



**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: J & B Investments Ltd.  
dba Zodiac Karaoke Cabaret  
155 – 8291 Alexandra Road  
Richmond BC V6X 1C3

Case: EH07-117

For the Licensee: James Macdonnell

For the Branch: Sonja Okada

Enforcement Hearing Adjudicator: Edward Owsianski

Date of Hearing: November 29, 2007

Place of Hearing: Vancouver, BC

Date of Decision: December 19, 2007

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**Ministry of Public  
Safety and Solicitor  
General**

Liquor Control and  
Licensing Branch

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## INTRODUCTION

J & B Investments Ltd. (Zodiac Karaoke Cabaret) holds Liquor Primary Licence No. 162535. The hours of sale are 7:00 p.m. to 2:00 a.m. Monday to Saturday, and 7:00 p.m. to Midnight on Sunday. The patron capacity is 114 distributed within 11 separate karaoke rooms (areas 1–11); and an 82 patron capacity lounge (area 12). The establishment is located in Richmond, BC. The licence is, as are all liquor licenses 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 proposed penalty are set out in the Notice of Enforcement Action (the "NOEA") dated August 13, 2007. The branch alleges that on August 3, 2007, 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 four day suspension of the liquor licence (item 3 of Schedule 4, *Liquor Control and Licensing Regulation*).

Item 3 of Schedule 4 of *the Regulation* provides a range of penalties for a first contravention of this type of a licence suspension for 4 - 7 days and/or a monetary penalty of \$5000 - \$7000.

The licensee disputes the contravention.

## RELEVANT STATUTORY PROVISIONS

### ***Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267 (the Act)***

#### **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

1. Did the contravention occur?
  
2. If so, is a penalty appropriate and what is a reasonable penalty?

## EXHIBITS

The following exhibits were presented:

- Exhibit No. 1:** Branch Book of Documents #1, tabs 1–15
  
- Exhibit No. 2:** Copy of a typewritten statement
  
- Exhibit No. 3:** Photocopies of a British Columbia Care Card and Driver's Licence
  
- Exhibit No. 4:** Two page document, "Zodiac Karaoke Cabaret, Staff Policy"

## **EVIDENCE - THE LIQUOR CONTROL AND LICENSING BRANCH**

**Branch witness A** testified that on August 3, 2007, he was 18 years old and would not turn 19 until November 4, 2007. During the evening he had been drinking at an unlicensed premises where he paid \$40.00 for all the liquor he wanted. He left there and proceeded to the Zodiac Karaoke Cabaret where he met up with a group of his friends. He entered the Zodiac through a side door where several people were standing outside smoking. Persons from inside would stand outside the door to smoke before returning inside. His friends had phoned him and told him that they were inside in a karaoke room identified as Area 6 on the floor plan for the establishment (Exhibit 1, tab 7). They told him to use the side door so he wouldn't get checked. After he joined his friends for a while it became apparent that the room was too narrow for all of them, so they proceeded to the lounge identified as area 12 (Exhibit 1, tab 7). While other of his friends were drinking, he did not because he was "already pretty drunk." He had been there barely an hour when the police arrived and requested his identification. He showed them either his driver's license or care card (Exhibit 3), both of which showed his date of birth indicating that that he was only 18 years old. He was escorted outside and got a ride home. On November 24, 2007, he made a signed written statement concerning the incident (Exhibit 2).

A **police officer** testified that she has been a member of the RCMP for approximately 11 ½ years and is currently stationed at the Richmond detachment. On August 3, 2007, she was in uniform working as part of a team of police officers and a liquor inspector doing liquor and smoking by-law inspections. The Zodiac was on their list of establishments for inspection and they arrived at approximately 11:40 p.m. and entered through the front main entrance. Inside she immediately noticed strong cigarette smoke. The team broke into smaller groups and she accompanied the liquor inspector. They proceeded to the main lounge area, area 12 of the floor plan (Exhibit 1, tab 7) where her attention was drawn to a large table where several young appearing patrons were seated. She requested identification of one young appearing patron. He said at first that he didn't have any, but it was later determined that he was carrying identification in his wallet. She examined his care card that showed him to be 18 years

of age. He appeared to be mildly intoxicated, swaying and unsteady on his feet. She escorted him outside into the care of another police officer.

Upon returning she saw a young male staff person being belligerent with the liquor inspector. He said that he was the son of the owner. He said that the minor must have sneaked in because all patrons had been checked for identification. He was agitated and not very helpful. His father arrived and told him to go into the back of the establishment.

The officer testified that the table where the minor was seated had several empty beer bottles and glasses containing beer on it. It was the only table occupied in the lounge area and was in clear view of the bar. Lighting was dim but sufficient to see the characteristics of patrons and to check their identification and make notes. She made notes of her observations at the time of the incident and completed a report later in the week (Exhibit 1, tab 4).

**A branch liquor inspector testified** that he has been employed as a liquor inspector for more than five years and is responsible for the geographical area in which the Zodiac is located. He is familiar with the Zodiac and on August 3, 2007, he made a routine inspection there at approximately 11:45 p.m. with several police officers. Upon arrival he noted that there were no staff present at either the front main entrance or a side door used for exiting. They entered the establishment through the main front door entrance. He and one officer proceeded to the main lounge area. He immediately noticed a table across from the bar occupied by young appearing patrons. He and the officer checked the identification of approximately ten persons seated at the table. One could not produce identification, another who said that he had no identification was found to have a care card that indicated that he was only 18 years of age (Exhibit 3). The police officer dealt with the minor and he, the liquor inspector, dealt with the staff.

One of the owners was present (witness B). He is a manager at the establishment, but is a quiet man and does not normally deal with the liquor inspector. His brother, also a manager and one of the owners (witness C) is normally present and deals with the inspector during inspections. He was not present at the time so the inspector spoke with his son who works at the establishment as a bartender. The son was not helpful. During the time that the inspector and the police officers were dealing with the minor the son was saying, "You don't have to tell them anything, you could get a lawyer." The son was noticeably upset. The inspector testified that he had never before experienced this type of attitude from a staff member of a licensed establishment.

At this point the father (manager, witness C) arrived and attempted to calm his son. The inspector advised the father that when he and the police officers arrived there had been no door control at the front entrance, young appearing patrons inside had not been checked for identification, resulting in a minor being permitted to enter and remain inside. He told the father that there should be door control to prevent minors from entering the establishment. The inspector issued a Contravention Notice (CN) to the father (Exhibit 1, tab 2). He made notes of the incident at the time (Exhibit 1, tab 3). He and the police officers left shortly thereafter. He drove by the establishment later at approximately 1:30 a.m. to see if door control was present, there was none visible.

The following week he reviewed the branch file for the establishment. In his testimony he referred to copies of documents from branch files:

- Exhibit 1, tab 5; the liquor primary licence in effect at the time of the alleged contravention. It is subject to the terms and conditions contained in the branch publication "Guide for Liquor Licensees."
- Exhibit 1, tab 6; a copy of the "Guide" in effect at the time of the alleged contravention. He referred to excerpts from the Guide dealing with: "Your Role as a Licensee" (p.3); "Minors" (p.11); "Exceptions to the Prohibition of Minors" (p.11); and "ID Requirements" (p.11).

- Exhibit 1, tab 8; Application for a liquor licence for the Zodiac dated June 18, 1993.
- Exhibit 1, tab 9; On August 25, 1994, a licensee representative met with the area liquor inspector and signed the branch Interview Sheet. The representative was the brother of witnesses B and C.
- Exhibit 1, tab 10; CN dated March 9, 2001, alleging contraventions of minor in premises; overcrowding of license capacity; and contravening a term and condition regarding liquor serving size. This CN did not proceed to enforcement action.
- Exhibit 1, tab 11; CN dated February 21, 2003, alleging contraventions of failing to clear liquor and allowing consumption beyond ½ hour after liquor service hours. This CN did not proceed to enforcement action.
- Exhibit 1, tab 12; CN dated March 22, 2003, alleging contraventions of allowing liquor to be brought into the establishment; permitting an employee to consume liquor; permitting a person to become intoxicated; and permitting an intoxicated person to remain in the establishment. A one-day suspension was imposed for the contravention of permitting an employee to consume liquor. The remaining allegations did not proceed to enforcement action.
- Exhibit 1, tab 13; CN dated May 15, 2003, alleging contravention of failing to clear liquor within ½ hour after liquor service hours. This CN did not proceed to enforcement action.
- Exhibit 1, tab 14; CN dated November 14, 2003, alleging the contravention of a term and condition regarding liquor serving size. This CN did not proceed to enforcement action.
- Exhibit 1, tab 15; CN dated June 2, 2004, alleging contravention of failing to clear patrons within ½ hour after liquor service hours. A compliance meeting was held with a licensee representative on June 28, 2004, and a commitment for compliance obtained.

The inspector subsequently prepared a Notice of Enforcement Action (NOEA) (Exhibit 1, tab 1), wherein he alleged the contravention and recommended a penalty. He testified that it is branch policy that all contraventions involving public safety proceed to enforcement. A minor being permitted into a licensed establishment is considered a public safety issue.

The inspector agreed that there had been no problems noted in the operation of this establishment in the past three years and that the only previous incident involving a minor occurred in 2001. He was concerned however that this incident occurred as a result of there being no door control at the establishment thus allowing a minor to enter, and once inside the minor was permitted to remain without being checked for identification. In the circumstances he recommended the minimum penalty, a four day licence suspension. In his view a compliance meeting was not sufficient to ensure voluntary compliance.

## **EVIDENCE - THE LICENSEE**

**Licensee witness B** testified that he has been a manager at the Zodiac for the past six years and is familiar with the rules and regulations. His job is to stand outside the front door to monitor patrons coming in through the front door and to monitor the side door to ensure that persons are not sneaking in. The side door is to be used as an exit only, but patrons do use it to go outside to smoke. His brother (witness C) also works at the establishment as a manager and is normally at the reception area inside monitoring patrons as they enter. His brother is in charge of staff training and explaining the rules and regulations to them. Staff is told to check patron identification and to tell patrons that they must go outside to smoke. He was working the night of August 3, 2007, at the time of the inspection. His brother was attending a family function and didn't arrive until later.

He testified that on August 3, 2007, there were six employees working in the karaoke rooms and lounge area, and one in the kitchen. Two were bartenders, two worked in the karaoke rooms and two worked in the lounge area. There were approximately 80 – 100 patrons present at the time of the inspection. He was in the washroom when the inspectors and the police officers arrived. On coming out the inspector asked him why there was no one at the front door, he told him that he was in the washroom at the time. He testified that police officers attend the premises two to three times a month checking identification. It never presents a problem and their attendance is welcome.



**Licensee witness C** testified that he is a director of the corporate licensee and has been the general manager of the Zodiac since April 2006. He was attending a family anniversary on August 3, 2007, so wasn't present when the inspector and police officers arrived. He observed the police vehicles parked outside on his arrival. Inside he was given a contravention notice for the minor and a by-law ticket for permitting smoking.

He spoke to the staff later that night and was told that the minor sneaked in without their knowledge. He determined that one server working in the main lounge area should have checked the identification of persons at the table where the minor was seated however neglected to do so because he knew some of the persons at the table. That employee was subsequently suspended for two days as a result.

The witness provided a copy of the Staff Policy for the establishment (Exhibit 4). It requires, amongst other things, that, "all staff members are required to check everyone who looks younger than 30 when entering the premises." It also provides that, "A failure to abide by these rules effective the first time will result in a two day suspension." He testified that all staff is aware of the rules when hired. He reviewed the staff policy with them following the incident. He has hired consultants to ensure that the rules and regulations are followed.

He testified that there has not been a minor found in the establishment since 2001 and there has not been any contravention since 2004. Police officers regularly check the establishment and the identification of patrons. The incident has caused him great stress. He fell off a roof as a consequence, injuring himself and was hospitalized. He was unable to work for the past two and one-half months. A four day suspension will affect his family and the employees.

**Licensee witness D** testified that she has a background in public and private sector media relations, marketing and crisis management, and is a partner in a consulting firm that works with licensees to achieve voluntary compliance. She is familiar with liquor licensing rules in British Columbia. The firm was hired by Zodiac in mid August as a

result of the contravention involving a minor being found on the premises. She has reviewed the staff policies for the establishment (Exhibit 4). The policy is good but they are working to sharpen it up and provide more thorough training. They are acting to bring Zodiac into compliance and enhance their current systems. She is aware of the behaviour of the son of the owner on the night of the incident. The son acted out of concern for his father that the business was being targeted, as the police are there on a regular basis checking for smoking. The father (witness C) was concerned that his son was out of line. The son has since apologized to the inspector.

**Licensee witness E** testified that he has 25 years previous experience as a police officer of which 10 years were doing undercover work in bars. He also has one and one-half years previous experience as a liquor inspector. He started a consulting firm approximately one year ago. In mid August of this year he was engaged on behalf of the Zodiac.

He sees the primary issue at the Zodiac as being young male patrons smoking inside. This has lead to regular inspections by police and by-law enforcement. He has evaluated the Zodiac and found it to be a well-run operation with systems and policies in place. It has few issues, is compliant and welcomes the visits of authorities. It has "No Smoking" signs in each of its rooms. The general manager of the Zodiac (witness C) was beaten up for telling persons not to smoke. Minors are not the biggest issue at the establishment. Identification is checked, one piece of ID if the patron is known to them, two pieces of ID if the patron is unknown. Policies are read and understood by staff and staff meetings are held.

At the time of the inspection on August 3, 2007, witness B was the manager and was checking outside to ensure persons were not sneaking in, employees were checking inside. The minor said that he had previously been drinking at an unlicensed premise. He went from there to the Zodiac and his friends inside told him how to get in and to go to the karaoke room at area 6. Shortly thereafter, the police arrived and checked identification.

He views the incident as a minimal public safety issue. He interviewed the minor and took a statement from him (Exhibit 2). The youth, while legally a minor, would turn 19 in four months. He was in the establishment for less than an hour. The real concern for the staff is checking for patrons smoking as it has lead to several by-law tickets and has almost closed the establishment. He disagrees that the inspector is compelled to seek a penalty. It is within his discretion not to do so. The impact of the proposed penalty on the general manager has been catastrophic, caused him stress resulting in him falling off a roof, being injured and not working for several months. Since the incident with the minor the establishment has installed smoke detectors, security cameras and maintains an incident logbook.

### **SUBMISSIONS – LICENSEE**

The licensee representative submitted that the Zodiac has been operated as a family run business for the past 14 years. It maintains a good relationship with the police and the branch. It strives for compliance. The last contravention occurred three years ago. It hosts approximately 2000 patrons a month and is subject to regular police inspections two to three times a month, during which they check identification. There has only been one minor found inside. He was close to legal age, turning 19 in four months time and had sneaked into the establishment.

The establishment has effective policies and procedures in place and takes measures to ensure they are followed. The server responsible for not checking identification of the minor on August 3, 2007, was suspended for two days. It is not the job of bartenders to check identification; they are to remain behind the bar. There are discrepancies in how far the minor was from the bar, estimates range from 12 to 40 feet. There is little evidence that this incident posed a public safety issue. The minor was not 14 or 15 years old, but was 18 years and 8 months and was not served liquor at the establishment. He had earlier consumed liquor at an illegally operated non-licensed premise.

Their record shows that the Zodiac was doing something right. It is a model for other establishments.

## **REASONS AND DECISION**

The evidence is that on August 3, 2007, a minor, witness A was found in the Zodiac. He had been in the establishment for approximately one hour and had not been checked for identification either upon entering or whilst inside the establishment. The minor was a young appearing person in the company of other young appearing persons, none of whom had been checked for identification. The police officer and the liquor inspector assessed the minor's condition as being noticeably slightly intoxicated. The minor did not consume any liquor at the Zodiac. The minor was permitted to enter and to remain in the establishment. That is a contravention of section 35 of the *Act*.

The licensee is entitled to a defence to the finding of the contravention, 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 prospective contraventions, it must ensure that those procedures are consistently acted upon.

Here the licensee has policy and procedures in place instructing employees on their duties. The establishment employs a general manager who is responsible for its overall operation. It also employs a manager who has the responsibility of monitoring the main front entrance and the side exit. They are both part of the ownership structure of the corporate licensee. The general manager was absent from the establishment at the time of the inspection, there is no evidence of any arrangements being made for the operation in his absence. The manager was on site, however, was absent from his post at the time of the inspection. No arrangements had been made to have him replaced at the front entrance during the times when he was required to be elsewhere. It is possible, perhaps probable that he was absent or otherwise engaged at the time that the minor gained entrance.

The minor entered through the side door that is primarily used as an exit. It is also used to allow patrons wishing to smoke to step outside, have their smoke and return. This practice is encouraged by the establishment to prevent patrons from smoking inside. There are two servers employed in the karaoke rooms. They are required to check the identification of young appearing patrons in their areas. The testimony of the minor was that he went first into one of the karaoke rooms identified as area six. He was not checked for identification. The two servers are also expected to be watchful for persons sneaking in through the side door, the door used by the minor to gain entrance. That is asking a great deal of two employees whose primary function is to serve up to 114 patrons in 11 separate karaoke rooms. The two servers in the main lounge area where the minor was located are required to check the identification of young appearing patrons in their areas. The server responsible for the table at which the minor sat, did not do so, and was subsequently suspended for two days.

That a minor could gain entrance without being checked was easily foreseeable in the circumstances that existed at the time of the contravention. The establishment does not have a means of checking to see if its employees are carrying out their duties until such time as a problem is brought to their attention. The table of young appearing patrons was immediately obvious to the police officer and liquor inspector when they arrived. They should have been equally obvious to the manager on duty at the time and the bartenders working at the bar in easy view of the table. At the very least the servers responsible for the lounge area and for the karaoke room at area six should have been questioned whether they had checked their identification. This was not seen as the responsibility of the manager who saw his duty as monitoring the front entrance, nor was it the responsibility of the bartenders who saw their duties as the preparation of liquor for the servers. The system broke down. Its weaknesses were easily foreseeable.

I find that the licensee has not been duly diligent, and thus may be said to have “permitted” the contravention.

In conclusion, on the evidence, I find on a balance of probabilities, that on August 3, 2007, 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.

## **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 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 *Regulations*. I am not bound by the maximums and may impose higher penalties when it is in the public interest to do so, and I am not bound to order the penalty proposed in the NOEA.

The branch’s primary goal in bringing enforcement action and imposing penalties is achieving voluntary compliance. Among the factors that are considered in determining the appropriate penalty is: whether there is a past history of warnings by the branch and/or the police, the seriousness of the contravention, the threat to the public safety and the well being of the community.

There is no record of prior proven contraventions, offences or enforcement actions of the same type for this licensee or this establishment within the year preceding this incident. The range of penalties for a first contravention of section 35 of the *Act* pursuant to the *Regulation*, Schedule 4, item 3 is a four (4) to seven (7) days suspension and/or a monetary penalty of \$5,000-\$7,000.

I acknowledge that youths are drawn to late-night establishments. However, voluntary compliance requires that a licensee review their practices to ensure that there are reasonable safeguards in place to prevent minors from entering or remaining in the establishment. Here there is no evidence that the licensee considered that with the general manager being absent, changes would have to be made to guard against a minor gaining entry. There was a need to establish procedures to ensure that there was no gap in the control of patrons entering the establishment when the manager was required to leave his post at the main entrance. There was no system in place to determine whether the servers were checking for identification as the policy required. The emphasis on the management of the establishment must always be on operating within the requirements the *Act*, *Regulations* and the terms and conditions of the liquor licence.

A minor entering a liquor primary licensed establishment is a serious matter that can lead to the minor obtaining and consuming liquor resulting in dire consequences. The evidence leads me to believe that it was only fortuitous that the minor here did not obtain and consume liquor while at the establishment.

I find that a penalty is necessary to ensure future compliance. In the circumstances the minimum four day suspension penalty is warranted and appropriate.

**ORDER**

Pursuant to Section 20(2) of the *Act*, I order a suspension of Liquor Primary Licence No. 168998 for a period of four (4) days, to commence as of the close of business on Thursday, January 24, 2008, 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 be held by the branch or the RCMP Richmond Detachment from the close of business on Thursday, January 24, 2008, until the licensee has demonstrated to the branch's satisfaction that the suspension has been served.

[ORIGINAL SIGNED]

Edward W. Owsianski  
Enforcement Hearing Adjudicator

Date: December 19, 2007

cc: RCMP Richmond Detachment

Liquor Control and Licensing Branch, Vancouver Office  
Attention: Donna Lister, Regional Manager

Liquor Control and Licensing Branch, Vancouver Office  
Attention: Sonja Okada, Branch Advocate