



**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:	Encore Promotions Inc. dba Rum Jungle 1192 5 th Avenue Prince George, BC V2L 3K9
Case:	EH08-042
For the Licensee:	Adriano Spoletini
For the Branch:	Olubode Fagbaymiye
Enforcement Hearing Adjudicator:	Sheldon M. Seigel
Date of Hearing:	June 25 & 26, 2008
Place of Hearing:	Prince George, BC
Date of Decision:	August 19, 2008

INTRODUCTION

The licensee holds a liquor licence for the sale and distribution of liquor at an establishment known as the Rum Jungle, in Prince George BC.

The licensee is a British Columbia corporation. It was represented at the hearing by Adriano Spoletini. Mr. Spoletini is the president and primary shareholder of the licensee. He operates the company and the establishment.

The Liquor Primary Licence No. 031589 indicates that the hours of operation are 9:00 am until 3:00 pm seven days per week.

On December 23, 2007, an 18 year-old female (TQ) was pronounced dead at a hospital near Prince George. She died approximately 45 minutes after leaving the establishment. She had been in two liquor primary establishments in Prince George on the night of December 22-23. The coroner investigated the young female's death. The cause of death was not determined.

As a result of the news of the incident the branch conducted an investigation, which resulted in the allegation.

ALLEGED CONTRAVENTIONS

The branch alleges that in the early hours of December 23, 2007 (the business day of December 22, 2007) the licensee supplied liquor to minors contrary to section 33 of the *Liquor Control and Licensing Act*, R.S.B.C. 1996, c. 267 (*Act*).

In the alternative, and in the event that the adjudicator does not make a finding of a contravention of the above described allegation, the branch alleges that on that same occasion the licensee permitted minors in the premises contrary to section 35 of the *Act*.

Schedule 4 of the *Regulation* establishes prescribed penalties for contravention of the *Act* or *Regulation*. For a first contravention of section 33 the range of penalty is ten (10) to fifteen (15) days licence suspension and/or \$7,500 to \$10,000 monetary penalty. For a first contravention of section 35 of the *Act* the range of penalty is four (4) to seven (7) days licence suspension and/or \$5,000 to \$7,500 monetary penalty.

RELEVANT STATUTORY PROVISIONS

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

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 license;

...

(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;

...

(4) On taking action against a licensee under subsection (2), the general manager must

- (a) provide the licensee with written notice of the action in accordance with the regulations,
- (b) set out in the notice the reasons for taking the action,
- (c) set out in the notice the details of the action including
 - (i) if a monetary penalty is imposed, the amount of the penalty and the date by which the penalty must be paid, and
 - (ii) if a suspension is imposed, the period of the suspension and the dates on which the suspension must be served, and
- (d) [Repealed 2002-48-37.]

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.

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

- Did the licensee contravene any of the provisions of section 33 of the *Act*?
- In the event that the adjudicator finds that the licensee did not contravene any of the provisions of section 33 of the *Act*, did the licensee contravene section 35 of the *Act*?
- If it is found that the licensee did contravene the *Act* as alleged, is a penalty warranted, and what is the appropriate penalty?

EXHIBITS

- Exhibit No. 1: Branch's Book of Documents
- Exhibit No. 2: Statement of CL dated Feb 19, 2006
- Exhibit No. 3: Correspondence dated July 4, 2005
- Exhibit No. 4: Correspondence from Branch dated December 21, 2007
- Exhibit No. 5: Excerpt from Branch Compliance and Enforcement Desk Reference
- Exhibit No. 6: Two page excerpt from Branch Compliance and Enforcement Desk Reference
- Exhibit No. 7: Procedures manual signed by employees
- Exhibit No. 8: Staff meeting notes and sign-in-sheets
- Exhibit No. 9: Daily report dated Saturday, December 22, 2007
- Exhibit No. 10&14: Bundle of confiscated patron identification (driver's licenses, social insurance cards, bank cards etc). **Note:** It appears as though this exhibit was inadvertently given two Exhibit numbers
- Exhibit No. 11: Time-line of persons entering establishment taken by licensee from viewing surveillance video
- Exhibit No. 12: Correspondence dated April 1, 2003
- Exhibit No. 13: Daily sign in sheet

Exhibit No. 15: The surveillance video. **Note:** The surveillance video is in a form that can neither be copied nor transferred easily. It is loaded onto the hard drive of a laptop from which it is believed it cannot be separated without destroying it. The licensee is in possession of the laptop and indicated that he is willing and able to retain it in its current observable form. I ordered that the video surveillance is to be kept by the licensee in an observable form for at least that period of time until the expiration of the period for judicial review, plus three weeks in the event that it is required for judicial review. In the event that a judicial review notice is filed, the licensee shall keep it until it is utilized by a judge, or until further notice of the termination of the order to keep it.

EVIDENCE

The branch called nine witnesses including three patrons, a police officer from the RCMP serious crimes unit, a video technician, the local coroner, two liquor inspectors, and a toxicologist.

The licensee's principal testified and also called additional witnesses including a door person, the establishment manager, and a bartender.

HG testimony:

She and TQ were best friends and the same age. They were both 18 years old on December 23, 2008. They had been best friends for nine years and knew each other's birthdays. They celebrated birthdays together.

On December 22 they went together to a restaurant for dinner to celebrate another friend's birthday. KVD was turning 19 that day. The two of them were together the whole evening until another friend offered to drive TQ home and left with TQ.

They went to the restaurant at 8:30 p.m. They did not drink any alcohol there and they left the restaurant at approximately 9:30 p.m.

From the restaurant they went to HG's home, where they may or may not have had one mixed vodka drink before being driven to the Rum Jungle by HG's sister's boyfriend. If they had a drink it would have been from the mickey of vodka in the freezer. The drink would not have had much vodka in it - like a single small drink at a bar, not more.

The three of them arrived at the Rum Jungle at approximately 10:45 p.m. They did not eat or drink on the way. They came in the main door of the Rum Jungle. There was a door person at the door, who asked HG and TQ for ID.

TQ produced a Manitoba Liquor Board ID with a picture "that sorta resembled her" and TQ's own bank card signed with the name from the Manitoba liquor Board ID. HG produced fake ID also; her sister's driver's licence and a UVIC card. She said: "I have used that ID at the Rum Jungle over and over. Not elsewhere." The door person glanced at her ID for four seconds or so, and did not ask any questions or turn any of it over to review the backside. HG said: "Exactly the same thing was done for TQ - four seconds, no questions, no turn-over."

The lighting was good at the door. It was easy to see. And HG did not see any signs about checking for ID.

They each paid a \$4.00 cover charge. The doorman gave them each wristbands and allowed them in to the club.

Exhibit No. 1, Tab 14, p.5 and p. 6 is photo of TQ and the fake ID she used.

Tab 14, p.8 is TQ's bank card signed with the name from the fake ID.

The two girls went in and each got a drink from the bar at the establishment. Neither of them was asked for ID at the bar. The drinks were Vodka Slimes. They drank the Vodka Slimes in five to ten minutes inside the Rum Jungle.

At approximately 11:00 p.m., HG and TQ left the Rum Jungle and went to another establishment. They were let in. They danced and talked, but did not drink anything. Then they left the other establishment and returned to the Rum Jungle.

At the front door of the Rum Jungle, a doorperson let them in. They were not asked for ID because they had wristbands.

In the Rum Jungle HG had two more drinks; another Vodka Slime and a shooter. TQ had a Tom Collins and then she also had a shooter of some sort. HG left at 1:30 p.m. TQ was still at the Rum Jungle when HG left.

HG had been to the Rum Jungle many times in the past. She was usually checked for ID, but always let in. She bought and consumed drinks in the Rum Jungle in the past.

Tab 14, p.9 is a photo of TQ's wrist after her death - showing the wristband.

Tab 10 is HG's signed witness statement taken by a liquor inspector February 13, 2008.

BP testimony:

Her birthday is []. She was 18 years old in December 2007.

She went to the Rum Jungle on December 22, 2007. She went with three girls who were of age.

She knew TQ for 10 years. They were old friends.

She worked as a server at the restaurant where the birthday party was that night. The party was for her friend KVD. She was there for the birthday dinner. She did not drink at the birthday party. KVD did have a drink though because it was her 19th and she was legally able to. TQ and HG did not have anything to drink at the birthday party.

The group left at about 10:45 p.m. to go the Rum Jungle, but BP went to the other establishment (the same one that TQ and HG went to after the first visit to the Rum Jungle) first. She got there between 11:00 p.m. and 11:30 p.m. She had nothing to drink and did not see TQ or HG. Then she went to the Rum Jungle.

She entered the Rum Jungle with KVD and another friend, JR, through the front door. There was a doorman who checked her ID. She had fake ID consisting of a BC driver's licence and a Bay store credit card. The Bay card was under the driver's licence when she handed it to the door person. The doorperson looked at the driver's licence for two or three seconds and gave it back. She did not ask any questions. She "may not have" looked at the Bay card at all. The ID she used was her brother's girlfriend's ID. The driver's licence photo had some resemblance to her. The lighting in the doorway "was okay. It was not difficult for the doorperson to have a proper look at the ID." BP paid the \$4.00 cover charge, got a wristband, and went in. Inside, she saw HG and TQ. She ordered a mixed drink.

She said:

“A vodka slime or a Tom Collins and we all had a tequila shot. We got the drinks at the bar near the dance floor. We were not asked for ID there. TQ and HG had tequila shots and TQ had a Tom Collins and I know that because I had a sip of her drink.”

She indicated that she drank all of her liquor in the establishment and was not questioned or approached by any staff member while she was drinking.

TQ and HG left with her at about 1:00 p.m. or 1:30 p.m.

BP was directed to Exhibit No. 1, Tab 14, p.5. She identified the photo as TQ. She looked at p.6 and identified it as the fake ID that TQ used to gain entrance to the Rum Jungle. She said TQ showed it to her at the restaurant and they discussed whether it would work. The second piece of ID that TQ used was her own bank card and she signed the back with the name from the Manitoba fake ID.

BP said:

“I had been to the Rum Jungle in the past. I bought drinks on previous visits. I did not see any signs about ID - maybe vaguely. I was not looking for it at the time. TQ passed away that night. On previous visits I used the same fake ID to enter the Rum Jungle. I have used it maybe five times there. Maybe ten. Less than ten. They never turned me away. I was stopped at [another establishment in Prince George] once, but never in the Rum Jungle. I drank each time I was in the Rum Jungle. I think I may have been asked for ID one time when I was inside, but he was satisfied.”

She was interviewed by a liquor inspector. She identified the notes of that interview at Tab 10 of Exhibit No. 1.

She was directed to the photos of the deceased and the fake ID that the deceased used. She said:

“If you look hard enough, there are differences you would see, but if you just looked quick and didn’t care, you would not notice the difference. If I didn’t think an ID was the person in front of me, I’d ask questions”

KVD testimony:

Her birthday is []. She was turning 19 when TQ died.

She worked at the restaurant where they had her party. She was not working that shift though. Her friends were ordering a lot of liquor shots. She also had a martini and two highballs. TQ had a virgin Pina Colada and some of the ice cream cake her boss brought out.

TQ and HG left the restaurant at about 9:00 p.m. KVD and some friends left between 10:30 p.m. and 11:00 p.m.

They went to the [other establishment] and then 20 minutes later went to the Rum Jungle. She arrived there at about 11:30 p.m. or 12:00 p.m. She said: “I guess I was pretty drunk when I got in.”

They went through the main entrance where there was a girl checking ID. She was asked for and presented ID. She was not asked any questions about the ID. After her ID was passed back, KVD told the doorperson it was her birthday. The doorperson told her she could get a free shot at the bar because it was her birthday. She paid the cover charge and got a bracelet.

She said:

“I ordered drinks right away. I was pretty intoxicated and don’t remember what I ordered. I usually drank vodka slimes or Rum and Cokes. I got my free drink and someone bought me a shot and another drink and stuff like that.”

TQ and HG left with her.

She identified the fake ID that TQ used at Exhibit No. 1, Tab 14, p.6. She said that she gave the ID to TQ.

She said:

“A few weeks prior to my birthday, I figured I would not be using the ID, so I said [TQ] could use it. I got it from Winnipeg. KH was a girl I worked with so she gave me the ID. I got it between August and September 2006. The ID does not look like [TQ] besides that they are blond and tanned.”

KVD said she had been to the Rum Jungle four or five times before that visit. She was always allowed entry and always bought drinks there. She always used the same ID that is in the Exhibit (Exhibit No. 1, tab 14, p.6). She said: “The door person did not notice it was my birthday - I had to tell her.”

She also said the following:

“I have probably had 35 or 40 vodka slimes. I have been [in the Rum Jungle] five or six times. Sometimes Rum and Coke, but usually Vodka slimes. They are Vodka, cranberries, Rye and Coke. Usually in a simple highball [glass]. Shooters? Quervo tequila, dirty hookers, red sourpuss and banana Bols. Tequilas. Some Jaegerbombs. These are what I usually drink at the Rum Jungle.”

She said that HG probably had a few shooters - perhaps three, TQ probably had one or two and might have been tipsy by the end of the night. She added that she last saw TQ in the [other establishment] but TQ was not drinking there.

RCMP member (SM) testimony:

She has been with the Prince George RCMP for 21 years. She has been a constable, corporal, sergeant, and staff sergeant. She was with the Serious Crime Unit in December 2007.

Following the death of TQ, SM conducted an investigation.

She seized the video surveillance from the Rum Jungle relating to December 22 and 23, 2008. She knew there was an issue about ID in someone else's name. The deceased TQ was 18 years old when she died. The forensic autopsy did not determine a cause of death. The coroner is still working on that. It is unusual that for no cause of death to be determined.

The coroner has jurisdiction rather than the RCMP because the police determined that it was not a homicide.

SM was directed to the photos of the identification that TQ used and the actual photo of TQ at Tab 14, p.5, and 6 of Exhibit 1. She said; "Those photographs do not look alike in my opinion."

Coroner's testimony:

TQ died on December 23, 2008. His investigation has established that TQ attended the Rum Jungle, a restaurant, and another liquor primary establishment on the night she died. He believes TQ died approximately 45 minutes after leaving the Rum Jungle.

Investigation and toxicology confirmed she had alcohol in her body.

He understands that she had five drinks that night. [

]

The investigation confirms that although she was not drinking huge amounts of alcohol, TQ consumed the largest amount of alcohol a couple of hours before her death.

He said:

[“

“]

AS testimony:

He is an experienced video technician. Two liquor inspectors (WM &HB) sought him out in order to gain access to a video made on a proprietary video format.

He said:

I could set it up so they could watch it, but I could not copy it. The inspectors watched it for a short time on April 10th, the day they brought it in, and then for 1.5 hours on April 14, 2008, and again for 7.5 hours on June 6, 2008.

WM testimony:

WM is an experienced liquor inspector and has worked in the area for four years.

He confirmed that he investigated the movement of the deceased and her friend HG on the night of TQ's death for the purposes of establishing whether any contraventions of the *Act* or *Regulation* had occurred at the two Liquor Primary establishments that the girls attended.

He interviewed the coroner, KVD, HG, BP, and the licensee, and he viewed the video surveillance. He testified that the Manitoba ID that TQ used on December 22nd is not an official piece of ID as described by BC statute and regulation. It lacks "tombstone data" (sex, height, hair colour, eye colour etc.), and the bank card used for a second piece of ID by TQ is also not an acceptable form of ID in accordance with the rules because it does not have a permanent representation of the holder's name on it (to compare with the signature).

The inspector testified that he viewed a portion of the surveillance video provided by the licensee and that the video clearly shows the doorman meeting incoming patrons at the front door of the establishment. He identified his notes of his viewing at Exhibit No. 1, Tab 11, pages a-b. He confirmed that the video disclosed the following:

- Approximately 30 patrons entered during the time period viewed
- Six of those entered without being stopped for ID

The doorperson displayed a repeating pattern of briefly scanning ID from some patrons before handing it back, affixing a bracelet on the patron's wrist, and taking a cover charge. The average time that the doorperson looked at the ID was 2 seconds.

He also testified that another inspector viewed the entirety of the video and produced a comprehensive report of the occurrences that she witnessed. That is reproduced at Exhibit No. 1, Tab 11, pages 4-7.

He summarized the report as follows:

"It is a demonstration of non-compliance by the licensee. In effect, there were 101 patrons who were not stopped and checked for ID. There were 207 patrons in total that entered the establishment between 10:00 p.m. and 2:30 a.m. The patrons are very young and some appear to be as young as 16 years of age.

WM identified all of the remaining documents in the branch's book of documents.

The inspector confirmed that at one time in the past he told the licensee that he was doing a good job with ID checks. He also described the requirement in the Guide for Liquor Licensees in British Columbia (*Guide*) as requiring:

ID requirements –

The first piece of identification must be issued by a government agency (e.g. a passport or driver's licence), and include the person's name, signature, birth date and picture.

The second piece must include an imprint of the holder's name (e.g. a credit card or care card), and include the person's signature and/or picture.
(p.11)

HB testimony:

She is a liquor inspector in the region, and has been so since 2006. She has worked as an investigator and inspector for the provincial government for 20 years. She assisted WM on this investigation.

She interviewed BP, KVD, HG, and the licensee with respect to this allegation. She contacted the Manitoba Liquor Licensing commission and determined that the ID at Exhibit No. 1, Tab 14, page 6, is an authentic Manitoba document, and not a mock-up.

She read from her notes from interviews of BP, KVD, and HG and confirmed the description of the events testified to by the youths. There were no significant discrepancies in the repeated stories.

She testified that she would expect that a doorperson confronted with a youth looking like the picture of TQ at Exhibit No. 1, Tab 14, page 5 and the ID at page 6 would see they are not the same person, or at least embark on some testing questions to confirm that suspicion. She also testified that she believes that any competent doorperson with a reasonable effort would see that the signatures on the Manitoba Liquor card and the bank card do not match.

The inspector confirmed that she is the author of the video surveillance report (Exhibit No. 1, Tab 11), and that she made it from a careful viewing of the video showing the door person greeting the patrons.

She said:

206 people came through the door. 101 were not asked for ID. The average time for viewing ID was 4 seconds. Many times it was less than 2 seconds. The video was of high quality and we could identify males and females and estimate their ages.

She said that the Manitoba ID is not acceptable for identification purposes in BC establishments because it does not state the height or weight of the holder and it can be obtained in Manitoba with only rudimentary steps.

When asked about whether she would accept a letter from the Deputy General Manager of the branch as an indication of changes to the requirements for checking ID, she said she would.

Toxicologist testimony:

The toxicologist was qualified as an expert able to opine about alcohol levels in a human body and issues related to alcohol absorption.

He confirmed the coroner's testimony that the reports on TQ's body demonstrate that she had consumed ethyl alcohol within hours of her death. He also testified that the two so-called date rape drugs, Rohypnol and GBH, more or less completely assimilate in the body very quickly and are not typically observable *post mortem*.

Adriano Spolentini's testimony:

He is the licensee's principal and operator and has been in the liquor business for 22 years. He is on the job daily and cares about what happens at the establishment.

He identified and described the licensee's exhibits, in particular, Exhibit No. 11 - the time line that licensee's staff prepared from viewing the video surveillance, Exhibit No. 10 - the package of confiscated ID, Exhibit No. 3-6 and 12, which include branch correspondence and material sourced from the branch.

He said that the ID that makes up Exhibit No. 10 was confiscated over a year and a half from this establishment. Also he has turned over that many pieces of ID to the branch twice before.

He indicated that all of the doors are alarmed and monitored to prevent patrons sneaking in back doors. All of the patrons that entered that night did so from the front doors and are visible in the surveillance video.

He feels that both the photo ID and the signatures on the ID are close enough to be interpreted as real ID, and good enough to gain entry. He confirmed that on the night of the allegation, he was absent and CL was the manager in charge.

TL testimony:

She is the manager of the Rum Jungle and has 5 years of experience in the liquor service industry. She conducts staff meetings daily. She has read and signed the policies and procedures manual at Exhibit No. 7.

She said:

"The staff members are trained to check ID like this: Look at the photo, the name, date, and signature. If they do not match perfectly, we will then look at the height and eye colour. On the second piece of ID, we look at the name and the signature and ask the patron what their [Astrological] sign is. And their postal code. That will prove if it is real or not. If we are satisfied we will let them in, otherwise I confiscate and tell them I am sorry they are not allowed

in this building and ask them to please leave. Also, I check ID randomly through my shift - and offer second opinions to staff who are not sure whether the ID is real or not."

The witness identified the door person on duty that night, whom is visible on the surveillance video.

She said that the policies and procedures manual is the only manual the licensee has for the establishment. There is no other training manual. She also testified that the policy manual says that a proper secondary piece of ID has a name imprinted on it as well as a signature.

She indicated that she is aware that a proper secondary piece of ID has a name imprinted on the card and a signature on the card. When directed to Exhibit No. 1, Tab 14, p.8, she first said the bank card was a proper secondary piece of ID, but then when asked if there is a name imprinted on it, she acknowledged that there is not and the card is not a legal secondary piece of ID.

RO Testimony:

She testified that she was the door person on duty for most of the night of the allegation and that she is the individual seen checking ID at the door in the video surveillance tape.

She said she always checks the ID for scratches or disqualifying marks that show that it has been altered.

She also always checks for eye colour and height and to see if the expiry date is current on the ID. She always asks for two pieces of ID and if she has any doubt she asks for the person's zodiac sign and asks her manager to come over. She confirmed that the lighting in the entranceway is good for doing ID checks.

She confirmed that she has signed the policies and procedures manual and attends regular staff meetings.

She said she is stern at the door, and people get pretty upset with her because she refuses entry to people who get in at other bars or don't get asked for two pieces of ID. She said she confiscated ID from some patrons on the night of the allegation.

She also confirmed her understanding that a secondary piece of ID has to have an imprinted name on it to be valid. She was directed to the signatures at Exhibit No. 1, Tab 14, p.6 and p.8 and said there is a difference between the two signatures and does not think they match. She also said that the bank card that TQ used would qualify as secondary ID.

She also said there is no policy for monitoring wristbands or people coming in with them, but her technique is:

"We make sure it has not been taken off and tied together and make sure that it is that colour from the right day. When you put it on, it snaps together and it sticks. They cannot take it off - put it on so that it doesn't slide off - they have to tear it off - so I would know it was tampered with."

CL testimony:

CL testified that she is the manager of the establishment and she answers to the principal of the licensee. She has 17 years experience.

She said there are staff meetings once per month but she has informal meetings with her staff every night. She helped to produce the policies and procedures manuals (Exhibit No. 7). She does most of the training and trained RO, who was on the door most of the night of the allegation.

She said that everyone entering the establishment must have ID or be checked every time they enter. If a patron leaves for a cigarette they must be checked for ID when they return. A bracelet or wristband will not allow them to bypass the ID check at the door. The wristband is for confirmation inside the establishment that they have been checked.

She confirmed that she has seen the package of ID that was confiscated (Exhibit No. 14) and that the package represents the remainder of the ID confiscated since the Rum Jungle has been in operation. One similar package was returned to the branch inspectors previously. The package at Exhibit No. 14 is approximately one half of all of the IDs collected from the establishment over 17 years.

She said she trains all of the door staff to check ID in the same manner.

She said:

“They look at the picture - look at the picture, the issue date, the ID. If there is no problems, I look at the hologram, the height weight, eye colour, see if it matches up by turning the ID over, ask about Horoscope and other questions, and if still have any doubt ask for three sample signatures.”

The witness was shown the photocopy of the ID that TQ allegedly used to gain entry (Exhibit No. 1, Tab 14). She said that the bank card does not qualify as a secondary piece because it does not have an imprinted name on it. She said that TQ should not have gotten in.

SUBMISSIONS

The branch submitted that the contravention occurred when the licensee served liquor to either TQ, BP, or HG.

The branch also submitted that the evidence discloses a lack of effective procedures in place at the establishment to monitor the service of liquor and in particular to prevent service to minors.

Finally the branch submitted that the evidence disclosed a pattern of disinterest or ineffectiveness on the part of the licensee and its management and employees relating to the prevention of minors accessing liquor in the establishment.

The licensee submitted that it was in every respect duly diligent. Mr. Spoletini indicated that the licensee has policies and procedures in place and all staff used those policies and procedures on the relevant night.

The licensee said that comparing the photo of TQ in Exhibit No. 1, Tab 14 p.5 to the photo in the fake ID on p.6 is not fair as underage patrons make themselves up to look like the ID they are using, and there is no evidence of what TQ looked like that night.

He said the minors gained access with a concerted effort to defraud the establishment. Their actions were calculated and designed to evade detection. The licensee cannot guard against such contrivances.

Mr. Spoletini indicated that the licensee witnesses showed that the licensee is constantly doing training and conducting staff meetings and talking about checking for ID, the witnesses confirm that the employees randomly check ID at the bar and that staff and employees are diligent about checking ID.

He submitted that the confiscated ID shows that the licensee goes over and above vigilance and has seized a lot of ID.

“In fact,’ Mr. Spoletini said, “Every one of the branch witnesses said she had been previously checked in our bar.”

The licensee further submitted that the Exhibit No. 4 is notice that the rules have changed with respect to checking ID. The licensee says that a letter from the branch setting out the rules should be relied on as the law. He says this letter does set out the law and as it is different from the licensee’s past understanding it is a change he should be able to rely on, and did rely on with respect to allowing the bank card as a second piece of ID. The branch letter does not indicate that an impression of the name is required.

ANALYSIS AND DECISION

The evidence is uncontroverted that minors did enter the establishment on the relevant date. The evidence is also uncontroverted that the licensee sold and supplied liquor to minors.

The patrons who testified said that as minors they had been permitted entry to the Rum Jungle in the past and ordered and consumed liquor on previous visits prior to the date of the alleged contravention.

I find that on the contravention date, the door person checked these witnesses ID for 1-4 seconds and did not ask any of them a question to check or verify the accuracy of their ID, or that it was in the hands of the correct person.

The evidence discloses that the doorpersons consistently failed in the past to stop the minors who presented testimony at the hearing, even though they had been stopped elsewhere.

The staff at the Rum Jungle failed to check ID from patron witnesses who had left the premises and were seeking re-entry on the date of the alleged contravention. The branch witnesses testified to this, and the licensee's witnesses presented no evidence to dispute that testimony.

The evidence discloses no indication of a single person having been checked for ID at the bar on the date of the contravention. The evidence also discloses that the witnesses, who were minors on December 22 /23, 2007, were not checked for ID at any time once inside the establishment on the date of the contravention. Those witnesses said in their experience, it would be highly unusual to be checked at the bar or when inside the Rum Jungle.

All of the minor witnesses used fake ID to get in to the establishment on the date in question.

The evidence indicates that TQ, HG, and BP all used fake ID or ID belonging to others when they were permitted to enter the Rum Jungle on the date of the alleged contravention. Each of them was under age. HG testified that she was permitted to enter with fake ID in the past. BP said that she had been allowed in to the Rum Jungle with fake ID five to ten times in the past. In each case the minor ordered, was served, and drank liquor while in the establishment. With the exception of the possibility of one time for BP, none of the minors was checked for ID once inside the establishment or when ordering liquor. The one time BP was checked while still a minor, her fake ID was found to be acceptable. The evidence discloses no occasion on which any of these minors was denied entry or a drink in the establishment. I also note that in each case the drink served was a hard liquor shooter or a mixed drink.

KVD was not a minor when she was admitted to the establishment. She testified that she was intoxicated when she entered. She had to tell the doorperson that it was her birthday, even though the doorperson was holding her drivers licence. She continued to drink in the establishment. There is no evidence that she was noticed, or checked for ID (except as a pre-condition for the free drink) though she was legal by only one day. She also testified that she has never seen anyone checked for ID inside the Rum Jungle in the approximately 10 times she had been in the establishment while still a minor.

This testimony supports a view that the licensee is not very successful at identifying minors, or looking for them at the door or inside of the establishment. This observation is useful in assessing credibility of the evidence of the licensee and its witnesses, as they indicate that ID is consistently and properly checked at the door and within the establishment. The contrary was attested to by the youths who testified on behalf of the branch, the liquor inspectors, and supported by my viewing of the video surveillance.

I accept the evidence of HG, that both she and TQ were permitted to enter the establishment on the date of the allegation and that they were each supplied with liquor and allowed to consume liquor contrary to section 33(1)(a) and section 33(1)(c) of the *Regulation*.

I accept the evidence of BP that she was permitted to enter the establishment on the date of the allegation and that she was supplied with liquor and allowed to consume liquor in the establishment. This is contrary to section 33(1)(a) and section 33(1)(c) of the *Regulation*.

I accept the evidence that HG, TQ, and BP were minors at the time of the alleged contravention.

The ramifications of this type of contravention are far reaching - and indeed may have been partly responsible for setting up one of the scenarios that the evidence indicates could have led to the death of TQ. TQ was a minor. She was admitted to the establishment on the night of her death (along with another liquor primary establishment). The evidence discloses that she was supplied liquor by the licensee. The coroner said: ["

"]

If TQ was denied entry to the establishment, or denied liquor once in the establishment, the possibility that her drink would be drugged would have been diminished.

Licensee says it has controls in place to prevent this type of contravention. The licensee says the entrance is controlled by a doorperson and a cover charge is a compulsory requirement for all patrons.

However, the licensee permitted minors to enter, order, obtain, and consume liquor in a licensed establishment under the direct control of the licensee. I find the licensee does not have adequate controls in place to prevent such contraventions.

The employees checking ID are there for a specific purpose. They should be more successful or better at the assigned task. The licensee's position is that the facts point to a concerted effort to defraud the door person. I disagree. I think the conduct of the minors is typical underage patron activity. It is exactly what a diligent licensee might expect to be confronted with and what the door staff is supposed to be on the look out for. This was not a case where professionals made up ID with pictures of the underage patron and a correct signature. The minors did not rehearse their ages and life history and practice signatures. They simply used other persons' ID who are of age, and the evidence is that multiple under-age patrons on multiple occasions gained entry, passed the superficial

scrutiny at the door, ordered and consumed liquor and were not checked again for ID once inside. I find that the licensee's argument must fail.

TL testified that the door staff does a thorough review of the details on a patron's ID when it is being checked, and often if not regularly asks a series of questions of the patron. I find that this is not a technique followed by the doorperson as evidenced by the surveillance video. Further, I find that TL's testimony of the procedure that she expects to be followed by employees of the licensee was contrived. Her stilted delivery of answers to some questions caused me to reference the branch desk manual. I discovered that she was at one point delivering an entire paragraph of the manual as though memorized. I noted that under cross-examination, TL looked to the licensee's principal before answering each question and received cues from him, (nodding and body gestures). Based on my observations of her testimony, I find that her evidence is not reliable.

RO testified that she is the individual shown on most of the surveillance video at the door and checking ID. I find that the video indicates that she did not check the ID as she testifies she "always does." I did not see her reject anyone, confiscate any ID, check with CL for confirmation on anyone. I saw her let lots of people through without checking anything. Further, her testimony is contrary to the evidence of each of the youths who testified that their ID was simply looked at for two to four seconds and handed back. She also indicated that she understands a name must be imprinted on a secondary piece of ID to be valid. And she testified that she believed the bank card that TQ used to gain entry was an acceptable piece of ID (It does not have a name imprinted on it). She testified that the signatures shown to her in the exhibits of the two pieces of ID used by TQ did not match (she was on duty when TQ allegedly used the ID and was granted entry). Also, she said there is no policy that allows her to let people in who have Rum Jungle wristbands. In the video, when she lets people in without checking their ID, she does not appear to look at their wristbands.]

The manager, CL indicated that bracelets or wristbands do not entitle a patron to re-enter without an ID check. That negates any possibility of an argument that the hundred or so people seen admitted on the surveillance video without being checked, were admitted because of possession of wristbands. She also contradicted AS who testified that Exhibit No. 14 was one of several packages of ID collected and is all from the past year and a half. CL said it is one half of all of the ID collected over 17 years of the establishment's operation. CL also testified that she trains all of the staff who work on the doors to check ID in a particular manner. Again, the video and the evidence of the youths who attended that night confirm that the ID checks did not occur as described by CL. I note that the manager of the establishment, when pointed to the ID that the deceased used to gain entry to the Rum Jungle, said: "She should not have gotten in."

I find that early in the morning of December 23, 2007, the licensee did supply liquor to TQ, BP, and HG, all of whom were minors at the time.

I find that the contraventions occurred as alleged.

Due Diligence

If the licensee could have avoided the contravention through the exercise of reasonable care, or *due diligence*, and can establish that it did in fact exercise such care, this is a complete defence to the allegation.

The onus is on the licensee to demonstrate on a balance of probabilities that it took all reasonable steps to prevent the contravention.

This hearing was not designed for the purpose of investigating the death of TQ. Her death, however, and the testimony of the coroner that patrons [

] in liquor establishments, serves as a reminder of the importance to be diligent in liquor establishments. The evidence demonstrates conduct by the licensee's employees over a protracted period of time that I find to be far short of diligence. The evidence also demonstrates that the conduct of the licensee's employees on the night in question was also far short of due diligence.

Inspector WM testified that neither of the pieces of ID used by TQ on the date of the allegation are approved or proper pieces of ID on which the licensee could rely.

I accept the evidence of the liquor inspectors as to the comprehensiveness and accuracy of the report of their viewing of the videotape (Exhibit No. 1, Tab 11, p 1-7). It is consistent with my observations made while watching the videotape. I find that the estimated ages of the patrons is of little use but to estimate whether a patron is young enough looking to require an ID check for age verification. Having viewed the video, I find that most of the patrons who were not checked for ID should have been, and most of the patrons who were checked for ID were not scrutinized closely enough to have formed an educated opinion of whether they were the individuals represented in the ID.

AS testified that at the time of the allegation he was not on site and the establishment was being managed by CL. CL had the ability to instruct and control the staff. CL also testified as to having contributed to the policies manual at Exhibit No. 7 and having trained most of the staff. She participated in delivering the monthly staff meetings and held the informal daily meetings. I find that at the time of the allegation she was the operating mind of the licensee.

The question, therefore, is whether CL had available to her, a system of adequate training and programs designed to instruct her staff on how to prevent service to minors and other contraventions, and whether she took reasonable steps to ensure the effective operation of those systems.

CL testified that the door person should not have let in TQ. She also described a process of checking ID that is not demonstrated in the video. She said that she trained RO. RO gave contrary testimony as to whether the second piece of ID that TQ used was acceptable for that use. She said the signature did not match, but she let TQ in to the establishment. She said that the card had to have an imprinted name (and it does not) but she said it was acceptable as second ID. I find it impossible to conclude from this evidence that RO was properly trained for her duties checking ID at the door.

Further, I find that the licensee and its management failed to develop an effective system for the prevention of contraventions of this type.

I find that the licensee, and its management in the person of CL did not take control of the establishment, as staff failed to act on information (Exhibit 1, Tab 5 pp.11-12) available to verify ID even though it had opportunity to do so.

I find that the failure to check ID of more than 100 patrons shows a highly defective system, or no system at all, which opens the door to the gestation of contraventions including supplying liquor to minors (section 33).

I find there were inadequate systems in place to prevent the contravention from occurring.

Although the licensee has a policy and procedures manual, the manual does not make reference to the exit and re-entry of patrons with wristbands to make sure minors are not gaining entry.

Exhibit 1, Tab 8 at pp. 1-14 is the full text of the licensee's policies and procedures for the establishment. These policies portray an emphasis on job descriptions, but no system for implementation of rules. For example, Exhibit 1, Tab 2, p.8 indicates that swampers must check ID and randomly check ID of people at the bar. The evidence discloses no incident of anyone being checked at the bar on the night in question. None of the witnesses were asked for ID at the bar or saw anyone so checked. Only the patron seeking a free birthday drink was checked for her qualifying ID.

The licensee could have had adequate strategies in place to ensure compliance. There could be a comprehensive manual. There could be a system to check ID from patrons re-entering the establishment. The licensee could have mandated identifiable employees to supervise the implementation of its policies. The licensee could have embarked on a risk assessment based on demographics of the location to implement programs to with a view to develop interactive solutions to its location. The licensee could have put a system in place to look at past instances of failures in order to address non-compliance with the *Act* and *Regulation*. The licensee could have put in place systems and effective measures to ensure the policies were being adhered to and monitored.

The licensee submitted that the correspondence of the branch (Exhibits No. 3&4) is inconsistent with and supersedes the requirements in the Guide for acceptable identification for confirming age through ID checks.

Exhibit No. 3 is the letter from the branch's then Deputy General Manager of Compliance Enforcement dated July 4, 2005. The licensee's position is that it supersedes the Guide. I find that this argument fails because at the time of the contravention the date of the active Guide was June 2007, subsequent to the letter.

Exhibit No. 4 is the letter of the current branch DGM. It says the secondary piece of ID should have "a signature or date of birth." The licensee's position is that this direction supersedes the Guide as it is an update, and the letter from the DGM should be relied on by licensees. Although I agree that a licensee should be able to rely on a current letter from the branch to determine its obligations, I have no evidence that the licensee's staff was informed of the information in the letter. I find that the licensee's use of the letter is an afterthought used to bolster his staff's lack of compliance with the rules. The licensee provided no evidence that he had implemented changes to his ID checking protocol as a result of the letter. There were no changes made to the procedures manual as a result of the letter. None of the witnesses testified to having been advised about changes to the ID checking rules resulting from this letter. There is no indication that the letter was ever discussed at a staff meeting.

I find that the evidence discloses inadequate systems in place and inadequate vigilance to the prevention of minors gaining access to liquor to consider the conduct of the licensee and its employees duly diligent. The defence fails.

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 licence

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 branch recommended a ten (10) day suspension in the NOEA and submitted the following reasons for the recommended penalty:

- Supplying liquor to minors or permitting minors to consume liquor are significant public safety issues because of the effects of alcohol abuse on growing bodies and developing minds.
- There are significant effects on individuals and society of irresponsible drinking behaviour learned at an early age.
- Minors may not have the same capacity to metabolize alcohol as do adults; therefore, liquor may have a more intoxicating effect on minors.
- Liquor is a significant factor in many crimes committed by youth, including serious driving offences, assault, and theft.

At the hearing, the branch submitted an increased proposed penalty in light of the evidence. The branch recommended that the penalty be a fifteen (15) day suspension, and put forth the following additional reasons:

- The license had effectively no procedures in place do deal with problems of underage patrons being admitted to the establishment.
- On the date of the contravention the licensee and its employees allowed more than 100 patrons to be granted access to the licensed establishment without ID checks, as clearly shown in the surveillance video footage.
- The penalty is required to reinforce the licensee's need to come into compliance with the terms and conditions of his licence.

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. Pursuant to Schedule 4, item 2, the range of penalties for first contraventions is ten (10) to fifteen (15) days suspension and/or a monetary penalty of \$7,500- \$10,000.

I have found that the contravention was proven. It only takes one minor to be supplied liquor on the relevant date to establish the contravention. The other minors who were allowed entry to the licensed establishment and supplied liquor on the same date speaks to penalty. The evidence of the historic contraventions of minors being granted access, provided with liquor, and drinking in the establishment supports a finding that the licensee is either ineffective in taking steps to prevent such contraventions or disinterested in preventing such contraventions. I am satisfied that the social values relating to these contraventions as demonstrated by the legislative and regulatory regime indicate the need for a penalty. I am further satisfied that only a significant penalty will get the attention of the licensee and indicate its need to take immediate action to establish new policies to prevent such contraventions from occurring in the future.

I find that a penalty is warranted.

I find that a ten (10) day suspension is significant and should bring about voluntary compliance in the future.

ORDER

Pursuant to section 20(2) of the *Act*, I order a suspension of the Liquor Primary Licence No. 031589 for a period of ten (10) days to commence at the close of business on Saturday, September 13, 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)

Original signed by

Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: August 19, 2008

cc: Prince George RCMP

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

Liquor Control and Licensing Branch, Surrey Regional office
Attn: Olubode Fagbamiye, Branch Advocate