



**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: 614540 B.C. Ltd.
dba Creekside Cold Beer & Wine Store
3929 Lakeshore Road
Kelowna, BC V1W 1V3

Case: EH05-137

For the Licensee: Richard Stotz

For the Branch: Sonja Okada

Enforcement Hearing Adjudicator: Sheldon M. Seigel

Date of Hearing: January 7, 2006

Place of Hearing: Written Submissions

Date of Decision: January 24, 2006

INTRODUCTION

This hearing was conducted by way of written submissions by agreement of the licensee and the general manager.

The Liquor Control and Licensing Branch (the branch) employs persons as agents who are between the ages of 19 and 25 years of age to assist the general manager in determining whether a licensee is complying with Section 45 of the *Liquor Control and Licensing Regulation* (the *Regulation*).

The licensee operates a Licensed Retail Store (LRS) under LRS Licence No. 192014 at a premise known as the Creekside Pub Restaurant & Cold Beer and & Wine Store, in Kelowna, BC.

During a compliance check on August 12, 2005, two agents of the branch entered the LRS and made independent purchases of liquor. They each paid for the product and were provided with receipts. They each left the LRS. Neither agent was asked to produce any identification (ID) while in the LRS.

The licensee has acknowledged that the establishment contravened Section 45(2) of the *Liquor Control and Licensing Regulation* by failing to request two pieces of identification from a person appearing to be under the age of 25 before allowing the person to enter the licensed establishment, or before selling or serving liquor to the person.

The recommended enforcement action is a one (1) day suspension of the liquor licence (Item 4, Schedule 4, *Regulation*). The licensee submitted that the penalty is too severe in light of the licensee's history of contravention, and the impact the suspension would have on its staff.

RELEVANT STATUTORY PROVISIONS

Liquor Control and Licensing Regulation

Section 45(2)

A licensee must request 2 pieces of identification from any person appearing to be under the age of 25 before

(a) allowing the person to enter the licensed establishment, if the establishment is one in which minors are not allowed, or

(b) selling or serving liquor to the person.

Section 64(3)

The general manager may hold an enforcement hearing to determine whether the licensee committed the alleged contravention and, if so, to determine what enforcement actions are to be taken against the licensee as a result...

Section 66 (1)

If, in relation to a contravention, the enforcement actions specified under section 64(2)(a) or referred to in section 65(1) include a suspension, the period of the suspension must, [at minimum] fall within the range established for the contravention under Schedule 4.

ISSUE

The licensee has acknowledged that the alleged contravention has occurred. The issue therefore, is whether a penalty is required under the circumstances of this case, and if so, what penalty is appropriate.

EXHIBITS

The licensee provided the following:

Exhibit No. 1 Comprising of a letter to the branch advocate on behalf of the general manager of the branch dated December 5, 2005.

The branch provided the following:

Exhibit No. 2

- Notice of Enforcement Action dated November 9, 2005
- Contravention Notice B002825 dated December 16, 2003
- Licensed Retail Store Licence No. 192014
- Pages 3, 10, from the LRS Licence- Terms and Conditions A Guide for Liquor Licensees in BC May 2005
- Liquor Retail Store Inspection Interview Sheet
- Compliance Meeting form dated November 10, 2004
- Compliance Meeting form dated May 12, 2003
- Waiver Notice re: CN B002817 dated Nov 10, 2004
- Contravention Notice B005031 issued August 24, 2005
- Contravention Notice B002817 issued July 14, 2004
- Enforcement Action Recommendation Report dated August 29, 2005
- Contravention Notice B002788 dated May 12, 2003
- Agent Observation Reports (two) dated August 12, 2005
- Legal Entity Change Inspection Interview report dated November 4, 2003

SUBMISSIONS

The licensee submitted that two of the previous contraventions of Section 45(2) took place at the establishment prior to the current owners taking possession.

They submitted, that as a result of that fact they were unduly punished by receiving a fine of \$1,000 for their first contravention of that section after taking ownership of the licence.

The recommended penalty of one-day suspension is therefore unfair for a second contravention of Section 45(2) of the *Regulation*.

Further, the licensee submitted that the current staff of the establishment does not include those involved in the contraventions and a suspension would unduly financially punish those current staff members.

ANALYSIS AND DECISION

The contravention has been admitted and I find that it has indeed occurred. The only issue, therefore, is penalty.

The penalty for a first contravention of this nature is a range of a one (1) to three (3) day suspension, or a monetary penalty of \$1,000-\$3,000.

The terms of the licence are fixed and enforceable. It is the sole responsibility of the licensee to ensure compliance with these terms while operating the establishment.

While the branch wishes to have voluntary compliance, it has the mandate to assure compliance through enforcement action if required to do so.

For the purposes of this adjudication, I must consider past contraventions, proven and alleged, as a whole, and in the context of this enforcement action. I find that although the licensee did not have ownership or control of the establishment at the time of the first two contraventions of Section 45(2) of the *Regulation*, they did have ownership and control thereafter. At least one additional contravention of the same section of the *Regulation* occurred during the licensee's ownership of the establishment- for which the licensee acknowledged responsibility and signed a waiver. The penalty issued was a \$1,000 fine.

This enforcement action relates to yet another occurrence of the same contravention. The branch, however, has chosen to recommend a penalty based upon this being a first contravention. It seems to me that the Compliance and Enforcement officer (C&E officer) chose to propose a smaller penalty than might be the case. The C&E officer has the discretion to so decide after review of the

compliance history, which in this case includes contact with the licensee and a Compliance Meeting.

I have been presented with no evidence that would suggest the inappropriateness of the recommended penalty, and indeed I find that the evidence supports a finding of a one-day suspension as reasonable under the circumstances.

I find that the previous \$1,000 monetary penalty assessed was insufficient to bring the licensee into a position of voluntary compliance and therefore a one-day suspension is warranted.

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 the 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 a licence suspension or monetary penalty is warranted, I am bound to follow the minimums set out in Schedule 4 of the *Regulation*.

The range of penalty for a first contravention of Section 45(2) of the *Regulation* in accordance with item 4 of Schedule 4 of the *Regulation* is one (1) to three (3) days suspension, and/or a \$1,000-\$3,000 monetary penalty.

The recommended penalty is a one (1) day suspension. I feel that penalty is appropriate.

ORDER

Pursuant to Section 20(2) of the *Act*, I order a suspension of the Licensee Retail Store Licence No. 192014 for a period of one (1) day to commence at the close of business on Thursday, February 23, 2006, and to continue each succeeding business day until the suspension is completed. "Business day" means a day on which the licensee's establishment would normally be open for business (Section 67 of the *Regulation*). I direct that the Liquor Licence No.192014 be held by the branch or the R.C.M.Police Kelowna Detachment from the close of business on Thursday, February 23, 2006, until the licensee has demonstrated to the branch's satisfaction that the Licensee Retail Store has been closed for one (1) business day.

Original signed by

Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: January 24, 2006

cc: R.C.M.Police Kelowna Detachment

Liquor Control and Licensing Branch
Attn: Rod Rodrigue, A/Regional Manager
Vancouver Island/Okanagan/Kootenay

Liquor Control and Licensing Branch, Vancouver Regional Office
Attn: Sonja Okada, Branch Advocate
