



**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: Carlton Cabaret Ltd.  
dba Carlton Club Cabaret  
900 Carlton Terrace  
Victoria, BC V9A 5A5

Case: EH06-023

For the Licensee: Peter K. Jones

For the Branch: Sonja Okada

Enforcement Hearing Adjudicator: Sheldon M. Seigel

Date of Hearing: April 11, 2006

Place of Hearing: Victoria

Date of Decision: May 3, 2006

## **INTRODUCTION**

The licensee owns and operates a nightclub in Victoria. The establishment is known as the Carlton Club Cabaret. It holds Liquor Primary (LP) Licence No. 37287.

The Victoria Police Department, along with the Liquor Control and Licensing Branch (the branch) and the Victoria Bylaw Office initiated a project on the business days of September 30, 2005, and October 14, 2005, to determine if minors in the community were being served liquor in licensed establishments in the City of Victoria.

The project consisted of the use of a 17-year-old female, a 20-year-old female auxiliary police officer, and a plain-clothes undercover police team.

The 17-year-old and the 20-year-old attempted to gain entry to liquor primary establishments and sought to be served liquor, while the police team provided support.

At approximately 11:30 p.m. on October 14, 2005, the minor was allowed admission to the Carlton Club and was allegedly served liquor.

The branch issued a Notice of Enforcement Action (NOEA) for supplying liquor to a minor contrary to Section 33 of the *Liquor Control and Licensing Act* (the Act).

## **ALLEGED CONTRAVENTION**

On October 14, 2005, the licensee allegedly contravened Section 33 of the Act by supplying liquor to a minor as set out in the NOEA and Contravention Notice #B007046.

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**RELEVANT STATUTORY PROVISIONS**

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

Supplying liquor to minors

33(1) A person must not

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

**ISSUES**

1. Did the licensee supply liquor to a minor?
2. Did the licensee exercise due diligence in its activities such as to excuse it from a finding of contravention?
3. If the contravention is proven, is a penalty appropriate in the circumstances, and if so, what is the appropriate penalty?

**EXHIBITS**

Exhibit No. 1	Branch's Book of Documents
Exhibit No. 2	Photocopy of four pieces of identification (branch)
Exhibit No. 3	Photocopy of rear of driver's license shown in Exhibit No. 2 (branch)
Exhibit No. 4	Procedures manual (licensee)

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**PRELIMINARY MATTERS**

The branch requested that the identity of the minor not be disclosed publicly during these proceedings in the interest of her security.

I ruled that all reference to the minor would be by her initials only, both during the process and in all written documentation relating to the process.

The licensee sought a dismissal of the allegation on the following grounds:

[1] There has been no alleged contravention of permitting a minor into the establishment, yet in the [Branch's summary of evidence] there is reference to the manner in which the identification of the alleged minor was verified. [A] reasonable assumption can be made that [the Branch] by not pursuing permitting a minor into the establishment acknowledges that the establishment exercised due diligence in verifying the identification of the alleged minor.

[2] It is common knowledge, and accepted practice with Liquor Primary Establishments operating as cabarets, that identification is checked by door staff in a well lighted area at the entrance to the cabaret to ensure that minors do not gain access. This was the circumstance in this case as noted in summary of evidence in the NOEA. The interior lighting of cabarets is subdued. To determine if a patron in the cabaret appears to be under the age of 25 being the age to check identification as identified in the [guide] is realistically not practical due to the subdued lighting. Accordingly, the reliance is on the door staff to check identification.

[3] There has to be a progression of events, or what is sometimes referred to as a connection of dots, that lead to the alleged contravention. In this case, the identification of the alleged minor was verified, found to be acceptable, and permitted into the cabaret. Once inside the cabaret, no further check of identification was necessary and liquor would be supplied.

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I denied the application and ruled that the hearing would proceed. I advised that written reasons for the denial of the application would be provided in the decision.

The licensee submitted that by not alleging a contravention for allowing a minor into the licensed premise, the branch acknowledged that the licensee exercised due diligence. I find that this argument has no merit. The general manager is authorized by the *Act* to take enforcement action for alleged contraventions of the *Act* or *Regulation*, in her discretion. There is no basis in law for concluding that one enforcement action implies acknowledgement of anything relating to another potential allegation. Further, due diligence is a defence which if successful is a complete answer to an allegation of a contravention under the *Act* or *Regulation*. It must be proven on the evidence. It does not operate to interfere with the general manager's right to proceed with enforcement action in any manner in which she is authorized.

The licensee submitted that the minor's identification was checked at the door where the lighting was adequate for that purpose, and that once inside the establishment the subdued lighting made further ID checks impractical. The licensee's representative argued: "Once inside the cabaret, no further check of identification was necessary and liquor would be supplied." This is clearly wrong. It is a contravention to serve alcohol to a minor. It is also a contravention to fail to ask for prescribed identification for anyone appearing under the age of 25 years. This obligation is not discharged by passing the door screening. It is well established law that each and every employee of the licensee who comes into contact with a minor or a person appearing under the age of 25 years has a continuing obligation on behalf of the licensee to refuse service, check identification, or remove a minor from the premise.

The representative of the licensee further submitted that the branch had in its possession a 5"X7" photograph of the minor, which was taken on the day of the

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alleged contravention. He indicated that he was allowed to view the photograph but was denied a copy of it. He wanted a copy in order to hire an expert artist or to use a "photo-shop" type software program to modify the photograph to show that with some modifications to the minor's appearance, she might reasonably resemble the picture ID that she presented at the door. This would, argued the licensee, show that the appearance of the minor as presented at the establishment could coincide with an older photograph taken for a driver's licence. The licensee submitted that the denial of the right to a copy of this photograph denied it an opportunity to mount a proper defence, and it was therefore a breach of procedural fairness.

The branch responded to this application by advising that, in order to protect the identity of the minor, it did not seek to use the photograph in the hearing.

I find that this application was ill timed. No evidence had yet been presented by the branch. If the branch were to ask that such a photograph be entered into evidence as an exhibit, it would be procedurally open for the licensee's representative to raise an objection at that time. The application was denied.

Finally, the totality of the applications by the representative of the licensee to dismiss allegations of contraventions under the *Act* prior to a hearing are *ex juris*. An enforcement hearing adjudicator is a delegate of the general manager for the purposes of conducting and adjudicating upon allegations of contravention, and some specific licensing functions. This jurisdiction is not inherent but granted by the general manager. An enforcement hearing adjudicator has no authority to dismiss an allegation of contravention or to terminate an enforcement process without or prior to a *viva voce* hearing, or in some cases a hearing by written submissions.

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**EVIDENCE**

The branch called a constable with the Victoria Police Department (VPD). He testified as follows:

- He is the operations officer for the VPD. In particular he is responsible for operations involving bars, crowd issue, and liaison with liquor establishments.
  - He is the director of the relevant ID check police project.
  - The program used a suitable minor who was physically and emotionally able to participate in a program such as this.
  - MK was such a minor.
  - He sorted through many packages of identification at the police department, looking for one that did not resemble MK in any way.
  - The packages of ID consisted of real identification obtained by the police in unrelated events and slated for destruction.
  - He found a package of ID that described an individual physically very different from MK. The physical descriptors, hair colour, eye colour, size, weight, and age, were completely different.
  - Exhibit No. 2 is a copy of that ID.
  - Exhibit No. 3 is a copy of the reverse side of the driver's licence in Exhibit No. 2.
  - Four officers were trained for this project. The goal was to ensure the safety of MK and a "handler".
  - MK's role was to present the "false ID" and attempt to gain entrance to the establishment. Once inside, MK would attempt to be served liquor.
  - The handler is a police reservist who looks under 25 years old, but is of age.
  - On October 14, 2005, he met with the four trained officers, MK and the handler, at the police station for a briefing.
  - He gave the package of ID to MK.
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- MK was to use that package of ID to attempt to gain access and service in seven establishments that night.
- The ID was collected from her at the end of the night.
- Notes from MK and the handler were also collected at the end of the night. Those notes were identified in Exhibit No. 1.
- MK was given no opportunity to practice the signature of the false ID.
- The Carlton Club was checked at 11:30 p.m. on October 14, 2005.
- The Carlton Club was chosen for the program based on previous complaints involving a minor.
- He was stationed outside the Carlton Club. From where he was, he could not see MK and the handler admitted to the club, but he was advised by them when they returned to his patrol car that they were admitted and served liquor. They also told him that there appeared to be more minors in the establishment.
- MK was allowed entry to eleven of the twelve establishments she visited on the two dates of the project.
- MK appeared to him to be her age: 17 years. On October 14, 2005, she was dressed and made-up as today at the hearing.
- He identified tabs 4, 5, 6, and 7, from Exhibit No. 1 as the report, the Licensed Premise Check (LPC), and the notes of MK and the handler.
- The LPC included an allegation of permitting a minor into the establishment. The branch did not pursue that allegation. It is up to the branch to decide what enforcement action to pursue.

The branch called MK. She testified as follows:

- Her birth date is <sup>[1]</sup>, 1988. She was 17 on October 14, 2005.
- She has brown eyes, is 180 cm or 5'11" in height and was 170 lbs. on October 14, 2005.

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<sup>[1]</sup> Personal information severed pursuant to the Freedom of Information and Protection of Privacy Act.

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- Her hair is brown with blonde streaks. On October 14, 2005, she looked as she does now. Her hair colour and style are the same. She is dressed similarly.
  - She is a high school student.
  - She worked with the VPD on contract on October 14, 2005.
  - Her job was to go into a bar with a handler to see if they checked her ID properly, and to see if they checked ID when she ordered drinks.
  - As part of this project, she attended twelve establishments on two occasions each.
  - She was provided with the false ID by the Victoria Police Department.
  - There were four pieces of ID including Drivers Licence, CareCard, Social Insurance Card and a Bank Card.
  - She had no other ID with her on those occasions.
  - She confirmed Exhibit No. 2 and Exhibit No. 3 are copies of the ID that she was given.
  - On October 14, 2005, she met with the handler and the police team at the police station and then went out to seven bars.
  - She attended the Carlton Club at approximately 11:30 p.m. on October 4, 2005.
  - There was a bouncer at the door. He asked to see her ID and looked at it. He asked that she take it out of her wallet, and she did so.
  - He took a good look at it and then let her in.
  - The bouncer asked her no more questions.
  - They went to the bar and the handler ordered two beers.
  - The bartender put the two beers on the counter in front of them, and the handler paid. He put one Corona down in front of each of them.
  - The bartender made eye contact with MK.
  - He did not ask for identification.
  - They took the drinks to a table and then left the bar soon after.
  - When they left, they went to the police car and made notes.
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- She identified her notes and those of the handler relating to the Carlton Club, in Exhibit No. 1.
- The lighting was dim inside the bar.

The branch called the handler. She testified as follows:

- Her birthday is <sup>[1]</sup>, 1984.
- She is employed with the police department as a reservist and by contract.
- She has branch experience working as an agent regarding underage identification checking, and she has been trained by the branch.
- On October 14, 2005, she was working with the police as a handler for MK in a project designed to report on liquor licensees' practices for checking the identification of minors.
- She accompanied MK because MK was a minor. She also reported on the ID checks on herself.
- She started the shift on October 14, 2005, at the Victoria police station where there was a briefing.
- MK was given false ID, and photos were taken of both of them.
- She identified Exhibit No. 2 and Exhibit No. 3 as copies of the false ID.
- MK looked the same then as she does today.
- They arrived at the Carlton Club at approximately 11:30 p.m.
- The doorman asked for ID from both of them, and MK produced the false ID.
- They were both admitted to the Club.
- They went to the bar shortly after being admitted.
- She ordered two beers.
- The bartender did not ask any questions, but put the beer on the bar in front of them.

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<sup>[1]</sup> Personal information severed pursuant to the Freedom of Information and Protection of Privacy Act.

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- The bartender knew one of the beers was for her, and one was for MK. She knew this from where he placed the beer.
- They sat at the table with the officers for a couple of minutes and then left the establishment.
- They went to a police car and made notes.
- She identified her notes and MK's notes in Exhibit No. 1.

The branch called the compliance and enforcement officer (C & E officer). He testified as follows:

- He has been a C & E officer for two years. He is responsible for the area in which the Carlton Club is situated.
  - Issues involving minors and overservice are important public safety concerns to the branch.
  - Minors are not seasoned or knowledgeable about alcohol consumption.
  - He had knowledge of the project in which MK and her handler were participating.
  - He contacted the establishment that had refused entry to MK that same night, and ascertained that the doorman there believed the ID did not look like MK at all.
  - He issued a Contravention Notice to the Carlton Club on November 10, 2005.
  - He met with employees of the Carlton Club. The questions and answers are at tab 8 of Exhibit No. 1. He was advised that there was a written policy manual, and that a new manual was in production.
  - He agreed that part of the decision process in determining whether to proceed to enforcement action may be the history of compliance and the enforcement record of the establishment.
  - He chose to pursue enforcement action because of the severity of the incident and the public safety risks.
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- He reviewed the new policy manuals provided after the events of October 14, 2005, and decided that not every effort was in place to prevent this type of contravention from occurring.
- The initial LPC notice indicated two alleged contraventions: permitting a minor on the premises and supplying alcohol to a minor. The branch decided not to pursue one due to duplication of enforcement.
- 11 of the 12 establishments allowed the minor entry and served her. 10 of the 11 were charged with supplying liquor to a minor.
- Since 2004, he has not pursued enforcement action for permitting a minor in a licensed establishment except as related to this project.
- He identified all of the administrative and relevant documents in Exhibit No. 1 including the Contravention Notices and Compliance Meetings relating to minors and ID identified tabs 13 through 17.
- The licensee has no proven contraventions relating to minors.

The licensee called the principal of the licensee. He testified as follows:

- He has owned the Carlton Club for 18 years.
- He is a good community member and past president of the local branch of the <sup>[1]</sup>.
- He is currently a director of the <sup>[2]</sup>.
- He designed a rules and regulations protocol for the club in 1988 and reviewed it with the branch.
- He has updated the policies and procedures since October 14, 2005. There was a revision in progress at the time. That revision is Exhibit No. 4.
- There are staff meetings on a regular basis.
- He met with the C & E officer on November 15, 2005. The notes on that meeting are at tab 8 of Exhibit No. 1.

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<sup>[1]</sup> Personal information severed pursuant to the Freedom of Information and Protection of Privacy Act.

<sup>[2]</sup> Personal information severed pursuant to the Freedom of Information and Protection of Privacy Act.

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- "We have a policy in place that if we do not think the ID is valid, we ask them to sign a piece of paper to [check] the signature."
- He once asked a community member to stand around in the Carlton Club and observe the staff checking for ID. The report was favourable.
- When he met with the C & E officer, he was already working on a new policy manual. It was delayed while he converted it to the appropriate electronic form.
- "The new manual has a copy of the terms and conditions. It has the LP terms and conditions that the staff need to know and what ID to check and how to challenge it. This is important for all of my servers especially."
- He attended two Compliance Meetings for similar issues (tab 15, and 17 of Exhibit No. 1).
- He had intended that the staff read and sign the terms and conditions from the guide in the new manual to ensure that they had read it.
- The staff has been instructed that if there is any doubt about a patron's age, they should double check for ID.
- "There are copies of the guide behind the bar, but I feel that it has not been taken advantage of by staff. There is nothing that says I have read and understood it."

## **SUBMISSIONS**

The branch submitted that MK was a minor, was served liquor and that there was no lawful excuse for so doing. The branch also submitted:

- MK's physical description did not match the descriptors on the identification that she produced, and she was allowed entry with no questions regarding those discrepancies.
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- Neither the doorman nor the bartender was called to speak to what took place on entry or upon service. The adjudicator can therefore only consider the evidence of MK and the handler as to the steps taken at the door of the establishment leading up to the entry of the minor and what occurred at the bar.
- Due diligence has not been established as there were inadequate policies in place on October 14, 2005, and inadequate training for employees.
- The proposed penalty is the minimum for a first contravention and is appropriate because supplying liquor to a minor is a serious public safety issue. The branch is seeking to send a strong message to the licensee and the community that would result in compliance in the future.

The licensee submitted:

- As the branch did not pursue enforcement action for permitting the minor in the establishment, the branch acknowledged that due diligence was established when the doorman checked for identification.
  - People can change their appearance. The doorman acted reasonably by asking for identification and looking at it. It was not unreasonable to conclude that the person presenting the ID was the same person as that described in the ID. The driver's licence was more than one year old at the time it was used to gain entry to the club.
  - One cannot reasonably say that an establishment must have a well lit area and ask for ID as a first line of defence and then depend on staff to determine again, in dim lighting, if someone is under the age of 25.
  - It is inappropriate for the branch to put forth an allegation as long after the event as it did. There was no reason why the issue could not have been
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raised immediately upon identifying the allegation, when the bartender and the door staff could be questioned in a timely fashion. This is required to allow the licensee time to prepare an adequate defence.

- The licensee is of good character and had a history of asking the branch for advice on such matters. He should not be penalized for not being granted a Compliance Meeting.
- The licensee would suffer significant financial hardship if the proposed penalty is imposed. Seven employees would be laid-off and suffer as well. "The balance of probabilities should be almost beyond a reasonable doubt given the severity of the penalty recommended by the branch."
- An allegation of supplying liquor to a minor cannot be pursued without evidence of a contract. There must be an offer, acceptance, and consideration. There must be a purchase by the minor. The handler purchased the beer, not the minor; therefore there was no contract with the minor.

## **ANALYSIS AND DECISION**

### The Contravention

The alleged contravention is one of supplying liquor to a minor. The evidence is that MK was at all relevant times a minor.

Much evidence and argument was submitted relating to the identification checked and used to gain entry at the front door of the establishment. While this might speak to issues relating to a defence of due diligence, it does not address the components of the contravention on the facts. The proximate issue is whether the bartender provided liquor to the minor.

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The representative of the licensee submitted that as it is an offence to allow minors in to a licensed establishment, once inside, there is no continuing obligation to check for identification. In support of his theory he cited the lighting requirements at the door and the traditional "dim" lighting of the interior of a cabaret. This proposition is simply wrong in law. It is contrary to the *Act* to provide liquor to a minor. The fact that an establishment has allowed a minor entry does not affect in any way the establishment's continuing obligation to refuse to serve a minor or to check for identification as prescribed if the individual appears to be under the age of 25.

The bartender had an obligation to ask for prescribed identification if the individual appeared under the age of 25. I find on the evidence that MK did appear under the age of 25.

The licensee indicated by his own testimony his awareness that the server has the responsibility to check for identification and the validity of that identification. He said, "The new manual has a copy of the terms and conditions. It has the LP terms and conditions that the staff need to know and what ID to check and how to challenge it. This is important for all of my servers especially."

There was no indication on the evidence that the bartender considered the age of the individual in front of whom he put the alcohol. I find that the 17-year-old minor did not look over 25 and therefore, should have been asked for the prescribed identification.

The bartender had an obligation to refuse service to a minor.

The representative of the licensee argued that a contract must exist between the minor and the establishment for the purchase of liquor in order for the contravention to be established. He argued that for this type of a "sting"

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operation to be effective, the minor would have to order and pay for the liquor herself. This is clearly incorrect. There is no requirement for a contract or any of the components of a contract to be established to find a contravention. I find that the provision of liquor to a minor, whether by sale, gift, or simply making the liquor available to the minor is sufficient to establish the required *actus* of the contravention.

Further, I find on the evidence that the bartender knew that when the handler ordered the two beers, he was supplying one drink to each of the two females standing before him. I accept the evidence of the handler that the bartender placed the two drinks on the bar in such a way as to indicate that he knew one was for MK. I find therefore that the bartender did serve a beer to MK, and therefore supplied liquor to a minor.

I find the contravention has been proven.

#### The Process

The representative of the licensee made much of the fact that the branch chose not to pursue enforcement of the allegation of permitting a minor in a licensed establishment. He argued that by choosing not to pursue enforcement of this allegation, the branch had somehow exonerated the licensee from responsibility for allowing the minor entry. I can see no relevance to this argument. The general manager of the branch has complete discretion as to when and what enforcement action to take. While her actions may be considered in an enforcement hearing from the standpoint of the tenants of administrative law and procedural fairness, an enforcement adjudicator has no jurisdiction to evaluate the methodology or motivation of the general manager in choosing to pursue enforcement action. It is contrary to the *Act* to permit a minor to enter a licensed establishment without lawful reason. The act of so doing cannot be interpreted to be sanctioned by the branch because of a lack of enforcement action.

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The representative of the licensee also submitted that it was procedurally unfair for the general manager to pursue enforcement action because the licensee had no history of proven contraventions. As I have already indicated, an adjudicator lacks the jurisdiction to second-guess the actions of the general manager in deciding upon enforcement action. Further, the licensee has provided no authority to support its proposition that a history of proven contraventions is necessary or even useful when deciding to pursue enforcement action.

The licensee argued that the branch delayed the process unduly by not advising the licensee at the time of the allegation that it had occurred. The licensee argued that a delay of one month in the processing of the Notice of Enforcement Action worked to prevent the licensee from mounting an adequate defence. I disagree. There is no requirement to advise the licensee at the moment of the alleged occurrence. I find that the branch proceeded with enforcement action at a reasonable pace and did not impair the licensee's ability to mount an adequate defence to the allegations.

The licensee argued that although the branch met with the licensee regarding the alleged contravention, this was not characterized as a formal Compliance Meeting and therefore the licensee was denied an opportunity to convince the C & E officer that enforcement action should be discontinued. I disagree. The evidence discloses that the C & E officer used appropriate resources and information to arrive at a conclusion that supported his recommendation to the general manager. The representative of the licensee provided no evidence to support the proposition that the meeting was any less valuable than a Compliance Meeting, and no authority to suggest that there is any requirement for a formal Compliance Meeting.

Due Diligence

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Due diligence is a complete defence to the allegations if established on the evidence. I find the evidence of due diligence on the part of the licensee to be insufficient. The defence fails.

The matter has been clouded somewhat by the insistence of the representative of the licensee that once the minor had passed the front door and been allowed entry to the establishment, the licensee was freed of any responsibility to monitor its service to the minor. I have decided above that this proposition is incorrect. Due diligence must be established at the site of the contravention.

I find that the bartender provided alcohol to the minor without consideration of her age or identity. I find that she looked younger than 25 years old and as such the bartender was obligated to check identification as prescribed by the *Act*. She was 17 years of age, clearly a minor and carrying ID that did not match her observable physical characteristics. She was not asked for ID by the bartender and she was provided with liquor in contravention of the *Act*.

I find on the evidence that this licensee cannot escape responsibility for the contravention by any reference to appropriate training or policies in place in the establishment.

The evidence disclosed that a new process for staff to read and sign the guide terms and conditions was only implemented after October 14, 2005. This is an indication that the licensee had, as of the date of the relevant event, not done all that he could have to ensure compliance with the rules.

Also, the licensee testified that "There are copies of the guide behind the bar, but I feel that it has not been taken advantage of by staff. There is nothing that says I have read and understood it."

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I find that this confirms that the staff at the Carlton Club on the date in question did not do all that they could have to ensure compliance with the rules.

The representative of the licensee submitted that the licensee had sought and was denied assistance from the branch, presumably with compliance issues. I find no evidence that the licensee had been denied any opportunity to educate itself or its staff. Compliance is entirely the responsibility of the licensee.

The representative of the licensee submitted that due diligence was exhibited by the doorman in evaluating the false ID in the possession of the minor. I have already decided that the events at the door are not the events in issue in this hearing. Although the central issue occurs at the bar, the licensee's argument might be interpreted as a submission that the doorman's actions are indicative of the licensee's due diligence in refusing entry to minors. The licensee argued that 11 of the 12 licensed establishments allowed the minor entry after producing false identification. He submitted that those numbers suggest that it was reasonable to allow her entry to the bar. Again, I disagree. The doorman did not turn over the false driver's licence to review the physical descriptors listed thereon. He did not question her about her hair colour. He did not ask her to produce a signature. He did not quiz her about her birth date or birthplace. I find that even the doorman did not exercise due diligence or demonstrate appropriate training or experience in the discharge of his duties. The argument that other establishments similarly failed to meet an acceptable standard of compliance is not evidence of reasonableness.

## **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:

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- 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 33 of the *Act* in accordance with Item 2 of Schedule 4 of the *Regulation* is four (4) to seven (7) day suspension and/or a monetary penalty of \$5,000-\$7,000. The branch has recommended the minimum suspension of four (4) days.

The licensee submitted that as there was no history of proven contraventions, the branch's recommended penalty is too severe. I find this argument to be illogical. The recommended penalty is the minimum penalty prescribed by the *Regulation* for a first contravention. Therefore, the absence of a prior proven contravention has already been contemplated by the *Regulation*.

Finally, the licensee's representative pointed to the severity of the proposed penalty and submitted: "The balance of probabilities should be almost beyond a reasonable doubt given the severity of the penalty recommended by the branch." This is clearly wrong. The issuance of a penalty should always be accompanied by the utmost solemnity and care. To distinguish the level of effort or consideration to be devoted to the award by virtue of the magnitude of the impact of the penalty would be to place the process into disrepute. The test for a substantive finding is the balance of probabilities. There is no basis in law for a

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modification of that standard due to the magnitude of the proposed penalty. The licensee's representative has put forth no support for this proposition and it bears no further consideration.

I find that a penalty is warranted in the circumstances of this case. I accept that providing liquor to a minor is an activity that endangers the safety and security of the public in general, and minors in particular. I believe that a four (4) day suspension is warranted.

### **ORDER**

Pursuant to Section 20(2) of the *Act*, I order a suspension of the Liquor Primary Licence No. 037287 for a period of four (4) days, to commence as of the close of business on Thursday May 25, 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*).

To ensure this Order is effective, I direct that the Liquor Licence No. 037287, be held by the branch or the Victoria Police Department from the close of business on Thursday May 25, 2006, until the licensee has demonstrated to the branch's satisfaction that the suspensions have been served.

[ Original Signed]

Sheldon M. Seigel  
Enforcement Hearing Adjudicator

Date: May 3, 2006

cc: Victoria Police Department

Liquor Control and Licensing Branch, Victoria Office  
Attn: Gary Barker, Regional Manager

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Vancouver Island/Okanagan/Kootenay

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

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