



**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:	A.M.P.M. Holdings Ltd. & Saylor Enterprises dba Oasis Hotel
Appearances:	Case: EH01-031/EH02-091
For the Licensee	S.R. (Russ) Chamberlain, Q.C.
For the Liquor Control and Licensing Branch	Cliff Bergman Shahid Noorani
Enforcement Hearing Adjudicator	Suzan Beattie
Date of Hearing	November 1, 2001
Place of Hearing	Surrey, B.C.
Date of Decision	March 5, 2002

INTRODUCTION

A.M.P.M. Holdings Ltd. and Saylor Enterprises Ltd., doing business as the Oasis Hotel, have four liquor licences. They have a Class "A" Lounge Licence #7839, a Class "C" Cabaret Licence #4183, a Class "G" Licensee Retail Store Licence #192873, and a Class "A" Pub Licence #9459.

This enforcement hearing deals with two allegations involving the Class "A" Pub Licence #9459. This licence permits hours of operation Monday to Saturday from 12 noon to 2 a.m. and on Sunday from 11 a.m. to 12 midnight.

ALLEGED CONTRAVENTIONS

The branch has alleged that on April 28, 2001 the licensee had a minor on the premises, and permitted an intoxicated person to remain on the premises, contrary to sections 35 and 43(2) of the *Liquor Control and Licensing Act and Regulations*.

For these alleged contraventions, the branch recommends the licence be suspended for a total of six (6) days starting on a Saturday and continuing on successive business days until completed.

The relevant legislation states:

Minors on Licensed Premises

- 35 A person who holds a licence under this *Act* or who sells liquor under the *Liquor Distribution Act*, or the person's employee, must not authorize or permit a minor to enter on or to be on premises where liquor is sold or kept for sale except
- a) If the minor is accompanied by a parent or guardian on premises where liquor is sold exclusively for consumption off the premises,
 - b) With lawful excuse, or
 - c) In prescribed circumstances.

For the alleged contravention of section 35, the branch is recommending a suspension of the liquor licence for two (2) days, starting on a Saturday, and continuing on successive business days until completed.

The branch also alleges that on April 28, 2001 the licensee contravened section 43(2)(b) of the *Liquor Control and Licensing Act* by permitting an intoxicated person to remain in a licensed establishment where liquor is sold. Section 43(2)(b) states:

Drunkenness

43(2) A licensee or the licensee's employee must not permit

- (b) an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied.

For this alleged contravention, the branch is recommending a suspension of the liquor licence for four days (4), starting on a Saturday, and continuing on successive business days until completed.

EXHIBITS

The branch presented the following exhibits:

- | | |
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| Exhibit 1 | Hearing Brief |
| Tab A | Notice of Enforcement Action dated August 20, 2001, |
| Tab B | Liquor Licence issued to A.M.P.M. Holdings Ltd. & Saylor Enterprises Ltd. |
| Tab C | Official Floor Plan of Oasis Hotel "A" Pub |
| Tab D | Licence Premise Check Form dated April 28, 2001 |
| Tab E | Contravention Notice issued by LCLB |
| Tab F | Letter dated June 4, 2001 from Inspector Kane Scott to Surrey R.C.M.P. attn: Cst. [] with attached letter dated June 8, 2001 from Cst. [] to Inspector Kane Scott, violation ticket AG10044379 dated April 28, 2001 |
| Tab G | Waiver Notice re: licence 9459 dated May 13, 1996 between A.M.P.M. Holdings Ltd. & Saylor Enterprises Ltd. and the Liquor Control and Licencing Branch dated with attached Notice of Suspension dated June 6, 1996 |
| Tab H | Waiver Notice re: licence 4183 dated May 13, 1996 between A.M.P.M. Holdings Ltd. & Saylor Enterprises Ltd. and the Liquor |

- Control and Licencing Branch dated with attached Notice of Suspension dated June 6, 1996
- Tab I Warning Letter dated September 17, 1999
- Tab J Warning Letter dated April 20, 1999
- Tab K Warning Letter dated February 26, 1997
- Tab L Warning letter dated February 26, 1997
- Tab M Warning Letter dated February 26, 1997
- Tab N Warning Letter dated June 3, 1996
- Tab O Warning Letter dated June 3, 1996
- Tab P Warning Letter dated May 13, 1996
- Tab Q Warning Letter dated April 5, 1994
- Tab R Letter dated June 7, 1991 from [] to A.M.P.M. Holdings Ltd. & Saylor Enterprises Ltd.
- Tab S Letter dated May 22, 1996 from S.R. Chamberlain to the R.C.M.P. with attached document entitled "Legal Rights, Responsibilities, and Procedures"
- Tab T Letter dated May 8, 1996 from S.R. Chamberlain to the Liquor Control & Licensing Branch with attached Employee House Rules
- Tab U Section 4.2.1. from the Compliance and Enforcement Policy and Procedures Manual re: Minors
- Tab V Section 4.5.1. from the Compliance and Enforcement Policy and Procedures Manual re: Intoxicated Persons
- Tab W Pages 10 & 11 from the Guide for Liquor Licencees in B.C. – Terms and Conditions of a Liquor Licence.
- Exhibit 2** Notes from Cst. []
- Exhibit 3** Notes from Cst. Constable []

WITNESSES

Constable [], Constable [], and Constable [] of the Surrey R.C.M.P. appeared as witnesses for the branch. The bartender and the manager of the Oasis Hotel gave evidence for the licensee.

I turn now to the events immediately surrounding the alleged contraventions.

EVIDENCE AND FINDINGS OF FACT

I will summarize the evidence and my findings of fact based on a balance of probabilities. I note at the outset that there are discrepancies in the evidence between the five witnesses.

There are six entrances and exits to the Oasis Hotel. Of interest in this hearing are the following four entrances and exits.

Door	Location	Security
1	South-east corner	Locked with chains and "panic" hardware
2	East corner (patio and bar)	Locked with chains and "panic" hardware – doorperson ([]'s) station
4	West corner (Cornet Lounge / Lobby / Interac machine)	Doorperson station
6	South-West corner (main entrance)	Doorperson station

On April 28, 2001, Constable [] of the Surrey R.C.M.P. detachment conducted an inspection of the Oasis Hotel Pub, commonly known as the Sahara Club. During his "walk-by," Constable [] observed that Door 4 was unlocked and unmanned. He also observed that persons entering the pub through this door were not being checked for identification.

Constable [] spoke with the manager. Approximately one month previously, Constable [] had found another door unlocked and unmanned. Constable [] felt a Licence Premises Check was now warranted, as this was the second occasion he found a door unlocked and unmanned. When he was told that only three door persons were working at the time, Constable [] expressed his opinion that the licensee had inadequate door staff for a Saturday evening.

After ensuring that Door 4 was locked, Constable [] returned to his patrol car and commenced to write a Licence Premise Check. The Licence Premise Check, which was issued on Sunday, April 29 at 00:02, states:

"Police observed door to lobby unlocked and unattended. 3 to 4 people entered bar freely from same door w/o being I.D.'d. One underage female inside removed and lobby locked. Inadequate # of door staff for Saturday night."

Constable [] and Constable [], two Surrey R.C.M.P. officers, discovered the under-aged female referred to in Constable []'s Licence Premise

Check during their routine inspection of the Oasis Club on Saturday, April 28, 2001. The events surrounding the under-aged female commenced at approximately 23:45 on Saturday April 28, 2001 and concluded with the under-aged female in the Surrey R.C.M.P. detachment office on or before Sunday, April 29 at 00:14.

Constable [] explained that he and Constable [] were walking their beat through the Oasis Hotel parking lot when they noticed a female leaving through Door 1. Constable [] stated that the female was staggering, looked very young to be inside a bar and was walking towards Door 2. He stated that he and Constable [] met the female between Door 1 and Door 2. During their conversation with her, they noticed she was unsteady on her feet, had a strong liquor odour, and had spilled something down the front of her shirt. The female stated she had been in the bar but was just waiting for her friends to come outside and she would be leaving the premises. Both Constables were satisfied she would be leaving the premises and took no further action.

Constable [] and Constable [] continued walking around the Oasis Hotel and entered the hotel through Door 6 on the southwest side. This is the main entrance and has a doorman station inside the front entrance. Directly in front of the entrance is a counter with a female staff person selling beer from a beer tub as well as a female coat check person. Constable [] and Constable [] walked past the doorman stationed in the foyer. Constable [] and Constable [] noticed that the same female they had just left in the parking lot was standing approximately ten feet from the doorman. Constable [] took her by the arm, walked in front of the doorman, and both Constables escorted her outside.

The female was unsteady on her feet and had to sit down on the front steps of the establishment. She was upset and yelling, swearing and generally verbally abusive. The female had no identification on her but was identified as a minor through a computer search.

At some point, Constable [] and Constable [] became aware Constable [] was sitting in his police vehicle. Constable [] could not remember

exactly where Constable [] was parked, but stated, "We did talk to him and let him know a minor was taken from the bar." As Constable [] was in the process of writing up a Licence Premise Check, he said he would add the minor being on the premises to the Licence Premise Check.

Constable [] and Constable [] arrested the under-aged female on other offences relating to violations of her probation. Constable [] walked the under-aged female approximately one block to the RCMP detachment office. As a result of this incident, Constable [] and Constable [] made a report to Crown Counsel.

During the course of writing the Licence Premise Check, Constable [] left his police vehicle, walked past the intoxicated female minor, and entered the licensed premises to obtain the liquor licence number and other details for the Licence Premise Check. He returned to his vehicle, completed the Licence Premise Check, and again entered the establishment to give the Licence Premise Check to the manager. The manager was co-operative and apologetic about the unlocked and unmanned Door 4. Constable [] stated he also read the manager the comment portion of the Licence Premise Check and explained the facts about an intoxicated minor on the premises.

The manager's only recollection of a minor was a female who had attempted to come through the "back door" (Door 2) and was not let in because she did not have any identification. He said she was standing on the patio for some time before the "beat police" (Constable [] and Constable []) saw her and took her away. The manager admitted he did not talk to his staff with respect to this event. He did make an entry into the manager's logbook but the logbook was not produced at the hearing.

The bartender stated that at approximately 11:30 p.m. a female was trying to enter Door 2, had no I.D., and was turned away by the doorman. The bartender also recalls the female being outside on the patio for at least 15 minutes until Constable [] and Constable [] started talking to her.

I pause to emphasize the discrepancy in the evidence at this point. Constable [] and Constable [] state they saw the underage female leave Door 1 and walk towards Door 2. Both the manager and the bartender stated the underage female was trying to enter Door 2 which is situated near the bar and patio. All witnesses agree the underage female was talking with Constable [] and Constable [] between Door 1 and Door 2.

The licensee argues the most credible explanation for the events on the evening of April 28, 2001 is that Constable [] and Constable [] found the under-aged intoxicated female in the patio area in the parking lot of the Oasis Hotel in an obvious intoxicated condition. They took the under-aged female into their custody, brought her around to the front entrance of the Oasis Hotel, and had a conversation with Constable []. Constable [] was in the process of writing his Licence Premise Check and added the contravention with respect to an intoxicated female minor being on the premises to the Licence Premise Check.

In support of its submission, the licensee submits it is remarkable that neither the notes of Constable [] nor the notes of Constable [] explain that the intoxicated female minor was found by the beer tub in close proximity to the coat check person and the doorman. As a result, the licensee submits that the Liquor Control and Licensing branch's evidence is totally unreliable and does not meet the test to establish its case on a balance of probabilities.

Implicit in the licensee's explanation is the suggestion that Constable [] and Constable [] did not find the underage female inside the premises. I am not prepared to accept that suggestion. Rather, I prefer the evidence of Constable [], Constable [], and Constable [] and find, on a balance of probabilities, that the female minor was found, in an intoxicated state, inside the licensee's premise. I am not persuaded by the manager that, having received a License Premise Check that referred to an intoxicated minor, he did not talk to any of his staff. The licensee did not produce the managers' logbook that would record the manager's notations of the event.

On balance, after considering the totality of the evidence, I find that the female minor was on the premises of the Oasis Hotel Sahara Pub on the evening of Saturday, April 28, 2001 in an intoxicated state.

SUBMISSIONS

Section 35

The branch states that with respect to the alleged violation of section 35 of the *Liquor Control and Licensing Act*, there is a defence of due diligence if the licensee sets out the steps it took to prevent the female minor from being on the premises and if the steps they took were appropriate in the circumstances. In order for a licensee to put forward a defence with respect to having the female minor on the premises, the branch states they must put forward evidence that meets a "lawful excuse." The branch alleges the licensee has not done so. It relies on the decision of the British Columbia Court of Appeal in *Twilight Zone Cabaret v British Columbia (Liquor Control and Licensing Branch)* [1995] B.C.J. No. 596 at paragraph 13, which states, in part:

"In my opinion, the lawful excuse referred to in paragraph (b) of s.37 must encompass, among other things, the satisfying of the tribunal that the defendant has required that the person produce identification and that the defendant has examined and acted on the authenticity of the identification."

The licensee submits that they have demonstrated due diligence in the manner and in the procedures that are in place to ensure that minors do not gain entry to the premises. The licensee argues that, If the evidence of Constable [] and Constable [] is accepted on a balance of probabilities, then the question becomes how did the female minor gain access to the premises, what did she do when she was inside the premises and what steps were taken to remove her from the premises. The licensee argues there is no evidence that the female minor's presence was permitted on the premises. It submits that it has made out a defence of due diligence.

I find on the evidence before me that the licensee has not met the test of due diligence. I accept the evidence of Constable [] that Door 4, the entrance from the Cornet Lounge and the Lobby was unlocked and unmanned. I find that, on this evening, the Oasis Hotel Sahara Pub was free and accessible to a minor. The defence of due diligence would require the licensee to take measures to ensure that entrance doors are staffed and that a minor could not enter the premises. I find the licensee contravened section 35 of the *Liquor Control and Licensing Act*.

Section 43(2)(b)

With respect to this allegation, the branch submits that the licensee permitted the intoxicated female minor to remain on the premises. The branch follows the definition of "permit" endorsed by the Liquor Appeal Board in *Ed Bulley Ventures Ltd. (c.o.b. Planet Sports Lounge) v. British Columbia (Liquor Control and Licensing Branch, General Manager)*, June 28, 2001, LAB L-9905 which states at paragraph 61, in part:

The interpretation approved by the courts is as follows: a licensee may be said to permit something where the licensee does not exercise as high a degree of diligence as it should have in the circumstances, or where the licensee shuts its eyes to the obvious or allows something to go on, not caring whether an offence is committed or not.

The licensee submits the branch has not made out its case that it "permitted" the female minor to be on the premises. Aside from the evidence on a balance of probabilities of the three police constables, the licensee argues there is no other evidence that the female minor was permitted on the premises for more than a 'temporary moment.'

I accept the evidence of Constable [] and Constable Johnson that the intoxicated female minor was 6 to 10 feet from the doorman at Door 1 (the main door). As well, there was a coat check person and a female staff member selling beer from the beer tub in close proximity to the female minor. There was no evidence of any measures taken to remove the intoxicated female minor. Nor was the incident log provided by the licensee with respect to this incident. On the evidence, I find the licensee contravened section 43(2)(b) of the *Liquor Control and Licensing Act*.

REASONS AND DECISION

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 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 license

Imposing any penalty is discretionary. However, if I find that either a licence suspension or monetary penalty is warranted, I am bound to follow the minimums set out in Schedule 4 of the *Regulations*.

Penalty

With respect to the female minor on the premises, the branch is recommending a two (2) day suspension of the liquor licence. With respect to the allegation of permitting the intoxicated female minor to remain on the premises, the branch is recommending a four (4) day suspension of the liquor licence, which is the minimum recommended in Schedule 4.

With respect to the issue of penalty, the licensee submits that there should be a one (1) day suspension concurrent on each of the two alleged violations. The licensee argues in substance and on the evidence, the alleged violations are inextricably linked and there should not be any additional penalty imposed.

I will deal first with the contravention of contravened section 35 of the *Liquor Control and Licensing Act*. The branch has expressed its concerns to the licensee in the past with respect to minors on the premises. Liquor service to minors is a significant public safety policy. The rationale for this concern includes the effect of alcohol on growing

bodies and developing minds; the effects on individuals and society of irresponsible drinking behaviour learned at an early age; the fact that liquor has a more intoxicating effect on minors and that liquor is a significant factor in many youth crimes.

This licensee had its class "A" pub liquor licence #9459 suspended for three (3) days in June 1996 for minors on the premises and permitting patrons to become intoxicated and remain in the establishment (among other contraventions). I acknowledge this incident was some time ago, and that the licensee took a number of steps at that time to work with the RCMP and the branch. However, in view of all the circumstances of this case, I find the branch's recommendation of a two (2) day suspension is reasonable.

Turning now to section 43(2)(b) of *the Liquor Control and Licensing Act*. The licensee argued that the contravention of section 35 and section 43 could be viewed, in the circumstances of this case, as being linked. The question before me is whether, on the facts, they are so inextricably linked that I should exercise my discretion and not impose any additional penalty.

In answering this question, I recognize the branch's argument that during the time the intoxicated female minor was on the premises, the doorman at the main entrance door, a coat check person and a female employee selling beer were in close proximity. As well, there was no evidence of any effort on the licensee's part to remove the intoxicated female minor. However, I find the fact that the minor was the intoxicated individual, and that she was on the premises for only a temporary moment, merit considering the contraventions as one for the purpose of the penalty.

In the result, I find the unique circumstances in this case justify the use of my discretion not to impose a penalty. I find the fact that both contraventions involve the same person, as well as the short time the person was on the premises, support the exercise of my discretion not to impose a penalty for the contravention of section 43(2)(b) of the *Liquor Control and Licensing Act*.

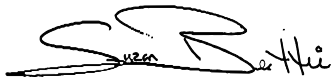
ORDER

Pursuant to section 20(2) of the *Act* concerning the Licence Number 9459, I impose a licence suspension of two (2) days as follows:

For the contravention of section 35 of the *Liquor Control and Licensing Act* on April 28, 2001, I impose a licence suspension of two (2) days;

For the contravention of section 43(2)(b) of the *Liquor Control and Licensing Act* on April 28, 2001, I exercise my discretion and decline to impose a penalty.

To allow the licensee time to exercise its right of appeal, the period of suspension shall commence after the close of business on Friday, April 12, 2002 and continue through to the opening of business on Monday, April 15, 2002 inclusive. The establishment must not serve liquor during the period of suspension. The suspension order notice and suspended sign notifying the public shall be placed in a prominent location by a liquor inspector or police officer. A member of the R.C.M.P. will be requested to attend the premises, take possession of the liquor license, and hold it in safe keeping during the term of the suspension period.



Suzan Beattie
Enforcement Hearing Adjudicator

Date: March 5, 2002

cc: Surrey Police Department
Liquor Control and Licensing Branch, Surrey Regional Office
Attention: Mike Clark, Regional Manager
Cliff Bergman, Branch Advocate
Liquor Control and Licensing Branch, Vancouver Regional Office
Attention: Shahid Noorani, Project Manager

Appeal Provisions

As a result of amendments made to the *Liquor Control and Licensing Act* effective January 15, 2001, the action determined by the General Manager in this decision takes effect immediately or at the time specified in the decision. However you may apply to the Appeal Board for a stay of the General Manager's action pursuant to s. 31 (5), (5.2) and (6) of the Act. Copies of these sections are enclosed.

Section 31 of the *Liquor Control and Licensing Act* provides a right of appeal to the Liquor Appeal Board in certain circumstances. Pursuant to section 31(6)(b), an appeal is not a hearing in the nature of a new trial but is instead an appeal on the record. "Record" is defined in section 1.1 of the Liquor Appeal Board Regulations. Copies of both sections are enclosed.

The grounds for appeal are limited by section 31(6)(b) of the Act to errors in law alone or failure to observe the principles of procedural fairness. After considering an appeal on these grounds, the appeal board may either dismiss the appeal, or allow the appeal and send the matter back to the General Manager/Committee for reconsideration. An appeal must be in writing and filed by either personal service, courier, facsimile machine, or by sending the notice to the Appeal Board by registered mail.

The Notice of Appeal should be delivered to the Liquor Appeal Board, Province of British Columbia, Suite 910 – 1125 Howe Street, Vancouver, British Columbia, V6Z 2K8, within 30 days after the date of this decision. A copy of the Notice of Appeal must also be delivered to the General Manager at the address on this letterhead within 30 days after the date of this decision.

The Notice of Appeal must be signed by the applicant or authorized agent and accompanied by the prescribed fee of \$500.00 payable to the Minister of Finance and Corporations. The Appeal Board "Rules, Practices and Procedures" may be obtained directly from the Appeal Board.