



**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: 588080 B.C. Ltd.
dba Royal Unicorn
147 East Pender Street
Vancouver, BC V6A 1T6

Case: EH06-061 and EH06-064

For the Licensee: Aurthur Lau

For the Branch: James Macdonnell

Enforcement Hearing Adjudicator: Sheldon M. Seigel

Date of Hearing: September 7, 2006

Place of Hearing: Vancouver

Date of Decision: September 19, 2006

INTRODUCTION

The licensee operates a liquor primary licensed establishment in Vancouver's Chinatown area. The establishment is known as the Royal Unicorn.

In the early morning of Monday, March 27, 2006, (the business day of Sunday March 26, 2006) members of the Vancouver Police Department attended at the establishment in response to a call reporting a fight. The police noted the presence of patrons beyond one half hour after liquor service was to be terminated.

In the early morning of Sunday, April 9, 2006, (the business day of Saturday April 8, 2006), the establishment was inspected by two compliance and enforcement officers (C & E officers). The inspection revealed a minor in the establishment.

The Liquor Control and Licensing Branch (the branch) issued two Notices of Enforcement Action (NOEA) to the licensee as a result of these inspections.

ALLEGED CONTRAVENTIONS

The branch alleged that on March 27, 2006, the licensee contravened Section 44(1)(a) of the *Regulation* by failing to clear patrons within ½ hour after liquor service hours terminated.

The branch also alleged that on April 9, 2006, at 1:15 a.m. the licensee contravened Section 35 of the *Liquor Control and Licensing Act* by allowing minors in the premises.

RELEVANT STATUTORY PROVISIONS***Liquor Control and Licensing Regulation, BC Reg. 244/2002***

Section

44(1) Unless otherwise authorized by the general manager,

- (a) liquor primary licensees and liquor primary club licensees must ensure that patrons are cleared from the licensed establishment within ½ hour after the time stated on the licence for the hours of liquor service, and...

Liquor Control and Licensing Act, RSBC 1996 Chapter 267

Section

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 44(1)(a) of the *Regulation*?
 2. Did the licensee contravene Section 35 of the *Act*?
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3. If a contravention is found, is a penalty warranted and if so, what is the appropriate penalty to be imposed?

EXHIBITS

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

EVIDENCE

The branch called a member of the Vancouver Police Department. He testified as follows:

He was on patrol in the early hours of March 27, 2006, and responded with his partner to a dispatch resulting from a 911 call regarding a fight at the Royal Unicorn.

There was yelling and screaming coming from a back room in the establishment. He and his partner went there and separated a male and a female who were having an argument.

He observed that there were patrons in the main room of the establishment with open alcohol and cigarette packages on the tables. There were patrons at the main bar as well. He believed the time was between 1:00 a.m. and 1:15 a.m.

The branch called a second member of the Vancouver Police Department. He testified as follows:

He and his partner attended at the Royal Unicorn on March 27, 2006, in response to a call relating to a fight.

They arrived shortly after 2:00 a.m. in response to being dispatched to answer a 911 call. The call was received by the police department at 2:03 a.m. He identified the report that indicated the call time.

They investigated an altercation in a back room of the establishment.

He noticed there were patrons in the private rooms and in the main area of the bar, and there were beers on ice and ashtrays on the tables.

He checked the establishment's licence and ascertained that liquor service hours were to end at 12:00 midnight.

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

He learned about the licensed premise check (LPC) relating to failure to clear patrons from the police. He issued the NOEA as a result of that information.

On April 9, 2006, he arrived at the establishment with another C & E officer to do a routine inspection. He went into the back rooms as the other C & E officer approached two female patrons in the main area of the bar. The two female patrons looked well under 25 years of age.

When he returned from the karaoke rooms, he was advised by the other C & E officer, that the two females did not have ID. The other C & E officer took the female patrons outside to talk with them privately. He was advised by the other C & E officer that one of the females admitted to being 18 years old and gave her birth-date and contact information.

He later corroborated the age of the patrons by use of the information provided by them. One of the patrons was indeed 18 years of age.

The branch called a second C & E officer. He testified as follows:

The two inspectors were on duty together for safety reasons. They attended the Royal Unicorn for a routine inspection at 1:15 a.m. on April 9, 2006.

Immediately upon entering, he noticed two female patrons who appeared to be very young. The other C & E officer went to the back karaoke rooms.

He approached the two females and asked for identification. Neither produced ID but one of them indicated that she was only 18 years old. The females said they were with friends and had left their ID at home. Each of them had a bottle of Coors Light in front of them on the table.

He took them outside to talk to them privately. They provided contact information including parent's names, phone numbers, and addresses, and the underage female provided her birth-date.

He wrote down the information provided and gave it to the other C & E officer to follow-up.

There was a clear line of sight from where the females had been seated, to the bar where the principal of the licensee was working. There was no way that the licensee could not have seen them. They were in plain sight of all other employees working in the establishment. Even servers tending to the karaoke rooms would have to pick up drinks at the bar, where the females would be in plain sight.

The principal of the licensee testified as follows:

With respect to the allegation of failure to clear, he had made last call before 12:00 midnight.

There was a group of ten people in one back room. Someone had a quarrel with the server and within about 25 minutes time, the customer hit the waitress. The licensee separated them and the server went to the washroom. From there the server called the police. It was 12:30 a.m.

The licensee told the group not to leave until the police arrived. The police arrived at 1:15 and checked the ID of the patrons and then let them go.

Two days later he got a ticket for failure to clear patrons. He was not allowed an opportunity to provide an explanation.

With respect to the minors on April 9, 2006, there were 30 patrons in the bar. They were there for a birthday party.

His waitress approached him at 12:30-1:00 a.m. and said that two of the patrons did not have ID. The waitress asked him to deal with them. He asked the two females for ID and they said they had none. He told them they were not allowed in the establishment and the two females indicated that their friends were bringing their ID to them later. The licensee told them to wait at the doorway. They went to the door and he went back to work at the bar.

He did not notice that the two females had come back to the table, until the inspectors appeared. He did not invite the two females back in or server liquor to them.

He also testified that all of his servers have Serving It Right certificates and he did not need a doorman because most of his patrons are regulars who attend to sing karaoke rather than to drink. He now employs a doorman on weekends.

The licensee called a server to testify. Her evidence was as follows:

She was working on April 9, 2006. She saw the two girls who appeared under 25 years of age and asked them for ID. They said they had no ID and their friends were bringing their ID. The licensee asked them to wait by the door. The females came back into the bar within five minutes of being told to wait by the door. She did not see them come back in.

The drinks were not served to those females. She did not know where the Coors Light came from. Perhaps the others at the table gave the beer to the two females.

There was no doorman on duty that night.

SUBMISSIONS

The branch submitted that there was at least one minor in the establishment on April 9, 2006. The licensee knew the females had no ID and allowed, either actively or passively, for them to remain in the establishment. The licensee and all of the staff who were working had clear views of the females and failed to take appropriate or adequate action to remove them. There were no adequate policies or procedures in place to prevent minors from being in the establishment.

On March 27, 2006, there were many patrons in the establishment beyond the time at which they were to have been cleared, including patrons not involved with the fight. The licensee has an obligation to ensure that they were cleared in a timely fashion.

Both of the recommended penalties are appropriate and in the middle of the range of penalties stipulated in the *Regulation*.

The licensee submitted that he was able to stop the fight on March 27, 2006. The waitress requested aid from police and so he politely asked the patrons to

stay to support his employee. He did not intentionally want to keep patrons beyond the time for them to be cleared. If he is to be penalized for assisting the police - by breaking the rules - he thinks the penalty should be the smallest one possible.

As for the April 9, 2006, incident, the licensee submitted that there are usually far fewer patrons to keep track of. This was an unusual occasion because it was a birthday party and there were many patrons. It was busy and stressful. He did his duty in asking for ID and removing the two females. It is unfortunate that the minute the females went back to the tables, the inspectors arrived. He did not see them return to the bar.

ANALYSIS AND DECISION

I find that the discrepancy in the testimony of the two police officers as to the time at which they observed patrons in the establishment is not significant, as both times are well beyond one half hour after liquor service was to be terminated. I find on the evidence that there were patrons in the establishment beyond the time at which they were to be cleared.

The licensee claims that he asked all of the patrons to stay, presumably to assist the police in their investigation of the server's call. I do not accept this explanation. The police report reveals that the 911 call was made at 2:03. This is more than one and a half hours after the patrons were to be cleared. Further, the evidence was that there was only a disturbance in one karaoke room. The police observed patrons in all areas of the establishment when they arrived. There is no evidence to indicate that all of these patrons were witnesses to the fight. I find the licensee's evidence in this regard to be unreliable.

With respect to the minors, the licensee was not clear as to whether he asked the patrons to wait outside or inside the establishment, just that he asked them to

wait at the doorway. I find on the evidence that they looked to be under 25 years of age, and as they had no ID when asked, they were not permitted in the establishment. If indeed they were asked to wait outside of the doorway, I find that they did return. The licensee has a continuing obligation to ensure that no minors are in the licensed establishment and that applies to persons who have been ejected as well as persons who are entering for the first time. The licensee had an obligation to refuse entry to the underage patron and failed to meet that obligation. He claimed that he did not notice her re-enter. It is the licensee's obligation to monitor the door and particularly the entry of persons who appear under the age of 25 or those whom the licensee has identified as having no identification. I find the licensee's answer to this allegation to be ineffectual.

PENALTY

Pursuant to Section 20(2) of the *Act*, having found that the licensee has contravened the *Act*, the *Regulation* and/or the terms and conditions of the licence, I have the discretion to order one or more of the following enforcement actions:

- impose a suspension of the liquor licence for a period of time;
- 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*. 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.

The branch recommended a two (2) day suspension for the contravention of Section 35 of the *Act*.

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

I find a two (2) day suspension is appropriate.

The branch recommended a \$2,000 monetary penalty for the contravention of Section 44(1)(a) of the *Regulation*.

The range of penalty for a first contravention of Section 44(1)(a) of the *Regulation* in accordance with Schedule 4 of the *Regulation* is one (1) to three (3) days suspension and/or a monetary penalty of \$1,000-\$3,000.

I find a \$2,000 monetary penalty is appropriate.

ORDER

Pursuant to Section 20(2) of the *Act*, I order a suspension of the Liquor Primary Licence No. 014783 for a period of two (2) days, to commence as of the close of business on October 6, 2006, and to continue each succeeding business day until the suspension is completed. "Business day" means a day on which the licensee's establishment would normally be open for business (Section 67 of the *Regulation*).

I further order the licensee to pay a monetary penalty of two thousand dollars (\$2,000) relating to Liquor Primary Licence No. 014783. The monetary penalty must be paid no later than the close of business on October 10, 2006.

To ensure this Order is effective, I direct that the Liquor Licence No. 014783, be held by the branch or the Vancouver Police Department from the close of business on October 6, 2006, until the licensee has demonstrated to the branch's satisfaction that the suspension has been served.

[ORIGINAL SIGNED]

Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: September 19, 2006

cc: Vancouver Police Department

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

Liquor Control and Licensing Branch, Vancouver Regional Office
Attn: James Macdonnel, Branch Advocate
