

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Butterworth Holdings Ltd. et al. v.
British Columbia (General Manager,
Liquor Control and Licensing Branch),
2007 BCSC 6***

Date: 20070103
Docket: S100539
Registry: New Westminster

Between:

**Butterworth Holdings Ltd., Frizzell Holdings Ltd. and
Legree Holdings Ltd. doing business as College Place Hotel**

Petitioners

And

British Columbia (General Manager, Liquor Control and Licensing Branch)

Respondent

Before: The Honourable Madam Justice MacKenzie

Reasons for Judgment

Counsel for Petitioners

W. D. Murdoch

Counsel for Respondent

D. Roberts

Date and Place of Hearing:

December 5, 2006
New Westminster, B.C.

Background Facts

[1] The petitioner holds a liquor primary licence for a bar in New Westminster, British Columbia known as “Mugs and Jugs”. It focuses on adult entertainment. During a routine check early in the morning of January 27, 2006 a police officer discovered two minors age 16 and 17 each seated with a glass of beer at a table near the stage. They had been allowed entry into the bar after presenting false identification. The identification belonged to the older brother of one of the two boys. The 16 year old ordered a pitcher of beer and two glasses from the bartender who served it to him without asking for identification. The 17 year old, having entered from a different door, joined the 16 year old. The two boys had been drinking beer for about thirty minutes before the police officer discovered them.

[2] The police issued a police licensed premises check which the Liquor Control and Licensing Branch followed up with a prevention notice for supplying liquor to a minor contrary to s. 33 of the ***Liquor Control and Licensing Act***, R.S.B.C. 1996, c. 267 (the “**Act**”). Section 33 provides that a person must not sell, give or otherwise supply liquor to a minor. (I have attached as appendices to these reasons the relevant sections of the **Act** and the Liquor Control and Licensing Regulation, B.C. Reg. 224/2002 as amended (the “**Regulation**”) and Schedule 4).

[3] A notice of enforcement action was issued on March 27, 2006 for contravention of s. 33 of the **Act**.

[4] The enforcement hearing was held on June 28, 2006.

[5] On July 19, 2006 the adjudicator determined that the petitioner had contravened the **Act** by allowing service of liquor to a minor. The licensee admitted that it does not require a bartender to ask for identification before serving a person appearing to be under the age of 25. The bartender relied on the doorman to ask for identification.

[6] In accordance with Schedule 4 of the **Regulation** under the **Act**, the adjudicator imposed a penalty of a four business day suspension of the petitioner's liquor licence (stayed pending this application).

[7] The petitioner now applies pursuant to s. 2 of the **Judicial Review Procedure Act**, R.S.B.C. 1996, c. 241 for an order that the decision of July 19, 2006 by the enforcement hearing adjudicator be quashed; or, in the alternative, that the decision be remitted back to the respondent for rehearing before an alternate adjudicator pursuant to s. 5 of the **Judicial Review Procedure Act**.

[8] The petitioner submits the adjudicator failed to properly consider all the evidence, applied an inappropriate standard of proof, erred in the application of the defence of due diligence, erred by considering he was bound to impose a penalty, and further erred in imposing an unreasonable penalty.

Statutory Framework

[9] The **Act** and its **Regulation** set out the statutory framework for the licensing and administration of all establishments in British Columbia that sell liquor. The general manager has a mandatory statutory duty to administer the **Act** and

supervise all licensed establishments. In furtherance of that duty she is empowered, on her own motion or acting upon a complaint, to enforce compliance with the legislation, regulations and terms of licenses: **Act**, ss. 3 and 6.

[10] Section 20(1) of the **Act** sets out the powers of the general manager under the **Act**. Section 20(1)(a) provides:

In addition to any other powers the general manager has under this Act, the general manager may, on the general manager's own motion or on receiving a complaint, take action against a licensee for any of the following reasons:

- (a) the licensee's contravention of this Act or the regulations or the licensee's failure to comply with a term or condition of the licence

[11] Section 20(2) sets out the kinds of restrictions and penalties that a general manager may impose on a licensee with or without a hearing and includes the power to impose a monetary penalty in accordance with the prescribed schedule and the power to suspend all or any part of the licensee's licence in accordance with the prescribed schedule of licence suspensions: **Act**, ss. 20(2)(c)(d).

[12] The enforcement hearing in this case was conducted by a delegate of the general manager (the "adjudicator"), pursuant to s. 84(2)(m) of the **Act** and s. 3 of the **Regulation**.

[13] If the adjudicator determines that a licensee has committed a contravention, he or she must decide whether to impose a penalty for the contravention. If the adjudicator determines that either a monetary penalty or suspension is warranted,

ss. 66 and 68 of the **Regulation** require the adjudicator to apply at least the minimum penalty set out in Schedule 4 of the **Regulation**.

[14] This legislative framework was succinctly set out by the Court of Appeal in ***Roxy Cabaret Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)***, 2006 BCCA 61, at ¶4-6 as follows:

4. Section 20(1)(a) of the Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267 (the "Act"), permits the General Manager to take enforcement action against a licensee who has contravened the Act or Regulation. It also permits enforcement of any term or condition the General Manager has imposed on a licence "in the public interest" as permitted by s. 12(2) of the Act. Part 7 of the Regulation sets out the procedure to be followed in an enforcement action. Section 64(1) mandates an inspector to provide a written notice to a licensee the inspector is of the opinion has committed a "specified contravention." This notice was provided to the appellant on three occasions by way of a standard-form ticket-like Contravention Notice.

5. If, after considering the alleged contravention, the inspector proposes enforcement action be taken against the licensee in response to the alleged contravention, s. 64(2) requires the inspector provide written notice to the licensee "specifying which enforcement actions the general manager proposes to take against the licensee should the licensee agree [by way of a notice of waiver] under subsection (3) that the licensee has committed the contravention" and "notifying the licensee that, unless the licensee provides a notice of waiver ... the general manager will determine whether the alleged contravention occurred and the enforcement actions, if any, that are to be taken in relation to that alleged contravention" and that, "an enforcement hearing may be scheduled for that purpose." This is the standard-form Notice of Enforcement Action by way of a letter from the inspector that the appellant received in this case.

6. If a "finding of contravention" (as defined in s. 63(b) of the Regulation) is made, the adjudicator, as the delegate of the General Manager, must decide whether to impose a penalty for the contravention. If the adjudicator determines either a monetary penalty or a licence suspension is warranted, ss. 66 and 68 require the adjudicator to apply the minimum penalty set out in Schedule 4 to the Regulation. In this case, the minimum penalties prescribed for

"Overcrowding" are found in Items 14 and 15 of the Schedule. The items are described under the column headed "Contravention":

[15] In the case before me, the penalties are found in item 2 of the Schedule.

General Principles

[16] A petition pursuant to the ***Judicial Review Procedure Act*** involves the application of administrative law principles. A court will only rarely make the decision which legislation assigns to an administrative tribunal: ***Dennis v. British Columbia (Superintendent of Motor Vehicles)***, 2000 BCCA 653, at ¶26. In this case, that decision is assigned by legislation to the general manger.

[17] The role of the court on judicial review in this context is supervisory; it is not to re-hear and re-assess evidence, but merely to ensure that the adjudicator did not make a decision that was outside his or her jurisdiction. It is not within the power of the court to examine the appropriateness of the decision and substitute its own view for that of the adjudicator: ***Wells v. British Columbia (Superintendent of Motor Vehicles)***, 2000 BCSC 1857 at ¶9 to 11, following ***Toronto (City) Board of Education v. OSSTF, District 15***, [1997] 1 S.C.R. 487, where Cory J. said at ¶45 that when a court is reviewing a tribunal's findings of fact or the inference is made on the basis of the evidence, it can only intervene where the evidence, viewed reasonably, is incapable of supporting a tribunal's findings of fact. See also D.P. Jones & A.S. de Villars, *Principles of Administrative Law*, 2d ed. (Toronto: Carswell, 1994) at 6-8; and D.J.M. Brown & J.M. Evans, *Judicial Review of Administrative Action in Canada* (Toronto: Canvasback, 2004) at 12-9.

[18] The standard of review for findings of fact in this case is that of patently unreasonable. The standard of review for questions of mixed fact and law is reasonableness *simpliciter*.

[19] The **Act** is public safety legislation that balances various competing interests, including: the interests of a licensee to maximize profits and the interest of public safety to minimize the adverse and sometimes tragic consequences of underage drinking.

[20] Under s. 33(1)(a) of the **Act** a person must not sell, give or otherwise supply liquor to a minor.

[21] Section 45(2) of the **Regulation** provides that a licensee must request two pieces of identification from any person appearing to be under the age of 25 before (a) allowing the person to enter the licensed establishment, if the establishment is one in which minors are not allowed, or (b) selling or serving liquor to the person.

[22] The prohibition against serving liquor to minors is a public safety issue serious enough to justify legislation prohibiting the service of liquor to a minor. The penalties set out in the **Regulation** reflect this seriousness: **Act**, s. 33, **Regulation**.

Issues

1. Did the adjudicator fail to consider all the evidence and/or apply an inappropriate standard of proof?
2. Did the adjudicator err in the application of the defence of due diligence?

3. Did the adjudicator err in considering he was bound to impose a penalty and further err in imposing an unreasonable penalty?

1. Did the adjudicator fail to properly consider all of the evidence and/or apply an inappropriate standard of proof?

[23] The petitioner maintains there was no evidence that liquor was supplied to a minor because, although the witnesses referred to “beer”, they were not asked by the branch advocate and did not disclose whether they had obtained “liquor”, meaning alcoholic beer. The petitioner submits that because non-alcoholic beer was also sold at the premises, the adjudicator erred in finding that the minors were supplied with liquor. The petitioner submits that the branch advocate failed to adduce evidence that a minor was supplied “liquor”.

[24] The petitioner also submits the adjudicator erred by failing to consider the defence set out in s. 33(5) of the **Act** which provides:

33(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.

[25] I can summarily dispose of this latter argument because it was not raised at the hearing below. Furthermore, s. 33(5) of the **Act** refers to a court hearing whereas this case involved an administrative hearing. Under s. 20 of the **Act**, the proceeding, if it goes ahead as it did here, is an administrative proceeding and not a

court hearing as referred to in s. 48 of the **Act**. Section s. 33(6) of the **Act**, which provides that a person who contravenes this section commits an offence and is liable on conviction to a fine of not less than \$500, refers to the proceeding as an “offence”. However, in a proceeding under s. 20 (“action against a licensee”), the general manger is enforcing the terms of a licence. Section 33(5) is inapplicable here because it provides a defence to a court proceeding.

[26] Regarding the former argument, I find there was overwhelming and unchallenged evidence that the 16 year old went to the bar, was served a pitcher of beer by the bartender, and was not asked to produce identification. Both minors testified that they were asked for one piece of identification at the door. Both also testified they were supplied beer by the establishment. They were not questioned as to whether it was non-alcoholic beer. There was no evidence before the adjudicator that this bar served non-alcoholic beer in pitchers. The adjudicator accepted that the typical reference to beer in the absence of evidence to the contrary indicates that it contains alcohol and is therefore “liquor” as defined in the **Act**. The police officer testified that she smelled the liquid, looked at it and was satisfied that it was beer. The adjudicator’s finding was based on cogent evidence that the minors were referring to alcoholic beer. I cannot say that his finding in this regard was unreasonable, let alone patently unreasonable. The latter is the applicable standard for judicial review of findings of fact in this case.

2. Did the adjudicator err in the application of the defence of due diligence?

[27] The petitioner referred to evidence regarding its alleged due diligence. It argues that the training of the staff was adequate in the circumstances. It submits that the problem of underage people trying to obtain entry into licensed premises by using false identification is enormous because “fake ID” is extremely difficult to recognize. It emphasizes that in this case, the two underage boys obtained entry by using the “L” drivers licence and the “N” licence of the older brother of one of the two minors. The licences looked legitimate, and according to the petitioner, most 19 year olds look as if they are 16 or 17. Also, the petitioner argues there are numerous schemes available for the obtaining of false identification.

[28] The petitioner further submits that due diligence does not require perfection, but only consists of what is reasonable in the circumstances and within the capacity of the licensee to carry out. The petitioner complains that the adjudicator apparently required perfection and treated this allegation as if it were an absolute liability offence.

[29] The petitioner argues there was nothing more the licensee could have done because its system of having the doorman require identification was reasonable in the circumstances. In this regard, it submits the bartender does not have time to check the identification of those to whom he serves liquor. Instead, he relies on the doorman. Furthermore, the bartender is able to see the doorman as he is checking identification. The petitioner says the fact both minors had been checked for photo

identification by door staff on behalf of the licensee and had produced the real identification of the older brother of one of the minors was adequate to establish due diligence in the circumstances.

[30] The due diligence defence is a complete defence. In a hearing under s. 20 of the **Act**, once the branch establishes that the alleged contraventions occurred, the licensee bears the onus of proving on a balance of probabilities that it exercised all reasonable care to avoid the contravention. The content of the defence must be meaningful: **R. v. Sault Ste. Marie**, [1978] 2 S.C.R. 1299 at ¶58, 59, 67. **Sault Ste. Marie** sets out a two step requirement: first, there is a requirement to show there are policies in place; and second, that the policies were meaningfully enforced at the time of the contravention. See also **Sandman Hotel Langley Inc. v. British Columbia (General Manager, Liquor Control and Licensing Branch)**, 2006 BCSC 417, in which Silverman J. applied those principles from **Sault Ste. Marie** in the context of a due diligence defence to a violation of the **Act**.

[31] The question of due diligence is one of mixed fact and law reviewable on a standard of reasonableness *simpliciter*. The standard of review involves determining whether there are any reasons to support the decision of the adjudicator. It is not appropriate for the court to re-weigh the evidence before the general manager: **Zodia Pub Ltd. v. British Columbia (General Manager Liquor Control and Licensing Branch)**, 2004 BCSC 96 at ¶34; **Sandman Hotel Langley Inc.; Sentinel Peak Holdings Ltd. v. British Columbia (Liquor Control and Licensing Branch, General Manager)**, 2004 BCSC 885, at ¶39-43.

[32] The test is factual and depends on the circumstances of each case: ***Sault Ste. Marie*** at ¶70.

[33] The licensee is required to ensure that minors are not served liquor in its establishment, and to ensure that anyone who appears to be under the age of 25 produces two pieces of identification.

[34] The onus is on the licensee to demonstrate on a balance of probabilities that it exercised reasonable care by establishing and enforcing every reasonable cautionary measure to ensure that a minor is not served liquor in the establishment. This requires an appropriate system to prevent commission of the contravention, and proof that the licensee took reasonable steps to ensure the effective operation of the system: ***Sault Ste. Marie*** at ¶72.

[35] In ***Aztec Properties Co. v. British Columbia (General Manager, Liquor Control and Licensing Branch)***, 2005 BCSC 1465 , Melnick J. applied the test for due diligence. He said at ¶18-19:

An establishment may well have a general policy, but if the directing mind on site at the relevant time ignores it, or makes no effort to see that it is enforced, it can hardly be said that the mere existence of a policy is sufficient to demonstrate due diligence. In fact, that is what happened here. The adjudicator just did not accept that, on the day in question, Aztec, through the steps that it had taken to prevent being over person capacity, had exercised due diligence.

Both *Zodiac* at para. 39 and *Sandman Hotel Langley Inc. (c.o.b. Sandman Hotel (Langley)) v. British Columbia (General Manager Licensing Branch)*, [2005] B.C.J. No. 282, 2005 BCSC 197 at para. 37 held that the defence of due diligence is a question of mixed fact and law and is reviewable on a standard of reasonableness simpliciter. This requires me to show deference to the adjudicator in her assessment of the evidence before her and the credibility of those who

gave that evidence. Giving that due deference to the decision of the adjudicator, I conclude that there was evidence before her from which she could reasonably conclude, as she did, that Aztec did not demonstrate due diligence.

See also: ***New World Entertainment Investments Ltd. (c.o.b. Richard's on Richards) v. British Columbia (Liquor Control and Licensing Branch, General Manager)***, 2004 BCSC 616, at ¶¶33-34, in which Gill J. applied a reasonableness standard of review to an adjudicator's decision regarding due diligence under the **Act**.

[36] The licensee acknowledged that it did not require its bartender to ask for identification from persons appearing under the age of 25 before serving liquor. The only system was to check "ID" at the door. The hotel manager confirmed that the bar staff relied on the door staff to check "ID". The adjudicator found this policy insufficient because the obligation continues beyond the door staff to the employees within. As a result, he found that the licensee failed to establish that it was duly diligent in checking identification and preventing minors from being served alcohol in its establishment.

[37] There is no basis to interfere with the adjudicator's decision that the petitioner failed to establish the defence of due diligence. The adjudicator's decision in this regard was not unreasonable as it was supported by ample evidence.

3. Did the adjudicator err in considering he was bound to impose a penalty and further err in imposing an unreasonable penalty?

[38] The adjudicator imposed a penalty in accordance with Schedule 4 of the ***Regulation*** under the ***Act*** of a suspension of four business days to be served commencing the close of business on August 16, 2006. (The suspension was stayed by the Liquor Control and Licensing Branch after this proceeding was commenced until December 27, 2006 pending the outcome of this application).

[39] The petitioner submits that the adjudicator erred when imposing this penalty because he fettered his own discretion by, in effect, considering himself bound to impose a penalty unless there were mitigating circumstances making the imposition of a penalty inappropriate. Specifically, the petitioner argues this error occurred because the adjudicator appeared to say that serving liquor to a minor required a penalty.

[40] In making this submission, the petitioner relies on ***532871 B.C. Ltd. (c.o.b. The Urban Well) v. British Columbia (General Manager, Liquor Control and Licensing Branch)***, 2005 BCCA 416 at ¶¶61-63. In that case, the Court of Appeal held that the general manager erred by adopting a default position that assumed the imposition of a suspension in the absence of mitigating circumstances.

[41] The Court went on to observe that the correct approach under the legislation is for the adjudicator to consider whether to impose a penalty of suspension, not to

assume a suspension and ask if there are any circumstances that suggest not imposing a suspension for a particular infraction.

[42] I disagree with the petitioner's argument that the adjudicator made a "default" decision. This case is distinguishable from ***Urban Well*** where the general manager said that there had been occasions when adjudicators, under the new enforcement regime, had not imposed penalties but that "those have been characterized as exceptional, extenuating or unusual circumstances or where there have been mitigating factors." Saunders J.A. also quotes the general manager's statement that she had considered whether there were mitigating circumstances to justify not imposing penalties, and her finding that there were no mitigating circumstances to justify not imposing penalties for the various overcrowding contraventions.

[43] In this case, the adjudicator said at (p. 13):

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.

The adjudicator followed the requirements of both the ***Act*** and the ***Regulation***. The adjudicator did not say as did the adjudicator in ***Urban Well***, that penalties are warranted *unless* there are mitigating circumstances, or, that absent mitigating circumstances, a penalty is appropriate. Instead, the adjudicator here said (at p. 11-12):

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 *discretion* [my emphasis] to order one or more of the following enforcement actions:

- Impose a suspension of the liquor licence for a period of time;
- Cancel a liquor licence;
- Impose terms and conditions to a licence or rescind or amend existing terms and conditions;
- Impose a monetary penalty;
- Order a licensee to transfer a licence.

Imposing any penalty is discretionary. However, if I find that either a licence suspension or monetary penalty is warranted, I am bound to follow the minimums set out in Schedule 4 of the *Regulation*.

It is clear the adjudicator did not make the error of the adjudicator in ***Urban Well***.

[44] The petitioner also submits the adjudicator erred in failing to consider the lack of enforcement history of the licensee over a 30 year period and in imposing a penalty that was unnecessary, unreasonable, and unwarranted in the circumstances. The petitioner argues the branch's true view of the degree of seriousness of this contravention is reflected in the fact that neither minor was charged under s. 34 of the ***Act*** or with ***Criminal Code***, R.S.C. 1985, c. C-46 offences. I observe that the argument about the 30 year absence of contraventions was not raised at the hearing and that the adjudicator's application of the provision was consistent with the requirement of the ***Act*** and ***Regulation***.

[45] Part 7 of the ***Regulation*** sets out the statutory enforcement provisions and provides for the imposition of enforcement actions. Specifically, the general manager may decide not to impose an enforcement action:

65(1) If, under section 20 of the Act, the general manager determines that a licensee has committed a contravention as a result of which one or more enforcement actions may be taken against the licensee, and if the licensee has not, in respect of that contravention, provided to the general manager a notice of waiver in accordance with section 64(3) of this regulation, the general manager may, under section 20 of the Act,

take the enforcement actions, if any, against the licensee that the general manager considers appropriate as a result of the contravention and, in so doing, may but need not take the enforcement actions specified under section 64(2)(a) of this regulation.

[46] If the adjudicator deems the contravention to warrant enforcement action, she must apply the penalties as set out in Schedule 4. Multiple contraventions require multiple penalties. The respondent also has the discretion to increase the penalties if she determines that the circumstances so warrant. Section 66 of the **Regulation** provides:

66(1) If, in relation to a contravention, the enforcement actions specified under section 64(2)(a) or referred to in section 65(1) include a suspension, the period of the suspension must, subject to subsection (2) of this section, fall within the range established for the contravention under Schedule 4.

(2) If, in the circumstances of a contravention and the compliance history of the licensee, the general manager considers that a longer period of suspension is warranted than that established for the contravention under Schedule 4, the suspension period may extend as far beyond the range established under Schedule 4 as the general manager considers appropriate.

(3) If the general manager determines that a licensee has committed more than one contravention for which suspensions should be assessed, the period of the suspension determined in relation to those contraventions must be the sum of the suspension periods determined for each of the contraventions.

[47] Schedule 4 of the **Regulation** sets out mandatory penalties subject to the general manager's discretion as to whether a contravention warrants a penalty.

[48] The petitioner also complains that the penalty was grossly disproportionate to the relatively minor contravention of the **Act**. It submits that even if the adjudicator properly exercised his discretion to impose a penalty, he ought to have chosen to

impose the monetary penalty open to him of a \$5,000 fine rather than the minimum suspension for a first contravention of four business days. The petitioner complains that this will cause significant financial losses, including approximately \$30,000 of business and a layoff of employees and contractors. I observe however that the petitioner has not brought a constitutional challenge to the penalty provisions.

[49] The adjudicator accepted that providing liquor to a minor was an activity that endangered the safety and security of the public in general and minors in particular. He considered the petitioner's submission that a \$5,000 fine was more appropriate than a suspension. The adjudicator disagreed and found a four day suspension was appropriate. He made this decision, as he said, in the circumstances of this case, and he gave carefully considered and thorough reasons after setting out the evidence and submissions in detail.

Conclusion

[50] The adjudicator exercised the discretion open to him, and applied the appropriate legislation. His findings that alcohol had in fact been served to minors was not unreasonable and certainly not patently unreasonable. His findings that the petitioner was not duly diligent in preventing the service of alcohol to minors was not unreasonable. There is no basis for this Court to interfere with his application of the statute. The adjudicator's decision will not be disturbed. The petition is dismissed with costs.

"The Honourable Madam Justice MacKenzie"

Appendix 1

Liquor Control and Licensing Act [RSBC 1996] Chapter 267

General manager

3 (1) The minister, under the *Public Service Act*, must appoint a general manager of the branch and set his or her remuneration.

(2) The general manager must, subject to the orders and direction of the minister on matters of general policy,

(a) administer this Act, and

(b) supervise all licensed establishments and manufacturers of liquor.

Duties and powers of general manager

6 The general manager must, subject to this Act and the regulations,

(a) issue, renew, amend, transfer, suspend or cancel licences as provided by this Act and the regulations,

(b) specify which regulations apply to a licence so granted,

(c) supervise the conduct and operation of licensed establishments,

(d) [Repealed 1999-36-2.]

(e) appoint or designate any person he or she considers advisable as an analyst for the purposes of this Act,

(f) authorize officials to issue licences and permits under this Act, and

(g) perform all other acts required to properly and efficiently administer his or her responsibilities as defined by the minister and under this Act and the regulations.

Licences

12 (1) The general manager, having regard for the public interest, may, on application, issue a licence for the sale of liquor.

(2) The general manager may, in respect of any licence that is being or has been issued, impose, in the public interest, terms and conditions

(a) that vary the terms and conditions to which the licence is subject under the regulations, or

(b) that are in addition to those referred to in paragraph (a).

Action against a licensee

20 (1) In addition to any other powers the general manager has under this Act, the general manager may, on the general manager's own motion or on receiving a complaint, take action against a licensee for any of the following reasons:

(a) the licensee's contravention of this Act or the regulations or the licensee's failure to comply with a term or condition of the licence

(2) If the general manager has the right under subsection (1) to take action against a licensee, the general manager may do any one or more of the following, with or without a hearing:

(c) impose a monetary penalty on the licensee in accordance with the prescribed schedule of penalties;

(d) suspend all or any part of the licensee's licence in accordance with the prescribed schedule of licence suspensions

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.

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(2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:

(m) providing for the delegation by the general manager of any or all of his or her powers, duties or functions, including without restriction, powers, duties and functions relating to licensing or enforcement, to officers or other persons or to a committee, which may include the general manager or officers or both;

Appendix 2

Liquor Control and Licensing Regulation, B.C. Reg 224/2002 as amended

Delegation by general manager

3 (1) The general manager may delegate any of his or her powers, duties and functions under the Act and this regulation to one or more officers or persons or to the Liquor Licensing Committee appointed under section 2.

Minors

45 (1) For the purposes of section 33 (5) of the Act, identification includes the following:

(a) a passport;

(b) a driver's licence that displays a photograph and the date of birth of the holder;

(c) an identification card, issued by a government agency, that displays a photograph and the date of birth of the holder.

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

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

(b) selling or serving liquor to the person.

(3) The pieces of identification required under subsection (2) must include

(a) one piece of the identification referred to in subsection (1), and

(b) one other piece of identification that displays the person's name and at least one of the person's signature and picture.

(4) A licensee must not allow a minor to have liquor in his or her possession in the licensed establishment unless the licence issued for that establishment is a

food primary licence or a liquor primary licence for a stadium and the minor is working as a server in the establishment.

Notices of contravention

64 (1) If an inspector forms the opinion that a licensee has committed a contravention, the inspector must provide written notice to the licensee that the inspector is of the opinion that the licensee has committed a specified contravention.

(2) If, after considering the alleged contravention, the inspector proposes that enforcement actions should be taken against the licensee in response to that alleged contravention, the inspector must, after forming that opinion, provide written notice to the licensee

(a) specifying which enforcement actions the general manager proposes to take against the licensee should the licensee agree under subsection (3) that the licensee has committed the contravention, and

(b) notifying the licensee that, unless the licensee provides a notice of waiver in accordance with subsection (3),

(i) the general manager will determine whether the alleged contravention occurred and the enforcement actions, if any, that are to be taken in relation to that alleged contravention, and

(ii) an enforcement hearing may be scheduled for that purpose.

(3) The general manager may hold an enforcement hearing to determine whether the licensee committed the alleged contravention and, if so, to determine what enforcement actions are to be taken against the licensee as a result, unless, within 14 days after the date of the notice referred to in subsection (2), or within such longer period as the general manager considers appropriate, the licensee provides to the general manager a notice of waiver, in form and content satisfactory to the general manager, by which the licensee expressly and irrevocably

(a) agrees that the licensee has committed the contravention,

(b) accepts the specified enforcement actions,

(c) waives the opportunity to have an enforcement hearing on the matter, and

(d) agrees that the finding of contravention and the specified enforcement actions will form part of the compliance history of the licensee.

Imposition of enforcement actions

65 (1) If, under section 20 of the Act, the general manager determines that a licensee has committed a contravention as a result of which one or more enforcement actions may be taken against the licensee, and if the licensee has not, in respect of that contravention, provided to the general manager a notice of waiver in accordance with section 64 (3) of this regulation, the general manager may, under section 20 of the Act, take the enforcement actions, if any, against the licensee that the general manager considers appropriate as a result of the contravention and, in so doing, may but need not take the enforcement actions specified under section 64 (2) (a) of this regulation.

(2) Nothing in this section requires the general manager to hold an enforcement hearing, or any hearing, before making either or both of the determinations referred to in subsection (1).

(3) The general manager may, in respect of a second contravention or a subsequent contravention, take the enforcement action applicable to that type of contravention even though that contravention was considered at a time or at a hearing at which one or more other contraventions of the same type were considered.

(4) A reference in subsection (3) to a "second contravention", a "subsequent contravention" and a "type" of contravention must be read within the meaning of Schedule 4.

Suspensions

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

(2) If, in the circumstances of a contravention and the compliance history of the licensee, the general manager considers that a longer period of suspension is warranted than that established for the contravention under Schedule 4, the suspension period may extend as far beyond the range established under Schedule 4 as the general manager considers appropriate.

(3) If the general manager determines that a licensee has committed more than one contravention for which suspensions should be assessed, the period of the suspension determined in relation to those contraventions must be the sum of the suspension periods determined for each of the contraventions.

(4) A reference in subsection (3) to a "second contravention", a "subsequent contravention" and a "type" of contravention must be read within the meaning of Schedule 4.

Monetary penalties

68 (1) The enforcement actions specified under section 64 (2) (a) or referred to in section 65 (1) that apply to a contravention that is a first contravention within the meaning of section 1 (1) (b) (i) of Schedule 4 include, but for any other contraventions do not include, a monetary penalty, and the amount of the monetary penalty that may be imposed in relation to a first contravention must, subject to subsection (2) of this section, fall within the range, if any, established for the contravention under Schedule 4.

(2) If, in the circumstances of a contravention and the compliance history of the licensee, the general manager considers that a monetary penalty in an amount that exceeds the amount established for the contravention under Schedule 4 is warranted, the monetary penalty may, subject to section 20 (2.3) of the Act, extend beyond the range established under Schedule 4.

(3) If the general manager determines that a licensee has committed more than one contravention for which monetary penalties should be assessed, the amount of the monetary penalty determined in relation to those contraventions must be the sum of the monetary penalties determined for each of the contraventions.