure for a second offence is enough of a deterrent to discourage any repeat infractions.
3. As a family owned and operated establishment, this penalty would have a negative financial impact on the business.
4. The penalty does not directly impact the person who committed the infraction.

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.

In requesting the hearing by written submission, the licensee agreed that the contravention occurred and that the licensee was not pursuing a due diligence defence. The licensee has not presented any evidence to demonstrate due diligence. I, therefore, find that the licensee has not established due diligence and I turn to the question of penalty.

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

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, and
- Liquor is a significant factor in many crimes committed by youth, including serious driving offences, assault, sexual assault, and theft

The facts are undisputed. The female server did not request any identification of a 17 year old minor when she served her the liquor. The licensee's submission refers to steps management takes to ensure its staff are up to date on the rules, regulations and policies of the branch. The licensee states that it shares information in staff meetings and in its training of staff. The licensee presented no documentary evidence to support the statements about its training and procedures.

The licensee submits that another reason for waiving the penalty is that the penalty does not directly impact the person who sold the liquor. Although the branch has the ability to issue fines to individual staff, ultimately it is up to management to uphold the law and to ensure its staff are well trained in what their job requires. Management also has the ability to ensure its employees experience the consequences of their actions when they act in contravention of the law and of the establishment's rules and policies. For example, many establishments include a clear policy of termination if a staff member serves a minor. The licensee makes no reference to any such policy in this case and no reference to any consequences it imposed on its staff member here.

Licenses 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.

The licensee refers to the negative financial impact the \$7,500 penalty will have on its family owned and operated establishment. The licensee does not provide any documentary evidence, such as financial information, to support this statement in its submission.

Based on the seriousness of this public safety contravention, the fact that the female server sold liquor to a 17 year old without any request for identification, and the absence of any evidence about the training of employees and procedures in place at the Pub, I find that a penalty is warranted here to encourage future compliance.

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.

I recognize the licensee's record of compliance in the 16 years that it has operated the Pub. I acknowledge that this is a factor that I must take into account when I am considering an appropriate penalty.

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 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.

Having found that a penalty is warranted, for the reasons stated above, I am bound to follow the minimums set out in Schedule 4 of the Regulation.

I find a \$7,500 penalty to be reasonable and appropriate given the importance of ensuring minors do not have easy access to liquor, to encourage future compliance from the licensee, and to ensure specific and general deterrence in society at large. I expect this licensee to use this situation as an opportunity to further enhance their existing policies and procedures to ensure future compliance with respect to this contravention.

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 13, 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: February 11, 2015

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

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