



**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:	685946 BC Ltd. dba Chieftain Hotel and Licensed Liquor Store 38005 Cleveland Ave Squamish, BC V0N 3G0
Case:	EH06-111 EH06-112
For the Licensee:	Rajinder Nijjar, Nick Nijjar
For the Branch:	Shahid Noorani
Enforcement Hearing Adjudicator:	Sheldon M. Seigel
Date of Hearing:	November 10, 2006
Place of Hearing:	Vancouver
Date of Decision:	November 24, 2006

INTRODUCTION

The single corporate licensee operates a Licensee Retail Store (LRS) under Licence No. 195248, and a Liquor Primary Establishment (Bar) under Licence No. 044630 in Squamish. Both establishments are in the same hotel and are identified by the same address. An on-site manager operates both establishments.

The representative of the licensee appeared at the hearing with her son, who participates in the management of the hotel and its licensed facilities. She indicated that she is the primary shareholder and effective owner of the corporate licensee and speaks on its behalf.

The branch received an anonymous tip that a minor was working in the LRS and the bar. The inspector contacted the manager. The manager identified the alleged minor and advised as to the dates at which she worked in the LRS and the bar. He was unaware at the time that employee in question was a minor.

As a result of further investigation, the branch issued Notices of Enforcement Action (NOEA), EH06-111 and EH06-112 to the licensee.

PRELIMINARY MATTER

Prior to opening statements, the branch advocate sought to amend the two Notices of Enforcement Action (NOEA). The NOEA relating to file EH06-112 corresponding to the allegations concerning the LRS indicates that the date of the alleged contravention is May 19, 2006. In fact that date should be May 24, 2006.

The NOEA relating to file EH06-111 corresponding to the allegations concerning the bar indicates that the date of the alleged contravention is May 22, 2006. In fact that date should be May 27, 2006.

The representative of the licensee stated that management was complicit in the occurrence of the error and agreed that no prejudice would result in making the change.

I ordered the two NOEAs amended to reflect the correct dates.

ALLEGED CONTRAVENTIONS

The branch alleged that on May 24, 2006, the licensee contravened Section 35 of the *Act* by permitting a minor in the LRS, and on May 27, 2006, the licensee contravened Section 35 of the *Act* by permitting a minor in the bar.

RELEVANT STATUTORY PROVISIONS

- 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

1. Did the licensee contravene section 35 of the *Act*, with respect to either or both of the LRS and the bar?
2. Is a penalty warranted and if so, what is the appropriate penalty to be imposed?

EXHIBITS

Exhibit No. 1: Book of Documents (the branch)

Exhibit No. 2: Hand drawn diagram of the LRS (the licensee)

EVIDENCE

The liquor inspector testified as follows:

- Each of the liquor licences in question has terms listed on its face.
- In each case, the terms include, by reference, the terms and conditions of the "Guide". The Guide confirms that minors may not be employed in an LRS or in a bar.
- She received an anonymous call that the hotel employed a minor in the LRS and the bar.
- On May 29, 2006, she called the hotel manager and was advised that the female employee did work in the LRS and the bar on certain dates, which the manager identified. The manager advised that he believed the employee to be of age, and offered to obtain the employee's identification and forward it to the inspector.

- On June 5, 2006, she received a call from the hotel manager who advised that the employee had quit and the manager was therefore not able to obtain the employee's identification. The manager indicated in that call that he believed the employee to be 21 years of age. The manager provided phone numbers for the employee.
- She was not able to reach the employee at the telephone numbers provided.
- Some days later, she was surprised by an unsolicited call from the employee.
- The employee indicated that she was 18 years old. She said she had applied for a cleaning job and for office work and was hired for that. She was not asked for identification or for a social insurance number. When she started work, she was led into the LRS and advised to sit there to do her office work. She did so. On one occasion she was told to do a shift in the bar for a server who did not show up for work. She worked in the bar for a couple of hours.
- The minor sent copies of her identification to the inspector (Exhibit No. 1, tab 2)
- She attended at the hotel and met with the manager. She showed him the minor's identification and conducted a compliance meeting. At the meeting, the manager admitted that he had made a mistake by not asking for the employee's identification. He said that in Squamish it was difficult to find and keep employees.
- On June 19, 2006, she spoke to the representative of the licensee. The licensee also admitted that a mistake had been made and the two discussed potential penalties at some length (notes at Exhibit No. 1, tab 13, p.3).

The manager of the LRS and the bar testified as follows:

- The minor was employed by the licensee for a short time.
- The employee was hired to do office work, accounting, and work at the front desk.
- On May 24, 2006, the LRS was short-handed and he was working in the LRS. The new employee needed help with her paper work and he could not run between the front desk and the LRS, so he asked her to bring her paperwork to the LRS. He put her in the office at the back of the LRS. She was doing her own work there. She was not staffing the LRS.
- On May 27, 2006, he was on a day off and one of the other employees was late, so the assistant manager asked the minor to go to the bar and open it up. The minor was in there for an hour, or an hour and a half. As far as the assistant manager knew, the new employee was of age, so he used his discretion to use her in the bar to fill in for the regular employee.
- When he hired the minor, he asked her for ID. She told him that she lost it and had applied for new cards. He trusted that she would bring it to him soon.
- When he heard that the new employee had worked in the bar, he knew it was a problem that he did not have her ID and he asked her for it again. She said she did not have it yet. He advised her that the company needed it to process the payroll. She then asked for more work hours and he told her she could have more hours when she submitted her ID. She did not come into work the next day. When he called her she said she had found another job. The minor and the liquor inspector spoke that same day. The manager thought the timing was odd.

- When he hired her she said she was turning 21. The employee form she filled out indicated that she was 19. He did not notice that until later.
- He met with the inspector. He told her he learned a lesson.
- "We have to have a system in place to make sure this sort of thing never happens. I understand that if it happens there will be consequences."
- He put the minor to work without looking at any ID.

SUBMISSIONS

The branch submitted that there is clear evidence that a minor was inside both the LRS and the bar on the dates alleged. The branch further submitted that there was no lawful excuse or due diligence shown which would allow the licensee to escape liability for its misfeasance. The licensee simply hired a minor without requiring identification, and put her to work in the LRS and the bar.

With respect to penalty, the branch submitted that each incident took place in a separate licensed premise and accordingly each licence should bear the burden of a separate penalty. The branch also submitted that hiring a minor is more egregious a contravention than letting a minor patron into the establishment because the licensee is putting the public safety in the hands of a minor who is ill equipped to handle the responsibility.

The licensee submitted that it is the victim of a fraudulent misrepresentation. A minor lied about her age, provided false information on her employment form, and misled management about the whereabouts of her identification.

The licensee further submitted that the offence came to the attention of the branch due to the wilful actions of a disgruntled employee.

The licensee did not dispute that the minor worked in the LRS, but she was only doing paperwork in the back office. The licensee also did not dispute that the minor worked in the bar, but she worked there only a short time on one day. These circumstances should be taken into account when assessing the need for a penalty.

The licensee did not plan the events that led to the contraventions nor did it profit from them.

ANALYSIS AND DECISION

I find that the evidence is clear that the employee was at all relevant times, a minor. The *Act* prohibits a minor from being permitted in a licensed premise. Each of the licences includes by reference, the terms of the Guide relating to each the LRS and the liquor primary establishment. The Guide prohibits the establishments from employing a minor.

I find that the minor was permitted in the LRS and the bar on the dates alleged.

I find that each of the contraventions has been proven.

PENALTY

Pursuant to section 20(2) of the *Liquor Control and Licensing 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 license 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*. I am not bound by the maximums and may impose higher penalties when it is in the public interest to do so. I am not bound to order the penalty proposed in the Notice of Enforcement Action.

For each contravention, the branch recommended a one-day suspension of the corresponding licence.

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.

The licensee has no contravention history relating to either of the licences, and the branch has recommended that each contravention be treated as a first contravention for penalty purposes.

The licensee has painted itself to be a victim of misrepresentation by the minor. I believe this to be true to a limited extent. While I believe the minor did intend to deceive and did in fact follow through with the deception, I find that the licensee was not entirely innocent of wrongdoing. The licensee has an obligation to conduct itself with the interests of public safety in mind. A licensee is not simply an employer, but an employer of people who will carry a significant burden with respect to their control over public safety. This burden must be borne by employees who are of adequate stature and competence, and who have been properly trained and are adequately supervised.

When the licensee offered employment to a minor, without confirmation of age by acceptable identification, it exposed itself and the public to foreseeable harm.

The manager testified: "We have to have a system in place to make sure this sort of thing never happens. I understand that if it happens there will be consequences." I agree. Indeed this statement applies post contravention as it did pre-contravention. I find that a penalty is appropriate in this circumstance.

As to the contravention of Section 35 relating to the LRS that occurred on May 24, 2006, I find a one-day suspension to be appropriate.

The manager failed in his responsibility with respect to confirming the age of the potential employee. I find this one failure to be adequately addressed by one penalty. The branch submitted that the LRS and the bar are operated under distinct licences, each with attendant responsibilities. I agree. However, in this case, there is one licensee for both licences. The licensee employs one manager. The manager operates one hotel at one location with one address. I find that the single action of hiring the minor without verification of her age was the proximate and direct cause of both contraventions, and accordingly, I find that only one penalty is required. I am not saying that facts cannot be imagined under which a single action might give rise to the appropriate assessment of multiple penalties, but that under the circumstances of this case, one penalty is adequate to reflect an appropriate consequence.

Further, I am satisfied that in light of the penalty awarded herein for contravention of EH06-112 relating to the LRS, no further penalty is required to obtain voluntary compliance in the future, with respect to either licence.

Therefore, I find that no penalty is required for the contravention of EH06-111 relating to the bar on May 27, 2006.

ORDER

Pursuant to Section 20(2) of the *Act*, I order a suspension of the LRS Licence No. 195248 for a period of one (1) business day, to commence as of the close of business on December 12, 2006, or as soon thereafter as the establishment is scheduled to be open for business. "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. 195248, be held by the Branch or the local detachment of the RCMP from the close of business on December 12, 2006, or as soon thereafter as the establishment is scheduled to be open for business, until the licensee has demonstrated to the branch's satisfaction that the suspension has been served.

Original signed by

Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: November 24, 2006

cc: R.C.M. Police Squamish Detachment

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

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