



**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:	Butterworth Holdings Ltd., Frizzell Holdings Ltd. & Legree Holdings Ltd. dba College Place Hotel 740 Carnarvon Street New Westminster, BC V3M 1E7
Case:	EH06-065 & 079
For the Licensee:	Wayne D. Murdoch
For the Branch:	James Macdonnell
Enforcement Hearing Adjudicator:	Edward Owsianski
Date of Hearing:	October 12 & 13, 2006
Place of Hearing:	Surrey, BC
Date of Decision:	December 15, 2006

INTRODUCTION

The licensee, Butterworth Holdings Ltd., Frizzell Holdings Ltd. & Legree Holdings Ltd., dba College Place Hotel holds Liquor Primary Licence No. 007446 for a liquor primary licensed area known as Mugs and Jugs Pub (the pub) located in the hotel. The licensed hours for the sale of liquor are 11:00 a.m. to 1:00 a.m. Monday to Saturday and 11:00 a.m. to midnight on Sunday. The licence permits 349 persons in the licensed area. The licence is, as are all liquor licences issued in the province, subject to the terms and conditions contained in the publication 'Guide for Liquor Licensees in British Columbia'.

Alleged Contravention and Recommended Enforcement Action

The branch's allegations and recommended enforcement action are set out in the Notices of Enforcement Action (NOEA) dated June 13, 2006 and June 28, 2006.

EH06-065 (dated June 13, 2006)

The branch alleges that on March 4, 2006, the licensee contravened Section 33 of the *Liquor Control and Licensing Act* by selling, giving or otherwise supplying liquor to a minor. The proposed penalty is a ten (10) day suspension of the liquor licence (item #2, Schedule 4 of the *Regulation*).

Item 2 of Schedule 4 of *the Regulation* provides a range of penalties for a second contravention of this type of a licence suspension for 10 - 14 days.

The licensee disputes that the contravention took place.

EH06-079 (dated June 28, 2006)

The branch alleges that on April 9, 2006, the licensee contravened Section 35 of the *Liquor Control and Licensing Act* by permitting a minor to enter on or to be on premises where liquor is sold or kept for sale. The proposed penalty is a three (3) day suspension of the liquor licence (item 3, Schedule 4 of the *Regulation*). The branch also recommended a term and condition be imposed to require the licensee to acquire, install and incorporate into daily operations a system which captures and records an image of the identification presented and the person presenting the identification.

Item 3 of Schedule 4 of *the Regulation* provides a range of penalties for a first contravention of this type of a license suspension for 1-3 days and/or a monetary penalty of \$1000 to \$3000.

The licensee disputes that the contravention took place.

RELEVANT STATUTORY PROVISIONS***Liquor Control and Licensing Act*, R.S.B.C. 1996, c. 267 (the “Act”)****Supplying liquor to minors**

33 (1) A person must not

- (a) sell, give or otherwise supply liquor to a minor,
- (b) have liquor in his or her possession for the purpose of selling, giving or otherwise supplying it to a minor, or
- (c) in or at a place under his or her control, permit a minor to consume liquor.

- (2) Subsection (1) does not apply if liquor is
- (a) given to a minor by his or her parent, spouse or guardian in a residence for consumption in the residence,
 - (b) administered to a minor by or under the authority of a medical practitioner or dentist for medicinal purposes, or
 - (c) given or otherwise supplied to a minor in accordance with the regulations.
- (3) A person has liquor in his or her possession when the person has it in his or her personal possession or knowingly
- (a) has it in the actual possession or custody of another person, or
 - (b) has it in or at a place, whether or not that place belongs to or is occupied by the person, for the use or benefit of the person or another person.
- (4) If one of 2 or more persons, with the knowledge and consent of the rest, has liquor in his or her possession, it is deemed to be in the possession of each of them.
- (5) It is a defence to a charge under this section if the defendant satisfies the court that, in reaching the conclusion that the person was not a minor, the defendant
- (a) required that the person produce identification, and
 - (b) examined and acted on the authenticity of the identification.
- (6) A person who contravenes this section commits an offence and is liable on conviction to a fine of not less than \$500.

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.

ISSUES

Preliminary Issue: Contemporaneous Submissions

Counsel objected to making submissions on penalty, prior to a determination that a contravention has been found. This position has been taken in several hearings. It has consistently been held that the hearing process allows for penalty submissions to be made during the course of the hearing prior to a determination on the alleged contravention and that that process does not prejudice the licensee. The hearing proceeded on that basis.

Substantive Issues:

1. Whether the licensee contravened the *Act* as alleged by the Branch.
2. If so, what penalties, if any, are appropriate?

EXHIBITS

The following exhibits were presented:

Exhibit No.1	Branch Book of Documents #1, tabs 1 – 8 and 11 & 12
Exhibit No. 2	Branch Book of Documents #2, tabs 1 – 8 and 11 & 12
Exhibit No. 3	Branch Book of Documents #1, tabs 9 & 10 and 13 – 17 and Branch Book of Documents #2, tabs 9 & 10 and 13 – 18.
Exhibit No. 4	Book of Document titled “ID Verification Technology”
Exhibit No. 4A	Excerpt from Bill 38 – 2003 [British Columbia] “Personal Information Protection Act”

Exhibit No. 5 Typewritten Statement dated March 4, 2006.

Exhibit No. 6 Licensee's Book of Documents

EVIDENCE – THE LIQUOR CONTROL AND LICENSING BRANCH

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Witness A, testified that on March 4, 2006, she was 18 years old. On that date she had received a ride to the College Place Hotel with a male acquaintance who worked at the hotel. This male entered the hotel a period of time before she did. Later she entered the licensed area known as Mugs and Jugs (the pub) with another male acquaintance. She did not enter with other females. She had been at the hotel in another licensed area on previous occasions; however, this was the first time inside the pub. Although there were door staff present at the entrance, they did not request that she produce identification. The staff appeared more interested in a televised boxing match. She and the male proceeded to the bar area where the male ordered a drink for her and handed it to her. She later testified that she was unclear whether the male handed the drink to her, or if the bartender did. She does not remember whether in a subsequent interview with a branch liquor inspector that she told him that she had purchased the drink herself. She was adamant that in either case it took place in front of the bartender and it was obvious that the drink was for her. The bartender did not request that she produce identification.

She testified that she did not have fake identification, but under cross-examination testified that she always carried fake identification with her in the event that she was requested to produce it to gain entry. It consisted of an expired driver's licence of a friend. The photograph in the driver's licence resembled her. She had used it without being caught on 10-15 occasions in the past. She carried the fake driver's licence in her pocket. She had her own

identification, a visa card. She has a valid driver's licence; however, could not recall whether she had it with her. She testified that she had a purse with her.

She testified that she was approached inside by a police officer. She told him her name and at first lied about her age, then told him her real age. She told the officer that she had received a ride to the hotel with the male acquaintance that worked at the hotel. She did not tell the officer that she entered the hotel with him. She does not recall whether the police officer checked her purse for identification.

Witness B, a Constable with the New Westminster Police Department, testified that on March 4, 2006, he was working in the downtown area of New Westminster with another constable on duties that included the checking of licensed establishments in the area. He was outside the College Place Hotel at approximately 9:15 p.m. when he observed a vehicle arrive with two male and one female occupant. He knew one of the males to be a doorman employed at the hotel. The occupants left the vehicle and walked into Mugs and Jugs Pub. The constable later spoke to the doorman who had arrived in the vehicle. He was wearing a black shirt, the uniform for this establishment. Upon entering the pub the constable noted the female standing at a table with a bottle of beer in her hand. As she appeared to be a "young teenager", he asked her to step outside into the lobby where he requested that she produce her identification. She told him that she did not have any identification and provided him with a name and date of birth. Accessing the police database, he determined that the date of birth provided by her was off by one year. She told him that she had arrived with a male acquaintance who was employed at the hotel as a doorman. He did not ask her how she had got into the pub.

The officer testified that he did not charge the minor female for being in a licensed establishment or for providing false information. He did not search her

for identification but did observe that she was wearing tight clothing without pockets. He did not observe her to be carrying a purse. He agreed that it was possible that she was carrying false identification but did not want to produce it to him. He did not recall two managers from the hotel commenting to him that she did not have a purse and may have passed it to a girlfriend.

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Witness C, a Constable with the New Westminster Police Department, testified that on April 9, 2006, he was working on patrol duties that included the checking of licensed establishments. He was outside of the College Place Hotel at approximately 12:50 a.m. and had occasion to check two males and a female. The female said that she was 19 years old but did not have any identification with her. He spoke to the hotel doorman about the two males then proceeded down the street while keeping an eye on the female. When she disappeared from sight he went into Mugs and Jugs Pub to see if she was there. He located her in the back of the pub in front of the liquor service bar with a drink in her hand. The drink smelled like liquor and appeared to be a conventional mixed drink. She appeared that she could have been underage. He took the drink from her and asked her where she had obtained it. She said that a friend had given it to her, she had not got it from pub staff. He took her outside and cautioned her about obstruction. She provided her name and date of birth. She was 18 years old. He wrote out and gave her a violation ticket for being a minor in a licensed establishment and wrote out a Licensed Premises Check for the establishment that was given to a manager. He did not search her but was satisfied that she was not carrying identification. She was wearing tight clothing and a rigid plastic driver's licence would have been noticeable inside a pocket. She was not carrying a handbag.

Witness D, a branch liquor inspector testified that he is the Branch inspector responsible for licensed establishments located within the city of New

Westminster. In that capacity, he received Licensed Premises Checks (LPC) from the New Westminster Police Department regarding the operation of the College Place Hotel.

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Upon receipt of the LPC (exhibit 1, tab 11) he contacted the police officer and reviewed the information with him. He then contacted the minor identified in the LPC. She advised him that she had entered the licensed area and had obtained and consumed liquor in the establishment without being checked for identification. He felt that the minor obviously appeared to be underage and should have been checked for identification. He is familiar with the policies and procedures of the establishment and was concerned that they are not effective in preventing contraventions. In his experience, staff on occasion have failed to request identification or when presented with identification have failed to examine it closely or look behind the identification to determine its authenticity. He issued a Contravention Notice (CN) (exhibit 1, tab 4) to the establishment and completed an Enforcement Action Recommended report (EAR) (exhibit 1, tab 3) which was forwarded to his regional manager for approval. He recommended that enforcement be taken as this was the second incident within a six month period involving liquor being supplied to a minor. The earlier contravention occurred in January of this year. He acknowledged that it is currently under appeal. He recommended a ten day license suspension, which is the minimum penalty for a second contravention of the same type occurring within a year. Upon receiving the approval he completed a Notice of Enforcement Action report (NOEA), (exhibit 1, tab 2) which was forwarded to the establishment.

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Upon receipt of the LPC (exhibit 2, tab 12) he contacted the police officer and reviewed the information with him. He issued a CN (exhibit 2, tab 4) to the establishment and completed an EAR (exhibit 2, tab 3) which was forwarded to his regional manager for approval. He recommended that enforcement be taken

as this was the third incident involving minors in the establishment within a short period of time. He recommended a three day suspension, which is the maximum penalty for a first contravention for permitting a minor on the premises. He also recommended that a term and condition be imposed to require the licensee to acquire, install and incorporate into daily operations a system which captures and records an image of the identification presented and the person presenting the identification. In making this recommendation he was concerned that staff at the establishment do not check identification or do so only superficially. Upon receiving the approval he completed a NOEA (exhibit 2, tab 2) which was forwarded to the establishment.

EVIDENCE – THE LICENSEE

Witness E, testified that he is 26 years old and holds a Bachelor of Business degree from the University of Toronto and a Bachelor of Accounting from Simon Fraser University. He has worked within the hospitality industry for the past six years, has a Serving It Right certificate and is a knowledgeable doorman.

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He was working as a doorman at the main entrance to the Mugs and Jugs pub on March 4, 2006. It was fight night with boxing matches being televised; consequently the crowd was primarily male. He recalls a group of four young women coming in sometime between 7:00 and 9:00 p.m. The alleged minor was one of them. They all carried purses, including the alleged minor. They all produced identification. The alleged minor produced a driver's licence and one other piece of identification.

His manager advised him that one of the young women had been checked by a police constable and found to be a minor. The manager said that she did not have any identification, nor did she have a purse. He advised his manager that he recalled her coming with three other young women, they all had purses and

they all produced identification. The other three young women were seated on a couch in the licensed area when he was approached by his manager but disappeared shortly thereafter. He provided a hand-written statement later that night which was then typed by his manager (exhibit 5). He recalls the person identified as the doorman arriving, he was with his girlfriend. The girlfriend was not one of the four young women. He does not recall when the other male acquaintance of the minor arrived.

Witness F, testified that he is 28 years old and has worked in licensed establishments for the past ten years at positions of disc jockey, doorman, bartender and manager. He was working as operations manager during the nights of March 4 and April 9, 2006.

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He testified that he came into the licensed area just as the police officer was talking to the minor; however, he first dealt with the male identified as a doorman with whom the alleged minor had arrived. This person is in fact an ex-doorman, who was no longer employed at the establishment and has subsequently moved away. The ex-doorman was upset at being accused of bringing a minor into the premises, so he escorted him into the lobby and attempted to calm him down. The ex-doorman said that the alleged minor did not come in with him; she must have just arrived at the same time. The witness knows the ex-doorman's girlfriend and the alleged minor is not her.

The witness testified that he then returned into the licensed area and spoke with the police officer and the doorman on duty. He overheard the discussion between the police officer and the alleged minor telling him that she didn't have any money or identification. The witness noted that she was not with other girls at the time, nor did she have a purse. The doorman told the police officer that she had a purse when she came in and it must have been given to one of the girlfriends who had since left.

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He testified that he spoke with the doorman on duty the night of April 9, 2006 and was told that the alleged minor found on the premises had not been checked for identification. The doorman had checked her identification in the past and on this occasion she entered the premises with an ex-doorman. He was thus satisfied that she was of age and didn't check her identification on this occasion. The witness testified that this resulted in the doorman on duty being suspended without pay for three days (exhibit 6, tab 1). He testified that the policy of the hotel is that all persons appearing to be under 25 years old are to be checked for identification. A memo outlining the duties of a doorman has been taped to the front entrance as a reminder to them. Documents found at exhibit 6, tabs 2, 3 & 4 are used in training of staff. He and the senior doorman are responsible for the training of doormen. A meeting is held with doormen each night.

Witness G, testified that he is 38 years old, holds a Bachelor of Commerce degree from the University of Calgary and has been employed within the hospitality industry for 23 years. He has been employed by the College Place Hotel as the General Manager for the past two years. He testified that new employees are hired following interviews by the operations manager and himself and all must have a minimum of two years experience. New doormen work at the main post with the senior doorman for 6 – 8 shifts. The operations manager goes over the house policies with them once hired and again following their initial shifts and they sign the policies. New policies are brought to their attention and periodically they go back over existing policies. The main duties of a doorman is checking identification and monitoring the crowd. The doormen at the front entrance are primarily responsible for checking identification. Other doormen take their posts inside the licensed area and are primarily responsible for monitoring crowd behaviour, not checking identification. A server or bartender can make secondary identification checks, to the best of his knowledge this was not done on these occasions, staff may have assumed that the minors were

checked upon entering. It is not required that all employees check for identification. To do so, would mean 15 checks per night per patron. Doormen receive training in detecting fake identification and situations where another person's identification is presented. The document, "Problem Response/Action Plan (condensed)" at exhibit 6, tab 2 was drawn up by him a year ago and lets staff know what he expects on each incident. The document at exhibit 6, tab 3 "Employee Duties and Responsibilities (Doormen)" has been updated this year and is in addition to the provisions of the collective agreement the hotel has with its employees. The document at exhibit 6, tab 4, "Doorman Training Schedule" provides instructions for management. The hotel has approximately 10,000 patrons per month. The New Westminster police do regular walk-thrus almost every day to a total of about 300 per year.

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He testified that he was working the night of March 4, 2006. He saw the police officer making a routine check of the premises and stopped to talk with a male and female patron. "She", the police officer, then told him that the female patron had no identification and was concerned that an off-duty staff member had brought her into the premises. The staff member in question was brought in and when questioned became angry with the manager (witness F). He said that he had entered the establishment with another female, not the minor, and that it was coincidental that the minor had come into the establishment just before him. This employee was not working that night. He was still an employee; however, was dismissed later that week for different reasons. The witness testified that he spoke with the doorman on duty (witness E) who said that the female minor had identification when she entered with three other females who had now left.

The witness was questioned about the identity of the police officer. He had described the officer as a female while the officer presented as a witness (witness B) was a male and was described as such by other witnesses. This

witness testified that the New Westminster Police Department has two officers with the same surname, one male, one female and both were present that night. He testified that at the time of the incident there were three police officers in attendance.

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He testified that on this occasion a mistake was made by the doorman in not checking for identification and he was subsequently disciplined. There had been no previous problems with this employee.

Witness H, testified that he owns and operates the hotel. He has been one of the principals of the corporate licensee since 1975. He is a board member of the Association of Beverage Licensed Establishments of BC (ABLE), which represents liquor primary licensees. He is a founding member of the Hospitality Industrial Relations consulting firm (HIR), which represents hotels in labour negotiations. He has been a member and has held office in the BC & Yukon Hotel Association since 1975.

The hotel averages 12,000 patrons per month. A licence suspension of 13 days would cause a loss of revenue of \$8 -10,000 per day and create a financial hardship on the 52 employees. He has advocated that the branch suspend the offending employee or suspend their Serving It Right certificate. By suspending the liquor licence a mistake by one employee creates a hardship for all employees and the owners. An employee fired for not doing his/her duty would not receive any penalty.

He testified that the association ABLE has written to the general manager of the branch outlining some suggestions on how to deal with contraventions regarding minors in licensed establishments (exhibit 6, tab 5). The consulting firm HIR has

outlined the difficulties in dealing with hotel employees under the collective agreement (exhibit 6, tab 6). False and fake identification is a constant problem and a number of newspaper articles have outlined the difficulties (exhibit 6, tabs 7 – 11). Young persons are pretty clever and it takes constant vigilance. The hotel maintains a good rapport with the New Westminster Police Department.

Licensee Submissions

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Counsel for the licensee submitted that there was no evidence that liquor was sold, given or otherwise supplied to a minor as required by the wording in the *Act*. The minor (witness A) testified that staff did not serve her; a friend ordered the liquor for her and handed it to her. For this contravention the rest of the evidence is not relevant. The minor admitted that she had identification from a friend in which the photograph resembled her and that she had used it 10 – 15 times previously. She didn't admit this to the police officer, nor produce it. She said that it was in her pocket and she didn't want to lose it by producing it to the police officer. She changed her story during cross-examination and stated that she had a purse containing her identification and money. The evidence of other witnesses is that she did not have a purse when being questioned by the police officer. The police officer didn't search her and the false identification was not discovered. She was not charged for being in a licensed establishment or for impersonation. The doorman (witness E) was adamant that he remembered her and recalled checking her identification. The evidence is that her appearance was such that she could have been 25 years of age. Determining age is not a science. The police were only able to confirm her age by accessing their database.

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Counsel submitted that it was admitted that a minor had been allowed into the establishment. The doorman on duty erred and was disciplined. The evidence was that it was not obvious that the minor was not 19 years of age. She obtained her drink from another patron, not from staff. It is not required that staff repeatedly check the identification of patrons. This is a busy establishment with many patrons going thru the door staff and having their identification checked. It is unrealistic that that a patron be checked again.

Due Diligence

Counsel submitted that due diligence is planning ahead of time to prevent things from going wrong. These contraventions are offences of strict liability, not absolute, liability thus due diligence is a defence. Here the establishment goes to considerable expense to prevent minors from entering or being served liquor. No system is perfect, mistakes can be made. Under this system of penalties all persons are punished for the mistake of one, even those persons who are doing things correctly. The NOEAs at exhibit 1 & 2, tabs 2 show "no previous compliance history". An astoundingly good record for a licensee in business since 1975 and with a high volume of patronage.

Penalty

Counsel submitted that the BC Court of Appeal in the Urban Well case (CA032081) August 17, 2005, at paragraphs 61-63 requires that in considering penalty the general manager (adjudicator) consider whether in the circumstances a penalty should be imposed. Here it must first be decided that a contravention has occurred. Then given the circumstances, evidence of due diligence including the volume of patrons, large number of staff and the clean history since 1975 whether any penalty should be imposed. Here the licensee has suffered great stress and expense thus the salutary effect of the enforcement hearing has

occurred. The penalties recommended by the branch are out of line. The punishment should match the offence. The penalties here would amount to a \$130,000 cost to the licensee and a financial loss to the employees. It is disproportionate to what has occurred. The minor involved in the incident of March 4, 2006, was not charged. The minor in the April 9, 2006, incident received a violation ticket and it is unknown if the fine has been paid. The penalties are out of line with criminal penalties including those for operating illegal marijuana grow ops. The recommendation of placing a term and condition on the license "to require the licensee to acquire, install and incorporate into daily operations a system which captures and records an image of the identification presented and the person presenting the identification" appears to have been made on the initiative of the Liquor Inspector and not branch management. It may be contrary to the provisions of the provincial statute dealing with the collection of private information.

REASONS AND DECISION

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I find that the evidence is that a minor (witness A) was found in possession of liquor in a licensed area of this establishment by a police officer. The liquor in her possession was ordered by an acquaintance and either handed directly to her by the bartender or handed by the bartender to the acquaintance and then to her in clear view of the bartender. There is no evidence to the contrary on this point and I am satisfied on a balance of probabilities that that is what occurred. That is a contravention of section 33(1)(a) the *Act*.

The licensee is entitled to a defence to the allegations of the contraventions, if it can be shown that it was duly diligent in taking reasonable steps to prevent the contraventions from occurring. The licensee must not only establish procedures

to identify and deal with problems, it must ensure that those procedures are consistently acted upon and problems dealt with.

Here the licensee has hired staff with previous experience in the industry and has provided training and instructions on how to perform their duties. The instructions are updated from time to time and staff is reminded of their responsibilities.

There is conflicting evidence whether the minor was checked for identification when entering the licensed area. The minor says no, the doorman says that she was. In cross-examination the minor admitted that she was carrying false identification in the form of an expired driver's licence of a friend with a photograph which resembled her (the minor). There are inconsistencies in the minor's evidence, particularly as it relates to where the identification was kept. Witnesses say that she was not carrying a purse upon leaving and thus had handed the purse with the identification off to someone else upon being approached by the police officer.

On the issue of whether the minor did produce identification to the doorman or not, there is difficulty in preferring the evidence of one over the other. There are as stated inconsistencies in the evidence of the minor. The evidence of the doorman is also not without question. It may be seen as self-serving given that it was his responsibility to check identification. Further it differs with that of other witnesses. The doorman testified that the minor entered with three other young females. This is contrary to the evidence of the minor on this point and is contrary to the evidence of the police officer (witness B) that observed the minor arriving and entering the establishment. In the end result, I am satisfied that the doorman did not satisfactorily check the identification of the minor. At best he viewed an expired driver's licence which did not belong to the minor. It did not

bear her photograph and while it bore a photograph resembling the minor, the name and biographical information did not pertain to her. He did not examine the identification for its authenticity.

Counsel for the licensee has submitted that due diligence is planning ahead of time to prevent things from going wrong. I agree. Thus, it is appropriate to consider the actions of the licensee as it has planned ahead and the circumstances in which it has done so. Here the alleged contravention occurred on March 4, 2006, shortly following a previously alleged contravention of the same type that occurred in January 2006. Yet, there is no evidence that the licensee took any measures to improve the policies and procedures to prevent such recurrences. Further, there is no evidence that the licensee has any policies and procedures in place to instruct its bartenders not to supply liquor unless satisfied that the person is of age. While the bartender may have the authority to check identification, there is no policy providing guidance as to when that authority should be exercised. Here I am satisfied that in the circumstances the bartender knew or ought to have known that the liquor was being purchased for a young appearing person and should have ensured that the person was of age. It was not sufficient for the bartender to assume that a doorman had requested identification and carefully examined it for its authenticity. Such an assumption could lead to the very results of this case.

In conclusion, on the evidence, I find on a balance of probabilities, that on March 4, 2006, liquor was, "otherwise supplied" within the meaning of Section 33 of the *Act* and in contravention of those provisions. I find that the licensee was not duly diligent.

PENALTY

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 license 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*.

There is a previous proven contravention of the same type for this licensee within the year preceding this incident. Pursuant to *Liquor Control and Licensing Regulation*, Schedule 4, Section 1(1)(b), the branch has treated the allegation as a second contravention. The range for second contraventions of this type is a licence suspension for 10-14 days.

The branch's primary goal in bringing enforcement action is to achieve voluntary compliance. In the circumstances of this case, I am satisfied that the licensee has not successfully or sufficiently stressed upon its employees the need to fully and conscientiously carry out their duties and a penalty is necessary to ensure future compliance.

Any penalty imposed must be sufficient to ensure compliance in the future. In the circumstances I find that the minimum ten (10) day suspension is necessary and sufficient.

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Here it is admitted that a minor had been allowed into the establishment. The doorman on duty erred and was disciplined.

The licensee is entitled to a defence to the allegations of the contraventions, if it can be shown that it was duly diligent in taking reasonable steps to prevent the contraventions from occurring. The licensee must not only establish procedures to identify and deal with problems, it must ensure that those procedures are consistently acted upon and problems dealt with. Here the licensee has hired staff with previous experience in the industry and has provided training and instructions on how to perform their duties. The instructions are updated from time to time and staff is reminded of their responsibilities.

Counsel for the licensee has submitted that due diligence is planning ahead of time to prevent things from going wrong. I agree. Thus it is appropriate to consider the actions of the licensee as it has planned ahead and the circumstances in which it has done so. Here the alleged contravention occurred on April 9, 2006, shortly following previously alleged contraventions involving minors that occurred in January and March of 2006. Yet, there is no evidence that the licensee took any measures to improve the policies and procedures to prevent such occurrences.

In conclusion, on the evidence, I find on a balance of probabilities, that on April 9, 2006, the licensee permitted a minor to enter, or to be on the premises where liquor is sold contrary to the provisions of section 35 of the *Act*. I find that the licensee was not duly diligent.

PENALTY

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
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- 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*.

There is no previous proven contravention of the same type for this licensee within the year preceding this incident. Pursuant to *Liquor Control and Licensing Regulation*, Schedule 4, Section 1(1)(b), the branch has treated the allegation as a first contravention. The range for a first contravention of this type is a license suspension for 1-3 days and/or a monetary penalty of \$1000 to \$3000.

The branch's primary goal in bringing enforcement action is to achieve voluntary compliance. In the circumstances of this case, I am satisfied that the licensee has not successfully or sufficiently stressed upon its employees the need to fully and conscientiously carry out their duties and a penalty is necessary to ensure future compliance.

Any penalty imposed must be sufficient to ensure compliance in the future. In the circumstances that this is the third contravention involving minors within a short period of time (Jan – April 2006) I find that the maximum three (3) day suspension is necessary.

The branch also recommended a term and condition be imposed to require the licensee to acquire, install and incorporate into daily operations a system which captures and records an image of the identification presented and the person presenting the identification. Given the concerns raised regarding this recommendation, I decline to impose the term and condition.

Order

Pursuant to Section 20(2) of the *Act*, I order a suspension of the Liquor Primary Licence No. 007446 for a period of thirteen (13) days, to commence as of the close of business on Friday, January 19, 2007, 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. 007446 be held by the branch or the New Westminster Police Department from the close of business on Friday, January 19, 2007, until the licensee has demonstrated to the branch's satisfaction that the suspensions have been served.

[ORIGINAL SIGNED]

Edward W. Owsianski
Enforcement Hearing Adjudicator

Date: December 15, 2006

cc: New Westminster Police Department
Liquor Control and Licensing Branch, Surrey Office
Attention: Regional Manager Michael Clark
Liquor Control and Licensing Branch, Surrey Office
Attention: James Macdonnell, Branch Advocate