



**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 RSBC c. 267**

Licensee:	0724193 BC Ltd. dba Oasis Hotel
Case:	EH06-077 EH06-114
For the Licensee:	Michael Fong
For the Branch:	James Macdonnell
Enforcement Hearing Adjudicator:	Sheldon M. Seigel
Date of Hearing:	October 4, 2006
Place of Hearing:	Surrey, British Columbia
Date of Decision:	October 18, 2006

INTRODUCTION

The Licensee operates a licensed establishment within the Oasis Hotel. There are several licenses in the hotel. The liquor primary license in issue, LP 009459 relates to a bar in the hotel, known as the "Dell."

The Licensee was at all relevant times, a numbered company or a partnership of numbered companies. The general manager of the Licensee appeared at the hearing by written authorization of the Licensee.

In the early morning on April 8, 2006, (the business day of April 7, 2006), the establishment was inspected by members of the Surrey detachment of the RCMP. The inspection revealed minors in the establishment.

In the early morning on June 10, 2006, (the business day of June 9, 2006), the establishment was inspected by members of the Surrey detachment of the RCMP. The inspection revealed minors in the establishment.

As a result of the inspections, the Branch issued Notices of Enforcement Action EH06-077 and EH06-114 to the licensee.

ALLEGED CONTRAVENTIONS

The Branch alleged that on each of April 8, 2006, and June 10, 2006, the Licensee contravened s. 35 of the Act by allowing minors in the premises.

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?
2. Is a penalty warranted and if so, what is the appropriate penalty to be imposed?

EXHIBITS

Exhibit #1: Book of Documents (Branch)

Exhibit #2: Seven (7) CD-R data discs (Licensee)

EVIDENCE

The Branch called a Corporal with the RCMP. He testified as follows:

- He is the area supervisor. He attended at the establishment on both April 8, 2006 and June 10, 2006, and was involved in both inspections.
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- On April 8, 2006, the RCMP responded to a dispatched 911 call reporting an assault at the premises.
- He arrived with other members at approximately 1:00 a.m. and tended to injured assault victims. There were four victims. All of the victims were intoxicated and could not or would not provide a statement. No charges were laid.
- While investigating the incident, he and a fellow member checked 12 patrons for identification. Four of them had no ID, and two of the patrons were underage.
- He confirmed the identities of the underage patrons with the assistance of the CPIC police database in his car.
- On June 10, 2006, the RCMP responded to a call from the Hospital advising of an assault causing injury that occurred at the Oasis Hotel.
- He assembled a team of sufficient members to control all of the doors to the establishment and the occupants of the room. There were between nine and 12 RCMP officers present. The team did not enter the establishment until all of the officers had assembled.
- They entered the bar, advised the occupants that the bar was a crime scene and "locked the room down."
- The team "carded" all of the patrons and checked ID.
- There were 122 people in the bar including staff but excluding the victim and his girlfriend.
- 31 of the patrons did not have ID.
- Each of the 31 patrons without ID were interviewed and searched in the RCMP CPIC database.
- There were three minors among the patrons. Each of their identity was confirmed with the aid of the police database.

The Branch called a constable with the RCMP. She testified as follows:

- She is a patrol officer. She attended at the establishment on both April 8, 2006 and June 10, 2006 and was involved in both inspections, along with her supervising Corporal.
- On April 8, 2006, she answered a call to the establishment as a result of a fight/assault.
- She arrived just before 2:00 a.m.
- When she arrived, the victims of the assault were in front of the bar.
- She assisted with the victims and then went into the bar to interview some patrons.
- In the bar she "carded" some patrons, including two minors. She confirmed the identities of the minors with the aid of the police database.
- The minors were inside of the bar when she first approached them.
- She was also present at the establishment on June 10, 2006.
- When she attended on that occasion, she found bleeding males and crying females outside the establishment, and a large number of RCMP members.
- The RCMP team went in to the bar together, and declared it a crime scene.
- She assisted in carding and confirming the identity of several female minors.

The Branch called a Compliance and Enforcement Officer (CEO). She testified as follows:

- She first heard of the police checks on the Oasis Hotel when she was meeting with the Licensee for a compliance meeting regarding other contraventions.
 - She then received the police Licensed Premise Checks which were submitted to the Branch relating to April 8, 2006, and June 10, 2006.
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- The Licensee's representative offered no explanation for the minors in the premises.
- The Licensee has no training manuals. There have been several meetings with the Branch and the Licensee's representatives have always seemed cooperative. Unfortunately, the Licensee does not ever follow through on its promises to change or improve systems operating in the establishment.
- The Licensee has had many opportunities to change its level of compliance but has shown no effort to comply with the rules.
- She is not certain that a suspension would have any effect because the bar is currently closed.

The Licensee called the general manager of the establishment. He testified as follows:

- The RCMP is interested in him and other employees, and members of management of the Licensee. Their interest is unrelated to the operation of the bar. The raids on the bar on both April 8, 2006, and June 10, 2006 were overzealous and motivated by ulterior motives.
 - The staff of the bar has been instructed to check ID very carefully in light of the RCMP scrutiny. He does not think any minors could get into the bar without false identification.
 - On April 8, 2006, there were no minors in the establishment.
 - On June 10, 2006, the minors might have come in through the doors when the RCMP were in the bar and had lined up the employees. The employees could not watch the doors while lined up, and the RCMP did not have all of the doors monitored or locked.
 - The CD-R discs show snapshots taken by security cameras outside the door of the bar and inside at various places. They show that the police
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were not where they said they were, and did not do what they said they did.

- If there were minors in the bar, none of them were served liquor.

SUBMISSIONS

The Branch submitted that the evidence is clear that the contraventions occurred. The Branch further submitted that as the Licensee has a lengthy history of contraventions both proven and alleged and has not shown any effort to come into voluntary compliance with the legislation and regulation, considerable penalties should be levied.

The Branch submitted with respect to penalty, that the June 10, 2006 contravention should be considered a second contravention, following a finding of a contravention for the same offence that occurred on April 8, 2006.

Lastly, the Branch submitted that in light of the CEO's evidence regarding the closure of the bar, a monetary penalty might be more appropriate.

The Licensee submitted that the minors might have come into the bar after the police arrived, while the establishment was under the control of the RCMP rather than the Licensee.

The Licensee submitted that the RCMP has other interests in the management and employees of the Licensee, and that the allegations are based on these interests rather than the facts alleged.

The Licensee also submitted that the security camera photos show that the police were not where they claimed to be and this shows that they are not credible and their evidence should not be accepted.

The Licensee also submitted that he has had lengthy discussions with the Branch with respect to the proposed suspensions relating to these allegations. Accordingly, it is inappropriate to change the proposed penalty to a monetary one at this late date.

ANALYSIS AND DECISION

I find the evidence of the RCMP members to be credible and reliable. I find the evidence of the representative of the Licensee to be less than credible.

I did review each of the CD-R data discs (exhibit #2). While they display areas identified by the Licensee, they do not display the whole of each of the areas. The photographs do not positively support any of the evidence provided by *viva voce* testimony by any witness. The Licensee says that the data shows an inconsistency between what the RCMP witnesses say they did and what happened.

I find that the absence of evidence of particular activity on the discs provided, does not confirm that the activity did not occur. The scope of the view of the cameras is limited, and the dates of the photographs were not confirmed by testimony. I find the discs neither prove nor disprove any of the evidence, and provide no new evidence of relevance.

Based on the oral testimony, I find that there were minors in the licensed premises on both April 8, 2006, and June 10, 2006.

I find that each of the two contraventions have been proven

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 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 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*. 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 submitted that a monetary penalty might be more appropriate in light of the recent closing of the establishment. The Licensee objected to this change on the basis of discussions between it and the Branch with respect to the proposed suspension. As general manager, I have considerable statutorily discretion to award a penalty in an enforcement hearing. I must also be alert to issues of administrative fairness. In this case, the Licensee has relied on the Branch's recommended penalty in discussions with the Branch. Neither the terms of those discussions, nor the circumstances under which the establishment

is currently closed have been disclosed to me. Accordingly, I find that awarding a monetary penalty would not be appropriate under the circumstances.

For the contravention relating to April 8, 2006, the Branch recommended a one (1) day suspension.

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 that a one (1) day suspension is appropriate for this contravention.

For the contravention relating to June 10, 2006, the Branch recommended a six (6) day suspension.

The range of penalty for a second contravention of section 35 of the *Act* in accordance with Schedule 4 of the *Regulation* is three (3) to six (6) day suspension.

The British Columbia Court of Appeal in *Skybar* (2006, BCCA 62, Vancouver Registry No. CA032768) said at paragraph 14:

The Regulation is clear that the question of whether a contravention is a first, second, or subsequent contravention depends on the timing of the commission of the contraventions, not on the timing of a finding that they have been committed.

Accordingly, I find that it is appropriate to treat the June 10, 2006 contravention as a second contravention and I find that a suspension of six (6) days is appropriate.

ORDER

Pursuant to Section 20(2) of the *Act*, I order a suspension of the Liquor Primary License # 009459 for a period of seven (7) days. The dates of the suspension will be determined by the general manager once the branch is satisfied that the establishment has re-opened for business. Once the dates for the re-opening of the establishment have been determined, the licensee must contact its local compliance and enforcement officer.

Once the period of suspension has been determined by the general manager, Liquor Primary License # 009459 will be held by the Branch or the Surrey detachment of the RCMP during the period of the suspension until the Licensee has demonstrated to the Branch's satisfaction that the suspension has been served.

I further order that the CD-R discs identified in exhibit #2 be returned to the Licensee as per his request.

[ORIGINAL SIGNED]

Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: October 18, 2006

cc: Surrey RCMP

Regional Manager, Mike Clark
Liquor Control and Licensing Branch

James Macdonnell, Branch Advocate,
Liquor Control and Licensing Branch
