



**DECISION OF THE
GENERAL MANAGER
LIQUOR CONTROL AND LICENCING BRANCH
IN THE MATTER OF**

A hearing pursuant to Section 20 of
The Liquor Control and Licensing Act RSBC c. 267

Licensee:	415807 B.C. Ltd, dba Sandpiper Pub 15595 Marine Drive White Rock, BC V4B 1C9
Case:	EH09-043
For the Licensee	Bill Lawrence Judy Baker
For the Branch	Peter Mior
Enforcement Hearing Adjudicator	Sheldon M. Seigel
Date of Hearing	July 21, 2009
Place of Hearing	Surrey, B.C.
Date of Decision	August 26, 2009

INTRODUCTION

The Licensee operates an establishment in White Rock BC under liquor primary licence #035782. The licence indicates that liquor may be sold from 10:00 a.m. to 1:30 a.m., Monday through Saturday and 10:00 a.m. to midnight on Sunday.

The licence is, as are all liquor primary licences issued in the province, subject to the terms and conditions contained in the publication *Liquor Primary Licence Terms and Conditions: A Guide for Liquor Licensees in British Columbia* (Guide).

The Branch's allegations and proposed penalties are set out in the Notice of Enforcement Action (NOEA) dated May 4, 2009.

Appearing for the corporate licensee were the primary shareholders and operating executives of the company (Licensee).

THE ALLEGED CONTRAVENTION

The Branch alleges that on April 11, 2009, at 11:30 p.m. the licensee contravened s. 35 of the *Liquor Control and Licensing Act*, R.S.B.C., 1996, c.267 (the "Act") by permitting a minor in a liquor primary premises.

The proposed penalty for contravening s. 35 of the Act is a four (4) day licence suspension, which is within the range of penalty indicated in item 3, Schedule 4 of the Liquor Control and Licensing Regulation (Regulation) for a first offence of this kind.

RELEVANT STATUTORY PROVISIONS

Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267

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 in prescribed circumstances.

ISSUES

Did the Licensee contravene the Act as alleged? The relevant elements of the contravention include whether the patron was a minor, whether she was within the licensed establishment, and whether the Licensee or its staff authorized or permitted the minor to enter on or be on the premises.

If the contravention occurred, is a penalty required under the circumstances of this case, and if so, what penalty is appropriate?

EVIDENCE

Exhibit #1- The Branch Book of Exhibits.

Exhibit #2- Licensee's Employee Policy Manual

Exhibit #3- Licensee's staff meeting agenda for July 9th

The Branch provided the minor, the liquor inspector and an RCMP corporal as witnesses, all of whom were present at establishment at the relevant time and place. The licensee provided the two controlling managers and shareholders, neither of which was present in the Pub at the time of the alleged contravention.

The Licensee did not deny that a minor was present at the establishment, but argued that the Licensee or its staff did not authorize or permit the minor to be on the premises. The Licensee presented a defence of due diligence.

Liquor inspector

The inspector testified that he attended outside the establishment as part of a routine licensed premise check (LPC) in advance of a scheduled attendance by an RCMP corporal and other uniformed officers. He indicated that he witnessed a young looking female who was dropped off near the front of the establishment. She appeared to be waiting nearby. The inspector then noticed an older male join her and they walked toward the establishment. An obstruction to the inspector's line of sight prohibited the inspector from seeing whether the couple entered the establishment at that time. The expected RCMP corporal and at least one other uniformed officer then joined the inspector. The corporal advised that she would go to the fire exit and wait to see if anyone exited using that means when the uniformed officers entered the establishment through the front doors. The inspector waited outside.

The liquor inspector testified as to the relevance and identity of the remaining documents in exhibit #1, and the process leading up to the enforcement hearing.

Minor

The minor testified that she was sixteen years old on April 11, 2009 and attended the establishment on the insistence of her boyfriend who was considerably older, and of drinking age. The boyfriend was planning on singing karaoke in the licensed establishment and had invited the minor to attend and listen to his performance. In preparation for her attendance, the minor had obtained the birth certificate of the sister of a friend, an individual who was at least nineteen years of age. She identified the document at exhibit #1, tab 6. The minor said that she was dropped off in front of the establishment, called her boyfriend on his cell phone and he came out of the establishment and brought her in through the front

doors. There was one doorman on duty. She says she presented the ID and the doorman looked at it and then let her in. The minor and her boyfriend sat at the back of the establishment near the fire exit. She says that after listening to the karaoke song, they left through the fire exit.

They were only in the establishment a few minutes and she did not consume any alcohol. She testifies that no staff member came to their table or offered her any drinks while she was in the establishment. She testifies that she has never been in the establishment before, and although she has had a drink before she does not typically go to licensed establishments, and "I go into other bars, and I usually don't get ID'd." She also indicated that the bartender on duty was her boyfriend's friend, that all of the staff in the establishment could see her at the table, and that she "obviously [doesn't] want to get anyone in trouble." She said she left through the fire door because it was close to where she was sitting, and that this was not unusual.

RCMP Corporal

The corporal testified that she has been an RCMP member for twelve years, has done hundreds of inspections and was in the RCMP Federal National Security Unit before being stationed in White Rock. She said she was familiar with the Sandpiper Pub. She testified that she attended with other uniformed members of the RCMP and decided to go around to the fire exit while the members entered through the main entry. She said: "Normally, when uniformed members go in the front doors, under-aged or intoxicated patrons exit through the back doors." She stationed herself outside the fire exit and within less than a minute of the uniformed member going in the front door, a young female exited the fire exit.

The young female immediately stood out as being underage, perhaps sixteen or seventeen years old. The corporal stopped the female and asked for identification. The minor first produced the fraudulent ID, and then when the minor could not recall the address or postal code listed on the driver's license,

she admitted that it was not her identification and provided her real name and her age (16 years). The corporal had the minor accompany her to a service vehicle where the corporal checked the veracity of the new identify with police resources and satisfied herself as to the identify of the youth. The minor advised the corporal that the doorman had let her in. The corporal identified the driver's license at tab 6, Exhibit #1 as the document presented to her by the minor.

Licensee's Representatives

The Licensee's representatives neither denied that the minor was in the premises on the stated occasion nor that she was indeed a minor. Their defence to the allegation was based on their belief that they had acted diligently and could not prevent the contravention from occurring. They testified that they were not at the establishment at the critical time on April 11, 2009, but that they have a policy and procedures manual (exhibit 2) and the staff are properly trained with respect to prohibiting minors from entering the establishment. They claimed that they are good corporate citizens of White Rock, and they have no history of these types of contraventions. In fact, the Licensee claims that their establishment does not cater to young legal drinkers but rather to older individuals and minors are not really a regular concern because minors are not interested in attending their establishment.

They testified that there was a doorman in place and that the doorman was trained to refuse entry to minors. The doorman's history is beyond reproach and he was fired after it was discovered that he let a minor in to the establishment. The Licensee's representatives indicated that they have regular meetings every month and in support of that provided a sample staff meeting agenda (Exhibit #3). They said they go over the same issues including minors and the liquor rules at each meeting. They said they usually have two doorpersons on duty and are puzzled as to where the other one was on April 11, 2009.

They also said the minor was sitting in a low volume quiet place in the Pub that usually does not get a lot of staff attention, and that the fire exit door is marked

as such from the inside and locked from the outside. They said the fire door is not usually available for exit and is so marked from the inside. They emphasized that minors trying to get in are not usually an issue with their customary clientele.

The Licensee's representatives stated that they interviewed the doorman after the allegation and the doorman said that he "knew he screwed up." He looked at the ID and it resembled the minor at the time and in the poor lighting in which he checked it and he made a judgement that she was the person in the identification. He asked her no confirming questions.

One of the Licensee's representative also said that he sometimes walks through the pub and ensures that nobody in the establishment is underage and occasionally re-checks identification.

ANALYSIS AND DECISION

I accept the evidence of the alleged minor and the RCMP corporal and find that the patron was indeed a minor at the time of the contravention.

I also accept the evidence of the minor and the corporal that the minor was present in the establishment at the bar, which is in the redlined area of the liquor primary establishment.

I accept the evidence of the minor that she did not drink liquor while in the licensed establishment.

The question then turns to whether the Licensee or its staff permitted the minor to enter or be in the establishment. The definition of "permit" is defined in *Ed Bulley Ventures Ltd* [2001] B.C.L.I. No.5. Simply paraphrased, that case asks: Did the licensee and its employees observe as high a degree of diligence as they should have in the circumstances in order to prevent the contravention from

occurring? I find that the Licensee did not. This is a finding distinct from whether or not the Licensee has been duly diligent. My reading of *Ed Bulley Ventures* satisfies me that the question of whether the Licensee permitted something to occur is a question of whether the component elements of the contravention have occurred. On a finding that such required components of the contravention are present, a determination may be made that the contravention occurred. I find that by allowing the minor access to the establishment through the supervision of the doorman, and by allowing the minor to remain in the establishment without being checked again for identification, the Licensee has authorized or permitted a minor to enter on or to be on premises where liquor is sold or kept for sale.

The evidence is that the doorman checked the fraudulent identification in the minor's possession and then allowed her in without further question or review. The RCMP corporal and the liquor inspector each testified that the young appearance of the minor roused their interest and suspicion. Upon being presented with the minor's false identification the police corporal immediately noted physical discrepancies between the document and the minor and was able to verify with simple questions that the minor was not the individual represented in the driver's license. Other than the evidence that the minor's boyfriend was friends with the bartender there is no evidence to explain why the doorman, experienced and trained as he allegedly was, should not have had the same concerns or followed up with verifying questions. I note also that the young looking minor was not asked for identification at any other time while in the establishment.

As for the appearance of the minor at the hearing, I find that the inspector and the corporal were correct in being struck by her youthful appearance. I find that the minor presented a youthful appearance to me here today also. Though she did not look completely different from the individual in the ID, her appearance should have raised concern for the doorman, who if well trained and acting responsibly, would have looked further into the question of her age and identification. This is especially so if the establishment, as the Licensee's

acknowledged, caters to an older crowd of patrons. Accordingly I find the Licensee did not have as high a degree of diligence as they should have in the circumstances in order to prevent the contravention from occurring, and did therefore permit the minor to enter on or be on the premises.

The Licensee claims that notwithstanding that the elements of the contravention appear to have occurred, they were duly diligent by virtue of systems and checks in place and should be excused any penalty for the contravention.

Due diligence is a complete defence to the finding of a contravention. Essentially, the defence of due diligence is an examination of the activities of the Licensee's operating mind to evaluate whether he or she has done all that could reasonably be expected to be done to avoid the contravention. In this case, I find the operating mind to be the two representatives of the Licensee who attended at the hearing. They testified that they are responsible for hiring and training of new employees, drafting and updating the procedures manual, and conducting regular staff meetings for the employees of the Pub.

I find the evidence discloses a dearth of formal training, or checks on the results of formal training for door persons and other employees who check identification. The Licensee has a policy manual (Exhibit #2) but it doesn't mention minors at all. The Licensee does test the staff on the operation of Keno (a gambling game) and sometimes has pop-quizzes and gives prizes away at staff parties, but there was no specific evidence that these quizzes are related to prohibiting minors from entering the establishment. The manual stays where the time sheets are positioned in the pub. The manual appears to be a work in progress. Furthermore, it does not include the licensee's obligation to exclude minors. I think the Licensee could reasonably do more. I think the manual could make reference to minors. I think the manual could codify how to check identification and what to do if suspicion arises of an irregularity in the identification. I think the

Licensee could specifically train the door persons and test them against a reasonable, acceptable standard.

I find the doorman on duty at the relevant time was either not thoroughly trained or did not care enough to keep the minor out. He was dismissed for his part in the contravention. The Licensee thinks that termination shows their interest in compliance. I think they are interested in compliance, but I think they could have taken a more active roll in assuring the door staff and other employees in the establishment are on the lookout for minors.

I find the facts not exemplary of due diligence because I do not think the Licensee's operating mind has done all that it could reasonably be expected to do to assure compliance with the rules against minors in liquor primary establishments. I think the Licensee could motivate the staff to be more alert to the possibility of minors on the premises and to check the identification of anyone that looks like they might not be of age. I also think the Licensee requires more supervision of the area where the minor was sitting, despite it not being a busy or service intensive area of the pub. I find the defence of due diligence must fail.

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 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 license

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

The inspector thought it appropriate to pursue enforcement for the allegation, and he indicated that he believes a penalty is required to assure voluntary compliance in the future. I find the inspector is experienced, familiar with the licensee and its operation, and uniquely positioned to provide a reasonable recommendation in this regard. I, therefore, chose to accept his expertise and recommendation that a penalty is appropriate in the circumstances.

The inspector recommended a \$5,000 monetary penalty in the NOEA and submitted the following reasons for the recommended penalty, "The Licensees of this establishment have demonstrated a commitment to voluntary compliance and have developed a level of trust, confidence and reliability with the area inspector over a number of years."

The inspector and the RCMP corporal each indicate the import of keeping minors out of liquor primary establishments in the Province. I find that a penalty is warranted to ensure voluntary compliance in the future, but I also find that nothing more than the minimum penalty is required as I find the Licensees are interested in compliance and I doubt that this issue will arise again in the future.

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 these incidents (“compliance history”). Accordingly, pursuant to the *Regulation*, Schedule 4, this is a first contravention and the range of penalties for first contraventions is a four (4) to seven (7) day suspension and/or a monetary penalty of \$5,000- \$7,500.

I find that a monetary penalty of five thousand dollars (\$5,000) is reasonable and required to bring about voluntary compliance in the future.

ORDER

Pursuant to section 20(2) of the Act, I order the Licensee to pay a monetary penalty of five thousand dollars (\$5,000) relating to Liquor Primary Licence #035782 in respect of action #EH09-043. The monetary penalty must be paid no later than the close of business on September 25, 2009.

Original signed by

Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: August 26, 2009

cc: White Rock R.C.M.P.

Liquor Control and Licensing Branch, Surrey office
Attn: Michael Clark, Regional Manager

Liquor Control and Licensing Branch, Surrey office
Attn: Peter Mior, Branch Advocate