



**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: Modern Business Training Institute Inc.
dba Goldie's Pizza Lounge
605 West Pender Street
Vancouver, BC V6B 1W7

Case: EH15-041

For the Licensee: James Macdonnell
Barrister & Solicitor

For the Branch: Cristal Scheer

General Manager's Delegate: A. Paul Devine

Date of Hearing: October 27, 2015

Date of Decision: November 19, 2015

**Liquor Control and
Licensing Branch**

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INTRODUCTION

Modern Business Training Institute Inc. dba Goldie's Pizza Lounge (the "licensee") operates the Goldie's Pizza Lounge at 605 West Pender Street in Vancouver, BC. Mr. Michael Schreiner, a principal of the licensee, attended the hearing, and Mr. Macdonnell represented the licensee.

The licensee operates under Food Primary Licence #303130. According to the terms of its licence, the licensee may sell liquor from 9 a.m. to 1:00 a.m., Monday through Thursday, from 9 a.m. to 2 a.m. on Friday and Saturday, and 9 a.m. to 1 a.m. on Sunday. The premises have a licensed capacity of 10 for Lounge Interior and of 40 for Person01.

The licence is, as are all liquor licenses 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 March 21, 2015, by serving liquor to a minor.

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 dated April 15, 2015 (the "NOEA") (Tab 1, Exhibit 1). The Branch alleges that on March 21, 2015 the licensee contravened section 33(1)(a) of the *Act*. On that date, the branch was conducting compliance inspections using the "Minors as Agents Program" (MAP). Two liquor inspectors were involved as well as a male minor agent who was aged 17 at the time. Amendments to the Act allowed the branch to use the services of individuals who are under the age of 19 for the purpose of compliance inspections. Information about the MAP has been widely circulated by the branch since its inception in 2011.

At about 17:04 on the date in question, a minor agent identified as #57 entered the premises of the licensee alone through the front door. He was followed shortly by the two liquor inspectors. The minor agent took a seat near the end of the bar counter and

ordered a beer from a female bartender. About three minutes later, the beer was poured and placed in front of the minor agent. He was not asked for identification to verify his age by the server or the owner who was also present at the time.

The liquor inspectors identified themselves to the owner. The inspectors advised that a compliance test had been conducted and that the 17-year-old minor agent had been served liquor. A photograph was taken of the pint of beer that had been served and the receipt for the beer was retained by one of the inspectors. Following this, a Contravention Notice was completed regarding the breach of section 33 (1) (a) of the *Act*. A copy of the Contravention Notice was served on the owner. Following this, the minor agent completed an observation form and a minor agent statement form.

The range of penalties for a first contravention of this type is a \$7,500 to \$10,000 monetary penalty and/or a 10 to 15 day licence suspension (*Liquor Control and Licensing Regulation* ("Regulation"), Schedule 4 Item 2). The branch proposes a 10 day suspension of the licensee's liquor licence.

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?

RELEVANT STATUTORY PROVISIONS

Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267

Section 33(1) a person must not

- (a) sell, give or otherwise supply liquor to a minor.

EVIDENCE

Exhibits:

1. Exhibit One: Branch Book of Documents;
2. Exhibit 2: Picture of the Minor Agent and related documents (sealed after review by the licensee)

TESTIMONY

At the outset of the hearing, counsel for the licensee conceded the contravention of selling liquor to a minor contrary to section 33(1)(a) of the *Act* as alleged in the NOEA. As well, the licensee did not advance a defence of due diligence. The only issue in dispute was the selection by the branch of a suspension instead of a monetary penalty.

The branch therefore called Liquor Inspector A on the issue of penalty only. The Inspector identified the picture of the Minor Agent #57 for the Record. She then testified as to her reasons for selecting a 10 day suspension for the contravention of selling liquor to a minor. First, she identified the public safety concerns that the branch has over liquor sales to minors. These concerns are also articulated on page 4 of the NOEA. The branch is concerned about the adverse effect of alcohol on young minds. As well, it is concerned about the manner in which alcohol is metabolized by young persons as it may lead to behaviour which raises public safety issues for the public and for the individual. Abuse of alcohol by young persons may be a contributing factor to youth crime. In this case, service was provided to a 17 year old minor. The serious nature of the contravention caused the liquor inspector to pursue enforcement under the *Act*.

In respect of the penalty which was applied in this case, the liquor inspector testified that she was bound to consider the ranges contained in the Regulation. Within these parameters, she sought a penalty which would be the least punitive in the circumstances. There was no prior history of compliance or enforcement contraventions which would cause consideration of greater than a minimum penalty. The liquor inspector considered the nature and size of the licensee's business, with a focus on its monthly purchases of liquor. Based on these criteria, it was considered that a suspension would be less punitive than a monetary penalty. The range of liquor licence

suspensions under the Regulation is 10 – 15 days, while the range of scheduled monetary penalties is \$7,500 - \$10,000.

In cross examination, the liquor inspector could not recall if she discussed the scheduled penalties in the Regulation with the licensee. She testified that the amount of purchases of liquor by the licensee was the main reason that a suspension was selected. She would not object if the minimum monetary penalty of \$7,500 was applied instead.

Michael Schreiner testified on behalf of the licensee. He advised that there was no dispute that the contravention occurred on March 21st as described in the NOEA. He recalled that he had a short discussion with the liquor inspectors who attended at the restaurant with the minor agent but he could not recall what was discussed or whether there was a discussion about penalty.

Schreiner testified that a 10 day suspension would have severe implications for the business of the restaurant. The income from liquor sales represents a significant part of the income for the restaurant, representing some 15 – 20% of revenue. While the monetary value of the monthly purchases of liquor by the restaurant is relatively small, the revenue from liquor sales is much higher. A suspension would also impact the ability of the restaurant to hire and retain employees, and to expand its business. As well, it would negatively affect staff and customer traffic.

Mr. Schreiner testified that as this is a first offence for the licensee, its preference is for a monetary penalty so as not to adversely affect its business. In the retail food business people expect certain amount of services, and can go to other venues. The buying public is fickle, and will readily go elsewhere. As well, the advertisement about a licence suspension in the restaurant would be detrimental to business. For all of these reasons, the strong preference of the licensee is for a monetary penalty.

ARGUMENT

The branch submits that on the evidence of an admission that a contravention occurred, a penalty is warranted. Enforcement action is being pursued by the branch for that reason. There is a need for a deterrent both to the licensee and to the licensee

community. Whether or not signage is used to inform the general public about the contravention and the penalty is not a discretionary matter.

The licensee submits that it has a good history of compliance with its obligations under the *Act*. The evidence is that this is the first contravention in nine years of operation. A suspension would adversely affect the business of the licensee, and it therefore prefers a monetary penalty in order to come into compliance. The licensee also notes that the branch does not express a position on whether the appropriate penalty is monetary or by way of a suspension.

ANALYSIS AND DECISION

Contravention

The Licensee does not dispute the fact that on March 12, 2015 a minor was sold alcohol inside its store as alleged. I find on a balance of probabilities the evidence establishes that on March 21, 2015, a 17 year old male minor was sold liquor by the licensee in contravention of section 33(1)(a) of the *Act*.

Due Diligence

The licensee is entitled to a defence to the allegations set out in the NOEA if it can show that it was duly diligent by taking reasonable steps to prevent the contravention from occurring. The licensee must show that it had established procedures in place to identify and deal with the type of problems for which the contravention was issued. It must also demonstrate that those procedures are consistently acted upon in order to deal with problems as they occur.

The licensee does not say that it acted with due diligence when the contravention occurred on March 21, 2015. I find therefore that the defence of due diligence is inapplicable in these circumstances.

PENALTY

Pursuant to section 20(2) of the *Act*, having found that the licensee has contravened the *Act*, the Regulation and/or the terms and conditions of the licence, I have discretion to order one or more of the following enforcement actions:

- 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 or both of a licence suspension or 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, and I am not bound to order the penalty proposed in the NOEA.

The branch's primary goal in bringing enforcement action and imposing penalties is to achieve compliance. Among the factors that are considered in determining the appropriate penalty are whether there is 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.

There is no record of prior proven contraventions, offences or enforcement actions of the same type for this licensee within the year preceding this incident. I therefore find this to be a first contravention for the purposes of Schedule 4 of the Regulation, and for the calculation of a penalty.

Due to a concern that minors are being allowed to purchase liquor in licensed facilities, the branch developed the MAP to test licensee compliance. The branch took measures to advise licensees about the program, and to remind them of their responsibilities under the *Act*. Despite these steps, the evidence in this case establishes that a youthful customer purchased liquor from the licensee without being asked for proof of age. Allowing minors access to liquor in this manner is a public safety issue as it can lead to very serious consequences. The branch accepts that consumption of liquor by minors can lead to an early learned behaviour with respect to abuse of alcohol. As well, due to a less effective metabolism of alcohol, liquor becomes a factor in many of the crimes committed by youth, including assaults and driving offences.

On consideration of all of the evidence, and in view of the seriousness of the contravention, I find that a penalty is necessary to encourage future compliance. Schedule 4 of the Regulation provides a range of penalties for a first contravention of this type. The branch has proposed the minimum penalty for a first contravention consisting of a 10 day liquor licence suspension. The intent of the liquor inspector in applying a suspension was to apply the minimum penalty for a first contravention available under the Regulation. She considered that a suspension would be less harmful to the business of the licensee than a monetary penalty. Otherwise, the liquor inspector had no objection to a monetary penalty.

The licensee has testified about its business circumstances, and why a suspension would be more harmful to its business than a monetary penalty. I accept the evidence that the business of the licensee would suffer significantly in the event of a licence suspension, and that a monetary penalty would be less damaging to its business. At the same time, there are no grounds here for waiver of penalty. A minimum monetary penalty of \$7,500 remains significant, and is necessary to bring home to the licensee the necessity of complying with its obligations under the *Act*.

I therefore find that the licensee is required to pay a monetary penalty of \$7,500 pursuant to Schedule 4 of the Regulation for its breach of section 33(1)(a) of the *Act* on March 21, 2015.

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 Monday, January 11, 2016.

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

A. Paul Devine
General Manager's Delegate

Date: November 19, 2015

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