



**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:	Yang-Myung Hotel Management Limited dba Astoria Hotel 769 E. Hastings Street Vancouver, BC
Case:	EH05-063
For the Licensee	Paul Sahota
For the Branch	Shahid Noorani
Enforcement Hearing Adjudicator	M. G. Taylor
Date of Hearing	August 5 and 17, 2005
Place of Hearing	August 5, 2005 – Vancouver August 17, 2005 – teleconference
Date of Decision	September 12, 2005

**Ministry of Public
Safety and Solicitor
General**

Liquor Control and
Licensing Branch

Mailing Address:
PO Box 9292 Stn Prov
Govt
Victoria BC V8W 9J8
Telephone: 250 387-1254
Facsimile: 250 387-9184

Location:
Second Floor, 1019 Wharf Street
Victoria BC

<http://www.pssg.gov.bc.ca/lclb/>

INTRODUCTION

The licensee, Yang-Myung Hotel Management Limited, operates the Astoria Hotel in the 700 block of East Hastings Street, in the Downtown Eastside of Vancouver. There are two principals of the corporate licensee, both of whom attended the hearing.

The hotel includes the Astoria pub (“the pub”) which operates under Liquor Primary Licence N0. 139155. The licence permits operating hours from 11:00 a.m. to 1:00 a.m. Monday through Saturday, and to Midnight on Sundays. The licensed capacity totals 220 patrons.

ALLEGED CONTRAVENTIONS

By Notice of Enforcement Action (NOEA) dated May 31, 2005, the Liquor Control and Licensing Branch (“the Branch”) alleged that on March 15, 2005, the licensee contravened Section 35 of the *Liquor Control and Licensing Act* (“the Act”), by permitting a minor to enter on or to be on the premises where liquor is sold or kept for sale.

The branch’s recommended enforcement action is a two (2) day suspension of the liquor licence.

RELEVANT STATUTORY PROVISIONS

Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267 (the “Act”)

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.

ISSUE(S)

1. Does the evidence establish that the licensee permitted a minor to enter or be on the premises?
2. If yes, is the branch's recommended enforcement action appropriate?

EXHIBITS

- | | |
|---------------|---------------------------------------|
| Exhibit No. 1 | Branch's Book of Documents |
| Exhibit No. 2 | Photocopy of Police Constable's notes |

PRELIMINARY APPLICATION

The licensee made an application to dismiss the case because the branch could not produce the minors for the hearing and, therefore, the licensee was unable to examine them. The licensee noted that the alleged minors held beliefs that were anti-establishment and anti-police and they would have an interest in grandstanding and in trying to deceive the police about their true identity. The licensee submitted that they could have intended to harass and mislead the police, to show off to their friends. By not showing for the hearing they would be considered like heroes to their friends.

The branch advocate advised that the branch went to all reasonable efforts to secure the attendance of the minors by hiring process servers. The process servers reported that the minors are not in Canada. However, he noted, the police officers were able to identify the minors by a) talking to the father of one;

and b) comparing the descriptors on the data system checks against the other's appearance and were satisfied that they had given their true identities

I reserved my decision on the application to dismiss and advised that I would hear the evidence and then determine whether to accept it.

EVIDENCE

Overview

It was common evidence that this occurrence arose out of an anti-police parade that took place at approximately 8:00 p.m. on March 15, 2005, in east end of Vancouver and culminated in the vicinity of the Astoria hotel. The Vancouver Police Department (the police) had officers monitoring the parade and the Identification Squad was on the scene videotaping the parade. Both the branch's and licensee's witnesses testified that they were told that some of the participants had damaged police vehicles and buildings, by throwing paint thinner and eggs. It was also common evidence that during the parade, and when they entered the Astoria pub, some of the participants were wearing masks and scarves over their faces. Some participants were dressed in combat attire and army-style boots.

At the end of the parade a number of the participants went into the Astoria pub. Police attended the Astoria pub and during their inspection found two females who were unable to produce identification. One was located in the women's washroom and the other was seated at a table with other patrons. Based on the information they provided, the police concluded they were both minors. Neither was drinking alcohol.

The police issued a Licensed Premises Check to the licensee for allowing a minor to be in the premises and a Violation Ticket to one of the minors.

The branch's case is based on the allegation that the licensee permitted minors to enter or to be on the premises. The licensee's defence is that the staff did not permit them to enter, rather the staff was overwhelmed when a group rushed into the bar, past the door security, without paying the cover charge, and that the police came in within one to two minutes after the group. The licensee submitted that once the police were present, the staff left the investigation to them, because the police would not have tolerated the staff interfering.

Branch's Witnesses

The branch's witnesses were a sergeant and a constable of the Vancouver Police Department and a liquor inspector. The police witnesses attended the Astoria pub after the parade had dispersed. The liquor inspector was not present during the alleged contravention. His testimony concerned the licensee's compliance history and other information from the licensee's file with the branch.

The sergeant was at the parade at its commencement and was instructed by the duty officer to muster all available officers to meet at the Astoria. She left to carry out her instructions and did not see the parade again. The constable, who was one of the officers mustered to attend, did not see the parade and arrived at the Astoria approximately 15 minutes after the sergeant. He testified that he viewed parts of the police parade videotape. Based on his viewing, he testified that some protestors were wearing masks and scarves over their faces, that the police officers who were monitoring the parade from the beginning stayed with the parade to the Astoria and that some of the police officers had cameras. He was not questioned about the events when the parade and the police reached the Astoria.

In Exhibit No. 1, there is an excerpt from the police occurrence report on the parade, which does not include any details of the parade although there is detail of an individual having been arrested and charged.

The sergeant testified that her instructions were to get identification from everyone outside and inside the Astoria so the ID squad could put names to faces on the videotape. She testified that she did not have instructions to arrest anyone and that they did not arrest anyone. She testified that she did not see anyone handcuffed or put against a wall and that there would no reason to unless the police were arresting someone.

She recalled that she attended the Astoria at approximately 9:00 p.m. with 12 to 15 officers. She did not recall how many police cars arrived at the scene and could not say when the vehicles would have been visible to the people in the rally. She testified that she did not see the parade disperse and that she might have watched for 3 or 4 minutes outside before going in and saw only 3 or 4 people go inside. When she entered, there was no door staff. She did not see any other police officers present when she arrived.

She observed that the hotel staff were serving drinks and there were a couple of staff behind the bar. She did not see any staff checking for identification. She agreed that the police would not want the staff to hover or interfere with their investigation of the patrons and she confirmed that they did not.

The sergeant testified that, at approximately 9:15 p.m., she located a female minor in the women's washroom, which is located at the back of the bar. She testified that the young woman appeared to be approximately 16 years old and did not have any identification on her. The minor provided a name and birth date (April 22, 1987) which indicated she was 17 years old. The police ran her name through the Canadian Police Information Centre (CPIC) and the driver licence checks, without results. The sergeant telephoned the minor's father and from information he provided, she believed the minor was who she said she was. She testified that the minor was not cooperative and was yelling that the police were harassing her and arresting her. The police issued a Violation Ticket to the minor for being in a licensed establishment and allowed her to leave.

The sergeant left the Astoria pub at approximately 9:45 p.m. The sergeant's evidence was based on her recollection as she had made no notes of her involvement in the parade or at the Astoria pub and did not view the videotape or the Occurrence Reports prior to testifying.

The constable found a young female who did not have any identification. She was sitting at a table with some others. She questioned his concern about her age since she was not drinking. The officer ran the name she gave through CPIC and was satisfied that her description – particularly her tattoos - matched the physical description in the system.

The constable spoke with the bartender who said she was in charge. He told her there were two minors found in the bar. She said that there were two door staff on duty but they were overwhelmed by a crowd of masked people who rushed the door. She said she did not telephone the police because they came in right after. The constable testified that he thought the bartender's explanation of what occurred was weak and he decided to issue a Licensed Premises Check for 'minors in premises.'

Licensee's Witnesses

The licensee's witnesses were a corporate principal, sound technician, 2 door security staff and an assistant bar manager.

One of the principals of the corporate licensee ("the licensee") was present during the occurrence on March 15, 2005. He testified that he had heard the parade would be happening and that lots of people would be walking in it. On the evening of March 15, 2005, he heard from other patrons that about two blocks from the Astoria some parade participants had vandalized a police car. He testified that approximately 20 people rushed the door and that some of the people came in wearing masks and cloaks. Before they came in there were

about 40 to 50 patrons, then 20 to 30 rushed in. The police followed them within 1 to 2 minutes.

The licensee testified that there were 2 door staff on duty. The one at the front door was not able to control the number of people who rushed in. The other was at the back door. A third door security person was just coming on shift when this occurred. He recalled there were 15 to 20 uniformed officers. He presumed there were also some undercover officers. He testified that he saw the police handcuffing people.

The licensee testified that the usual procedure at the front is that staff check identification, collect a \$5.00 cover charge and stamp patrons once they have paid.

The pub has a video surveillance, which the licensee said was operating that night. The licensee did not watch the video or save it for the hearing because, as he testified, he was there and saw what happened, as did the police.

The licensee's sound engineer surmised that he was told about 1 week in advance about coming to work on March 15, 2005. Usually there is not live music on Tuesdays, but this was a special occasions because of the parade, which he said was supposed to be a peaceful march. He recalled that 3 bands were to play, starting around 10:00 p.m.

He testified that arrived at the Astoria around 8:00 and at approximately 9:00 p.m. about 20 people came in together. Some wore hoodies, army fatigues and balaclavas. One man started to pay the cover charge and the rest rushed by and went to the back of the bar where they joined some other people. They immediately began removing their hoodies and balaclavas. Within a minute, the police came in.

The sound engineer testified that the door staff could not have stopped the group that rushed by. The group was intimidating and threatening because of their dress. He recalled seeing one door security at the front door and one at the back door, and that there was a 3rd door security. The police went to the back of the pub and surrounded the area where the group had gone, and they blocked the exit doors. At the request of the police, he turned off the music and turn up the lights.

The person referred to as the '3rd doorman' testified that he had arrived at the bar early and was playing pool. He first noted two large men wearing camouflage clothing. Then he saw approximately 15 to 20 individuals rush in and to the back of the bar. A couple of them went into the washrooms. Then approximately 15 to 20 police officers arrived and starting questioning the people sitting around.

The other door security witness testified that he was watching the back door on March 15, 2005. He recalled that a couple of people rushed in wearing dark clothes, army fatigues, and that he followed them into a washroom. He testified they were changing their clothes and said they were meeting friends. They both had door stamps. When he came out of the washroom, there were more people, many of whom were wearing black combat fatigues. Police officers had also arrived. He approached one officer who said they had everything under control.

The assistant bar manager testified that he was working on March 15, 2005. He went to the stock room, which required him walking through the Licensed Retail Store to the hotel lobby. As he was returning, he saw the parade and people carrying banners and wearing balaclavas and army clothes. He saw 2 to 3 police vehicles across the street and saw officers get out of the vehicles with batons in their hands. He testified that the police handcuffed and arrested one person outside the Astoria. He recalled one person in particular who was yelling about police brutality. He testified that there was a lot of chaos, people running, and people dropping eggs on the sidewalk.

He further testified that when he went inside the pub, there were people inside wearing balaclavas and he asked the bar manager what was happening. More people came in and rushed by him to the stage area and the washrooms. Within 1 or 2 minutes, the police came in and corralled the group in a corner.

SUBMISSIONS

The licensee submitted that the branch had not proven that the alleged minors were in fact minors and submitted that there is no onus on the licensee to prove they were not minors. The branch did not produce the individuals so there was no opportunity for the licensee to question them.

The licensee submitted that the pub staff were overwhelmed by the 'rush' or 'storming' of people and did not have time to respond before the police came in. The licensee was emphatic in saying that he was not questioning the truth of the officers' testimony, but that their testimony did not support the branch's alleged contraventions. The licensee contended that the sergeant and her officers arrived after the 'storming' and, therefore, could not witness the 'storming' which only took a few seconds.

The licensee submitted that in the circumstances of the anti-police parade, considerable damage to vehicles and buildings, and protesters out of control, both uniformed and undercover officers would have had this parade under surveillance and surrounded right to the point of dispersal. He submitted it is not plausible that the officers would have allowed the vandals to disperse without following them. The licensee's theory was that the 'rally police' followed the 'stormers' into the Astoria.

Further, the minor in the washroom was obviously hiding herself. The evidence is clear that the minors were not regular customers, were not there to drink, and

were not consuming liquor. He submitted it is more likely that the minors had run into the Astoria to evade police detection.

Additionally he reasoned, since there was going to be a band playing that night, there would have been door staff as the witnesses stated. Obviously, it was in the licensee's interest to identify everyone coming into the bar and to collect the cover charge. But the 'storming' had never happened before, was unforeseen and was beyond the licensee's control. Once the police entered, the staff had no opportunity to check the patrons. In the circumstances, the licensee could not be said to have permitted the people to enter or to remain.

ANALYSIS AND DECISION

The allegation is that the licensee permitted minors to enter or be on the premises. The accepted definition of 'permit' is contained in *Ed Bulley Ventures Ltd. (c.o.b. Planet Sports Lounge) v. British Columbia Liquor Control and Licensing Branch, General Manager*, [2001] B.C.L.I. No. 5, appeal No. L-9905 (Liquor Appeal Board), quoting from the BC Court of Appeal, paragraph 61:

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 contentious point of the evidence is what happened when the group entered the pub. That is the crucial point in time to determine whether the licensee 'permitted' the minors to enter, according to the branch's theory of the case.

This case suffers from a lack of evidence of what occurred at the point that the rally ended. Apparently, both the police and the licensee would have had videotape coverage of the rally arriving at the Astoria but neither tape was in evidence. The branch's witnesses did not include any police officers who

monitored the parade, took photographs, or were present when the parade ended. The police have a general occurrence report for the parade but only segments of that were put in evidence. Two key people for the licensee were the front door security and the bar manager, neither of whom testified.

The strength of the branch's case lies in the testimony of the sergeant who testified that the parade had dispersed by the time she arrived at the Astoria at approximately 9:00 p.m. That when she entered the pub, there were no other police officers present, that there was no staff at the door, that no patrons were wearing masks or scarves, and that the licensee was serving patrons.

The strength of the licensee's case lies in the testimony of various witnesses who said that the crowd rushed past the door staff, that some of the crowd were wearing masks and balaclavas which they quickly removed, and that the police followed the crowd within 1 to 2 minutes. Further, the licensee provided evidence of their usual practice of checking identification and collecting a cover charge, which they were prevented from doing because of the 'rush' past the door staff.

Overall, I find that the licensee's witnesses were credible and that their testimonies provided a consistent and plausible explanation of what occurred when the parade ended. There were differences in recollections, which one would expect from eye witnesses, but those differences did not undermine the licensee's theory of what transpired. In the absence of evidence to the contrary, such as the police videotape or police testimony of what occurred when the participants entered the Astoria, I accept the licensee's evidence. I find that a group of people who had been in the parade rushed past the door security, probably in an effort to avoid being apprehended or identified by the police, and dispersed into the pub. I find that the licensee's staff were taken by surprise and overwhelmed, and could not have stopped the group that rushed in.

I also find that police officers entered almost immediately following the group of people. It is not necessary for me to conclude whether those officers were the 'rally' police or the 12 to 15 officers who accompanied the sergeant. Once the police were present, they took control and there was no opportunity for the licensee to question the people who had rushed in.

I find it probable, based on the police evidence of their descriptions and actions, that the two females were participants in the parade and that they entered with the group from the parade. I find that the licensee did not permit them to enter the premises and did not permit them to remain. The evidence is clear that the licensee did not serve them alcohol.

As noted earlier, the licensee asked me to refuse to admit the police evidence of the identification of the two females. Given my determination that the licensee did not permit the people to enter or remain, it is not necessary for me to rule on that evidentiary issue.

ORDER

I find that the branch has not established that the licensee permitted minors to enter or remain on the premises.

Original signed by

M.G. Taylor
Enforcement Hearing Adjudicator

Date: September 12, 2005

cc: Vancouver Police Department

Liquor Control and Licensing Branch, Vancouver Regional Office
Attn: Lee Murphy, Regional Manager

Liquor Control and Licensing Branch, Surrey Regional Office
Attn: Shahid Noorani, Branch Advocate
