



**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

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| Licensee: | 664975 B.C. Ltd. dba Argyle Place 5251 Argyle Place Port Alberni, BC V9Y 1V1 |
| Case: | EH05-163 |
| For the Licensee: | Receiver Manager for 664975 B.C. Ltd. |
| For the Branch: | Shahid Noorani |
| Enforcement Hearing Adjudicator: | Sheldon M. Seigel |
| Date of Hearing: | March 27, 2006 |
| Place of Hearing: | Port Alberni |
| Date of Decision: | April 19, 2006 |

INTRODUCTION

The licensee operates a licensed establishment within the Somas Hotel. There are several licenses in the Hotel. The licence in issue is Liquor Primary No. 029240 and relates to a bar known as the "Blue Zoo." The Blue Zoo offers exotic dancing intended for adult audiences. The establishment was at all relevant times being operated by a third party receiver/manager. At the hearing, the licensee's representative, by arrangement with the Liquor Control and Licensing Branch (the branch), was a representative of the receiver/manager.

In the early morning of Sunday, September 18, 2005, (the business day of Saturday September 17, 2005), the establishment was inspected by members of the Port Alberni Detachment of the R.C.M. Police. The inspection revealed minors in the establishment.

The branch issued a Notice of Enforcement Action (NOEA) to the licensee as a result.

ALLEGED CONTRAVENTIONS

The branch alleged that on September 18, 2005, at 1:35 a.m. the licensee contravened Section 35 of the *Liquor Control and Licensing Act* (the *Act*) by allowing minors in the premises.

RELEVANT STATUTORY PROVISIONS

Liquor Control and Licensing Act Section 35

Minors on licensed premises

35 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.

ISSUES(S)

1. Did the licensee contravene Section 35 of the *Act*?
2. Did the licensee act with due diligence such that its actions are a complete defence to the allegations?
3. Is a penalty warranted and if so, what is the appropriate penalty to be imposed?

EXHIBITS

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| Exhibit No. 1: | Book of Documents (the branch) |
| Exhibit No. 2: | Somas Beer and Wine Store Third Party Operator and Employee Policies and Procedures (the licensee) |

EVIDENCE

The branch called the minor. She testified as follows:

- Her birthday is November 6, 1987. On the date in question, she was 17 years old.
 - She attended at the Blue Zoo bar on that date.
 - She had no identification, real or fake, with her on that occasion.
 - She entered the establishment alone by way of the back alley.
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- There was no staff at the door when she entered the bar.
- She was not checked for identification by bar staff at the door or at any time while in the bar.
- She went to the smoking room, walked around the main part of the bar and then sat in the smoking room.
- No staff took an order from her.
- She had brought her own beer into the bar in her purse.
- She consumed one or two of the beers that she brought in, while in the bar.
- She had consumed about three beers before attending the bar.
- She was in the bar for twenty-five minutes to half an hour.
- After that time, she went into the washroom. Two girls went with her.
- When she came out of the bar she was approached by a police officer and asked for ID.
- She told the officer she was older than her real age.
- She then admitted her real age.
- The police officer took her to his car and emptied her purse onto the top of the police car. There was no identification in the purse.
- The police officer gave her a ticket.
- The manager of the bar came outside and told the police officer that she had used fake ID to get in. This was not true.

The branch called the police corporal. He testified as follows:

- He has been a member of the Port Alberni Detachment of the R.C.M. Police for 20 years.
 - He has operational and administrative duties including running a six-man-team responsible for community and drug work and conducting Licensed Premise Checks (LPCs).
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- He was working on September 18, 2005. He had started his shift at 7:00 p.m. on September 17, 2005.
 - He attended the Blue Zoo at approximately 1:30 a.m.
 - He saw ambulance and fire department vehicles in the back of the Somas Hotel and decided to investigate.
 - He entered the bar. There were approximately eighty patrons in the establishment and two bar staff that were known to him.
 - The ambulance and fire crew were tending to an older man who had fallen in the washroom and suffered a head injury.
 - He decided to do a LPC while he was there.
 - The bar manager accompanied him on the Licence Premises Check.
 - He noticed three females going into the washroom. One of the females looked young and was staggering.
 - He was eight to ten feet away when he made this observation.
 - He advised the bar manager that he thought one of the females was underage and that he would wait for them to exit the washroom and investigate further.
 - The bar manager indicated that all patrons were checked for ID and were of age.
 - When the female exited the washroom he asked her about her age. She said she was 19. He asked for ID and she said she had none.
 - He observed that she was staggering, her speech was slurred, she had bloodshot eyes, and she was swaying. He opined that she was intoxicated.
 - She gave him a date of birth that would have made her 20, not 19.
 - He told her of the discrepancy and she admitted that she was 17 and provided her correct birth-date.
 - The bar manager was present for the discussion and then accompanied him and the minor outside to the police car.
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- The bar manager indicated that the minor had produced photo ID and indicated the particular name on the ID (not the minor's name).
- The minor confirmed that she had no ID and had not produced any to bar staff.
- The minor confirmed that she had brought beer into the bar, drank it in the bar, and had not been asked for ID or served while in the bar.
- He emptied her purse on the roof of the car, found only a bankcard with her name on it, by way of ID.
- He confirmed her identity and age with the use of his police computer, and issued her a violation ticket.
- He identified all documents in Exhibit No. 1, with which he was involved.

The branch called a Compliance and Enforcement Officer (C & E officer). He testified as follows:

- He has been a C & E officer in the area for four years.
 - The licence in question is one of four in the premises.
 - The numbered company has been the licensee since May 2004.
 - The receiver/manager has been operating the licence with the branch's approval since February 2005.
 - He conducted an interview with the receiver/manager's agent on April 2, 2004, at which they discussed issues of "minors and ID".
 - After the alleged contravention, he contacted the receiver/manager to discuss the events and was surprised to be advised that the receiver/manager knew nothing about the incident.
 - The agent of the receiver/manager indicated that the bar staff had not advised of the LPC or the alleged contravention.
 - He then visited the establishment and spoke to the bar manager about the LPC. He was advised that the manager had no recollection of the minor entering the bar because the manager was dealing with the emergency relating to the male who had hit his head. The manager advised that
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another bar staff had advised that he had checked the female's ID later in the evening and she had produced three pieces of ID.

- He issued a Contravention Notice (CN).
- He took enforcement action because it is a bar with adult entertainment. The minor was in the establishment for a fair amount of time. She was visible and permitted to stay. He did not believe that she was asked to produce ID.
- He identified all of the documents in Exhibit No. 1 that he had authored or considered prior to issuing the CN. He also identified the documents relating to the establishment's history of Contravention Notices and Compliance Meetings.

The licensee called the doorman on duty at the relevant time. He testified as follows:

- A bunch of girls came in at the same time.
- He was pretty sure he checked all of the ID, but he may have missed one.
- He is sure he checked the ID of anyone he missed later in the bar.
- The minor produced two pieces of ID, "a BCID card and something else-not sure, maybe a CareCard".
- He checked her ID.
- There was enough light to see it.
- Another member of the bar staff asked if I checked her at the door, and I was not sure, so I checked her again.
- This was his first doorman job.
- He was trained by another member of the staff.
- He had never been tested on his procedures knowledge.

The licensee called the bar manager. He testified as follows:

- He has been in the business for six years.
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- He was the manager of the Blue Zoo for a year and a half.
- Fake ID is easily available.
- One can tell fake ID from real by "feel- and there is no black light reflection."
- A female came in that night who was small and young looking. I asked the bouncer if he checked her ID. Then I checked it myself. "She had a BCID and a birth certificate and one other piece- I don't remember what it was."
- The name on the ID was [specified but not the name of the minor]. She was born in 1987.
- A police officer was there and asked her for her ID. She gave him three different names and then she said who she really was.
- The police officer took her outside and came back and gave me the CN.

SUBMISSIONS

The branch submitted that allowing minors to remain in a licensed premise is a significant public safety issue. The proposed penalties are appropriate and necessary to obtain voluntary compliance.

The licensee made no submissions

ANALYSIS AND DECISION

The minor testified that she was not checked for identification either at the door upon entering the establishment or at any time thereafter.

The police officer testified that when he emptied her purse, she had only a bankcard in her own name and no other identification.

I find both of these witnesses to be credible and I accept their evidence. Indeed I prefer their evidence to that of the bar manager and the doorman to the extent that the evidence is inconsistent.

I find the evidence of the bar manager and the doorman to be inconsistent with respect to their recollection of the checking of the identification of the minor.

Although the facts allow for the possibility that the minor presented false identification or identification belonging to another, and then handed it off to someone else in the bar before being approached by the police officer, there is no evidence to indicate that occurred.

Whether or not the minor was checked for identification and presented false identification goes to the issue of whether the licensee was duly diligent in complying with the *Act* and *Regulation*.

On the evidence, I do not accept a defence of due diligence.

The minor therefore entered and remained on the premises without lawful excuse and no effective defence was tendered by the licensee to this finding.

I find that a contravention of Section 35 of the *Act* has been proven.

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;
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- 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 branch recommended a monetary penalty of \$1,000.

The range of penalty for a first contravention of Section 35 of the *Act* in accordance with Schedule 4 of the *Regulation* is one (1) to three (3) days suspension and/or a monetary penalty of \$1,000-\$3,000.

I find that a monetary penalty of \$1,000 is appropriate.

ORDER

Pursuant to Section 20(2) of the *Act*, I order the licensee to pay a monetary penalty in the amount of one thousand dollars (\$1,000) relating to Liquor Primary Licence No. 029240 relating to Notice of Enforcement Action EH05-163. The monetary penalty must be paid no later than the close of business on Wednesday, May 10, 2006.

[Original Signed]

Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: April 19, 2006

cc: R.C.M.Police Port Alberni Detachment

Liquor Control and Licensing Branch, Victoria Office
Attn: Gary Barker, Regional Manager
Vancouver Island/Okanagan/Kootenay

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