



**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 Heartbreakers
1192 5th Avenue
Prince George, BC V2L 3K9

Case: EH12-147

For the Licensee: Adriano Spoletini and Leah Spoletini

For the Branch: Peter Mior

General Manager's Delegate: A. Paul Devine

Date of Hearing: January 22, 2013

Place of Hearing: Prince George, BC

Date of Decision: May 27, 2013

Liquor Control and
Licensing Branch

Mailing Address:
PO Box 9292 Stn Prov Govt
Victoria BC V8W 9J8
Telephone: 250 952-5787
Facsimile: 250 952-7059

Location:
4th Floor, 3350 Douglas Street
Victoria BC
<http://www.pssg.gov.bc.ca/lclb/>

INTRODUCTION

The Licensee operates a liquor primary facility known as “Heartbreakers” under Liquor Primary Licence Number 031589 (the “Licence”). The establishment is located at 1192 5th Avenue in Prince George, BC. Under the terms of its licence, the hours of operation of Heartbreakers are 9 a.m. to 3 a.m. Monday to Sunday inclusive. The licence is also subject to the terms and conditions set out in the publication “A Guide for Liquor Licensees in British Columbia.”

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Branch alleges that on June 9, 2012, the Licensee permitted a minor to attend on its premises in contravention of section 35 of the *Liquor Control and Licensing Act* (the “Act”). The circumstances leading to the alleged contravention were initiated when at approximately 1 a.m., the RCMP responded to the report of an assault inside the front door of the licensed facility. During the investigation, two females aged 21 and 16 were interviewed. Afterwards a police officer observed them entering the establishment. Later the RCMP conducted a “walk-through” of the establishment and found the underage female and her friend at a corner of the bar near the DJ booth. When asked for ID, she told the police that she did not have any on her person. She said the door staff always let her in as they knew her and did not request ID. A Licensed Premises Check (“LPC”) was issued for allowing a minor to attend on the premises.

The Branch proposes a seven day suspension of the licence. As well, it proposes that several terms and conditions be attached to the licence. The reason for the amount of the proposed penalty was because this was a second contravention involving a female minor who was permitted into the licensed establishment. The first incident involved a female who consumed a quantity of liquor, left the establishment, and died 45 minutes later. The cause of her death was not determined. The seven day suspension was said

to be warranted to send a clear message to the Licensee, the community, other licensees, and minors that minors will not be permitted inside a licensed establishment.

RELEVANT STATUTORY PROVISIONS

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

Section 35

A person who holds a licence under this Act or who sells liquor under the Liquor Distribution Act, or the person's employee, must not authorize or permit a minor to enter on or to be on premises where liquor is sold or kept for sale except

- (a) if the minor is accompanied by a parent or guardian on premises where liquor is sold exclusively for consumption off the premises,
- (b) with lawful excuse, or
- (c) in prescribed circumstances.

EXHIBITS

1. Branch Book of Documents Tabs 1 -14
2. Licensee Documents #2(a) – 2(g)
3. Photocopy of ID's seized by Licensee

ISSUES

1. Did the contravention occur?
2. If so, has the Licensee established a defence to the contravention?
3. If the contravention is proven, what penalty, if any, is appropriate?
4. What conditions, if any, should be added to the licence of the Licensee?

EVIDENCE - THE BRANCH

Liquor Inspector

The Liquor Inspector testified that he has 10 years of experience with the Branch. Previously, he served with the RCMP for 25 years, and also worked as a fraud investigator for 2 years.

The Liquor Inspector testified that he learned about the June 9, 2012 incident involving the Licensee when he received an LPC from the RCMP. The inspector then spoke with Adriano Spoletini, a principal of the Licensee, about the incident. The Liquor Inspector said that Mr. Spoletini was candid with him about what had occurred on that evening.

The Liquor Inspector testified that he conducted a telephone interview with the former employee who was working at the door on the night in question. He did not speak to her directly because she no longer works for the Licensee. She told the Liquor Inspector that she had been hired as a coat check person but was quickly put on duty at the door to check ID. She said she had no real training, and had been left to work alone at the door. On the evening of the incident, she was working alone while the Licensee was running a bikini contest. Mr. Spoletini was acting as the DJ for the event. She said she was terminated from her employment after the police issued the LPC.

Recommended penalty

In respect of compliance history, the Liquor Inspector testified the Branch records indicated there had been a compliance meeting in 2003 between the Licensee and a former liquor inspector. At that time, the concern for the Branch was problems with patron intoxication, service to minors, and the removal of liquor at the end of service. During this meeting, the Licensee committed to address these issues, and to monitor the activities going on outside of the club.

The Liquor Inspector conducted a compliance meeting with the Licensee on February 17, 2006. The meeting was to educate the Licensee, and bring it into compliance. The Licensee made commitments about future compliance. The former manager of the establishment and a principal of the Licensee were present at the meeting.

On December 6, 2007 the Liquor Inspector met with the Licensee over an issue about signage. Following this, on August 19, 2008, a delegate of the General Manager issued a decision concerning an incident involving the sudden death of a minor female who had been inside the facility operated by the Licensee. The establishment was called the "Rum Jungle" at the time. The minor female had false ID with which she gained access to the facility. She died after leaving the establishment. The exact cause of her death was not ascertained. The Licensee had a 10 day licence suspension imposed following this event.

In the present case, the Liquor Inspector issued a Notice of Enforcement Action ("NOEA") on October 12, 2012 based on his investigation which included information received from the RCMP. The Occurrence Report from the RCMP outlined the following circumstances leading to the contravention of allowing a minor to attend on the premises of the Licensee contrary to section 35 of the *Act*:

- At approximately 1 a.m. on June 9, 2012, police responded to an assault inside the front door of the licensed facility. The police were informed that a male had struck another male on the head with a beer bottle and inflicted lacerations.
- The male suspect left the scene and was located by police a short distance away in the company of another male, a 21-year-old female, and a 16-year-old female who was known to the police.
- On questioning, all admitted that they had been inside the licensed facility and were present when the assault occurred. The male suspect was arrested, and remained in cells until sober.

- The two females advised that they were returning to the club to continue drinking. A police officer observed them entering the front door of the licensed facility, and the 16-year-old female was not seen to leave.
- At 1:35 am, two constables entered the licensed facility to conduct a “walk-through” of the establishment. They found the 16-year-old female and her friend sitting at a corner of the bar near the DJ booth. The 16-year-old female was asked to attend outside.
- Upon requesting ID, the 16-year-old female told the police that she did not have any ID on her person. She was asked how she got inside the bar without ID, and stated they always let her in as they knew her and did not request ID.
- The RCMP issued an LPC for allowing a minor to remain on the premises. The Licensee advised police that she must have got in using false identification. The RCMP asked to review the surveillance footage of the CCTV system on site, and were told that the system was being upgraded and was not operational.

The Liquor Inspector recommended a seven day suspension as this was a second contravention involving minors inside the establishment. The first incident was the one that lead to the 10 day licence suspension. During its investigation of the earlier incident, the Branch examined video tape from inside the establishment and generated an extensive report. It was determined that the Licensee had allowed 240 people into the licensed facility that evening. On average, the door staff took 2.1 seconds to view ID, and some patrons were not asked for ID at all. The entrance doorway was dark, and it was felt that the ID checking by the Licensee was inadequate. As a result of these issues, a 10 day licence suspension had been recommended, and was subsequently served.

In the opinion of the Liquor Inspector, the Licensee blatantly disregarded its obligations with respect to the current contravention. The former employee was not trained, and the Licensee only put someone at the door after the police arrived at the establishment. A lengthy suspension was needed to bring home the message to the Licensee, its employees, and to the community at large the seriousness of the issue of allowing minors inside the establishment.

Recommended terms and conditions

As to the terms and conditions, the Liquor Inspector proposed the following terms and conditions, for the reasons appended to each:

1. Video Surveillance

- (a) Licensee must have video surveillance at all ID checking areas.
- (b) Licensee must have video surveillance at all entrances and exits to the establishment and must cover the exterior and interior area of the exits and entrances.
- (c) The video surveillance system must be capable of producing video records on demand by the police or the liquor inspector.
- (d) Licensee must not permit any patrons to enter the establishment in the event that the video surveillance system is not working.
- (e) The video surveillance system must be capable of retaining seven days worth of data.

The Liquor Inspector testified that video from the Licensee's system has been available in the past, but on this occasion, he told the police it was not working. As well, he would not allow the police to check his system. The old video equipment was also of poor quality, so better equipment was required and the lighting by the door was poor.

On June 21, 2012 Mr. Spoletini advised the Liquor Inspector that the video equipment was not functioning because of a defective hard drive. A replacement had been ordered but he did not know when it would be installed.

2. Identification Verification

- (a) The Licensee must use electronic scanning equipment for ID verification for all patrons upon entry or re-entry of the establishment.
- (b) Licensee must not permit any patrons to enter the establishment in the event that the electronic ID scanning system is not working.

The Liquor Inspector testified that the Licensee needs a scanning system to ensure minors are not let into the club. There is nothing in place now, and so minors continue to gain access. As well, staff are not trained in age detection or document examination, and the equipment will scan for false ID.

3. Patrons

- (a) All patrons must enter and exit through the front main doors of the establishment.
- (b) Patrons may not enter at any time for any purpose through alternate entrances.

The Liquor Inspector testified that patrons exiting and entering had been an issue at the club but was not now as the door had been alarmed. He was not sure if the door entrances and exits remained a problem.

4. Security Staff

- (a) The Licensee must hire an adequate number of licensed security to conduct all required screening and other security functions.
- (b) The licensed security staff must conduct all screening required during all hours the establishment is open and operating.

- (c) The security staff must be briefed in detail on their duties and must be clearly identifiable as security staff.

The Liquor Inspector stated that the Licensee needs to hire licensed and visible security staff to screen patrons and check for intoxication. They need to be in place and proactive when the club is open, and be briefed nightly about coming events, dangerous patrons, and similar issues.

5. Police and Liquor Inspector Authority

- (a) Upon demand, the police or liquor inspectors, have the right to examine the ID scanner, video recorder, at any time to confirm they are operational and working as intended.
- (b) On demand, the licensee will provide copies of all video surveillance maintained by the system.

The Liquor Inspector asserted that the RCMP needed to have access to the video recording system operated by the Licensee to ensure that it is working. It is to be available on demand in order to corroborate branch or police evidence.

6. Signage

- (a) Signs advising patrons of what information is being captured by the ID scanning system and how it will be used will be placed in prominent locations.

The Liquor Inspector testified that signage is required to advise patrons that their ID will be scanned and shared with enforcement agencies. The Licensee operates the largest cabaret in Prince George, and needs to deal with minors and intoxicated patrons.

The Liquor Inspector stated that all of the terms and conditions in the NOEA were designed to address public safety issues, and would assist the Licensee in addressing these issues.

Cross examination

In cross examination, the Liquor Inspector acknowledged that the incident involving the teen that died outside of the club had occurred six years ago, and the cause of her death was not ascertained. As well, he had been into the licensed facility several times since, and had seen staff checking for ID. He agreed there were usually 2-3 staff present at the entrance, as well as a coat check person. As far as the concern about lighting being inadequate, he agreed that lighting at the main door was good. He did not dispute that more lighting had been added since. He did not dispute that the people who were normally not asked for ID were staff members. As well, he agreed that the police told him the Licensee had been cooperative.

The Liquor Inspector agreed that security guards are not normally trained to ask patrons for ID. He said there was one security agency in town that employed guards who were trained to check ID. He also agreed that the Licensee has seized hundreds of fake ID's, more than any other similar establishment in town.

The Liquor Inspector agreed that some of the statements in his records were inaccurate. For example, he agreed that the Licensee told him the video camera was not working because the hard drive failed and it was out for repairs. He testified, however, that the RCMP advised him the Licensee had refused to allow them to see the allegedly non-functional video equipment.

In response to the Licensee's suggestion that an ID scanner was already being used in the club, he replied that may be but he had not seen it yet. On questioning as to how security would assist the Licensee, the Liquor Inspector said some security agencies have trained staff with Serving it Right certifications. He agreed the security staff would also need to be qualified in document examination and intoxication awareness. While this type of training was uncommon among security employees, he stated there was one security agency in Prince George that could provide staff with this training.

The Liquor Inspector was questioned about the statement in the NOEA that security personnel would be engaged to perform “other security functions”. He testified that the functions would include patrolling outside the establishment, door patrol, and observing patrons for intoxication. He said the Licensee was “vicariously responsible” for dealing with fights among patrons leaving the facility, the use of drugs in the adjacent parking lot, minors hanging around outside, and for public safety issues. In response to the Licensee’s suggestion that it could not control activities occurring on the street, and because it did not own or operate the parking lot, it would have insurance issues with the suggested requirement to patrol there. The Liquor Inspector replied that some bars in Vancouver were engaged in similar activities.

With respect to the proposed term and condition that the establishment must close if the video system was not functional, the Liquor Inspector agreed the Licensee could not control the timing on when such equipment might fail. He also agreed that the Licensee had been cooperative providing video in the past.

EVIDENCE - THE LICENSEE

Licensee

Adriano Spoletini testified that he and his wife have operated the establishment of the Licensee for 27 years. He testified that the present CCTV video system is seven or eight years old and takes clear pictures. The Licensee employs an ID scanner already but patrons still try to deceive staff at the door. Staff are trained to check for ID. As well, the exit doors are armed against opening. The proposal to place video cameras outside the club will not assist with problems inside. More signage will not work as minors will attempt to come in regardless.

Mr. Spoletini testified that while there may be lineups outside the club, most patrons line up inside because there is a lengthy passageway that snakes back and forth inside the main door. There are cameras at the entrance and exits to the club. One video camera is located outside, and pans both the sidewalk and the lineups outside. The video CCTV system can record up to 3 weeks of records.

The Licensee testified that he is concerned about theft if he places more video cameras outside. There was another camera outside previously, and someone used a ladder to climb up and cut the cable in order to steal it.

Mr. Spoletini testified that the Licensee's policy is to check all ID of all people entering into the club. Staff are trained in ID checking, over-service, and identifying intoxication in patrons. Training is ongoing, and consists of spot checks. Staff are observed and told what to look for. When working at the bar, they must ID and re-ID, even if a wrist band has been given to a patron. Coat check employees all have training, and are responsible to check for ID as well. Porters are employed in the club to help staff in their duties. The porters clean up, check outside the club, perform bathroom checks, and conduct head counts every ½ hour. They check the exit doors, and monitor patrons inside the club. Porters and bartenders work together to check ID's and check for intoxication. Porters call police if needed.

Mr. Spoletini testified that the coat check employee the Liquor Inspector spoke to began her employment working in the licensed retail facility, and was first employed there in February 2012, not in April as she apparently told the Liquor Inspector. She then moved to Heartbreakers club on March 31st, and was trained there as well. She and other employees worked the entrance to the club as well as the coat check. He and his wife also both work on the entrance regularly, so staff there are not left alone.

He testified that on the night of the incident, the club was not busy. The headcount was at most 143 patrons, and the club can hold up to 400. The club had employed a DJ for the event that was being put on that evening, and Mr. Spoletini only helped for about 15 minutes. The rest of the time, he worked the floor, and helped with staff inside. The Licensee testified that he and his wife were at the door most of night, and porters were there from time to time as well.

Mr. Spoletini testified that employing security guards to check for ID would not be helpful because most are not trained for that function. The Licensee would in any event be held responsible if the security guards did not check ID properly. Employing an outside agency would also raise insurance issues. As for shutting down the establishment if the video equipment failed, it could take up to 30 days for repairs to be effected. It took 7 days to replace the hard drive that failed at the time of this incident, and it malfunctioned on a weekend.

Cross examination

Mr. Spoletini agreed he did not produce documents to support his assertion that employees signed off on the Licensee's policies to confirm that they read and understood them. Instead, a sample of a Daily Reports form that documents headcounts and incidents was produced in evidence. These reports are signed off by him or by staff members on the go.

He testified that the employee the Liquor Inspector spoke to was working at the door. She was not working on coat check on the evening of the incident. He agreed there were no documents confirming that she had read and signed off on the Policies and Procedures document that was produced in evidence by the Licensee. Nor were there any letters from staff to corroborate his evidence about staff training because the club has a fairly high staff turnover.

Mr. Spoletini testified that the RCMP were inside the club three times on the night of the incident. He worked with the DJ for only 15 minutes, not all night as was suggested by the Liquor Inspector. For the rest of the evening, he worked behind the bar. He said that he had spoken to the employee about the minor coming into the club, and she said the minor must have snuck by her.

Manager

The Licensee's spouse and manager at the establishment testified that the Licensee has tried to keep up with changes in systems like the ID scanner, and is cooperative with the Branch and local police. Placing a number of cameras outside the club as directed, however, would require a completely new video system. She testified that while there is an ID scanner in place, its use has caused complacency. Students can still have their ID successfully scanned, and then pass it on to a friend.

The Manager testified that the use of security would be dangerous. She generally assigns female staff to check ID at the door because male patrons who are denied entrance won't challenge them physically. Hiring male security to work at the door would be provocative, expensive, and would still require training and supervision by the Licensee. As a result, she does not believe the security guards will enhance ID checking or security in the establishment.

The Manager testified that on the evening of the incident, she had been working at the door checking ID with the employee who spoke to the Liquor Inspector. After the bikini contest ended, she heard a disturbance outside. She went outside with one of the porters and flagged down an RCMP car to deal with the incident. Afterwards, she used the washroom, and then went to the kitchen to load dishes into dishwasher. Meanwhile, there were two employees at the door.

The Manager testified that while the Licensee seizes ID that is improperly used, the real owners often return with the RCMP to recover their ID that was used by someone else. The Licensee uses several devices to scrutinize and control its patrons. For example, the stairs in the club are monitored to identify patrons who show evidence of difficulty walking down them due to intoxication. A beat curve is used to slow the music down near the end of evening so that patrons are not riled up as they leave. The head count in the club goes down after 2 p.m.

The club has never been overcrowded, so its main issues are controlling minors trying to enter the club, and intoxication among its patrons. The Manager testified that pre-drinking is often an issue among patrons. Screening for this and for ID is mainly done at the door. The Licensee hires students from the local university, and so there is a high staff turnover.

The Manager testified that when the club was known as the "Rum Jungle", the Licensee was told by the police to keep gang members out. A bar watch program was instituted in Prince George but it failed. Since then, the Licensee now plays top 40 music, and has a lot fewer problems. With respect to the latest incident, it was the Licensee that was responsible for calling the police.

SUBMISSIONS - THE BRANCH

The Branch submits the Licensee disputed only penalty, not the contravention. The evidence of the RCMP about the contravention therefore cannot be contradicted. After receiving the Contravention Notice from the RCMP, the Liquor Inspector spoke to the former employee who worked at the door on the night in question. She advised that she had received minimal training, and was initially hired as a coat check person. She said that on the night in question, the club was busy, and she was the only person at the door to check for ID because a bikini contest was going on inside the club. She was unable to monitor the patron flow in and out of the club by herself. The female minor

must have entered the club through the smoking lineup aisle which was situated behind her, and she did not see the female until she was removed by police at about 1:30 a.m. The Branch submits the contravention has been proved, and it proposes a seven day suspension of the licence for the establishment. As well, it proposes terms and conditions on the licence. The amount of the proposed penalty reflects this being a second contravention involving a female minor who was permitted into the licensed establishment. The first incident involved a female who consumed a quantity of liquor, left the establishment, and died 20 minutes later. The cause of her death was not determined. Nevertheless, a ten day suspension was said to be warranted to send a clear message to the Licensee, the community, and other licensees that minors will not be permitted in a licensed establishment.

SUBMISSIONS - THE LICENSEE

The Licensee does not dispute the allegation that it was in contravention of Section 35 of the *Liquor Control and Licensing Act* because it admits that it allowed a minor to be on its premises. The Licensee conceded therefore that the contravention of having a minor in the premises occurred as alleged. The main concern of the Licensee was the proposed terms and conditions to be added to its licence. The Licensee asserts these would make continuing its business impossible.

REASONS AND DECISION

Contravention

The Licensee does not dispute the allegation that it was in contravention of Section 35 of the *Liquor Control and Licensing Act* because it allowed a minor to be on its premises. Ms. Spoletini disputed some of the police evidence concerning the nature of the incident that occurred outside of the establishment. Since the Licensee did not dispute the contravention, however, the Branch did not call the RCMP to give evidence about the incident. The Licensee did not give notice to the Branch that it was intending

to dispute this evidence. In the circumstances, I accept the evidence submitted by the Branch concerning the occurrence of the incident in preference to the evidence of the Licensee.

Section 35 of the *Liquor Control and Licensing Act* provides that a Licensee must not authorize or permit a minor to enter on or to be on premises where liquor is sold or kept for sale except in limited circumstances which are not applicable in this case.

It is not disputed that there was a minor female on the premises of the establishment on June 9, 2012 as alleged. It appears that she was not asked for identification when she entered into the establishment. According to police evidence, she advised that she did not have any identification on her person. She also told the police she had been inside the establishment previously that evening. When the police entered the club, she was found sitting with a friend near the DJ booth. I am satisfied on this evidence that the Licensee committed a contravention under section 35 of the *Act* both by allowing a minor to enter into and be on its premises.

Due Diligence

The Licensee is entitled to consideration of whether it acted with due diligence, and so ought to be relieved of any adverse consequences that might be levied under the *Act* despite the finding of a contravention. The onus to establish due diligence lies with the Licensee.

In order to establish due diligence, the Licensee must show that it had procedures in place to prevent the contravention from occurring, and those procedures were regularly and consistently applied. The test for due diligence is set out in the Supreme Court of Canada decision *R. v. Sault Ste. Marie* (1979) 2 SCR 1299, where at page 1331, Dickson, J. stated:

One comment on the defence of reasonable care in this context should be added. Since the issue is whether the defendant is guilty of an offence, the doctrine of respondent superior has no application. The due diligence which must be established is that of the accused alone. Where an employer is charged in respect of an act committed by an employee acting in the course of employment, the question will be whether the act took place without the accused's direction or approval, thus negating willful involvement of the accused, and whether the accused exercised all reasonable care by establishing a proper system to prevent commission of the offence and by taking reasonable steps to ensure the effective operation of the system. The availability of the defence to a corporation will depend on whether such due diligence was taken by those who are the directing mind and will of the corporation, whose acts are therefore in law the acts of the corporation itself.

In British Columbia, the BC Supreme Court in the case of *Plaza Cabaret v. General Manager, Liquor Control and Licensing Branch* (2004) BCSC 248 (CANL II), the Court set out the criteria a licensee must meet in order for it to be found not responsible for contravention under the *Act*:

[25] If a licensee is not to be responsible for unlawful conduct occurring in its establishment within the meaning of Section 36(2)(b), it must prove, on a balance of probabilities each of two facts: that the employee was not the directing mind of the licensee in relation to that part of the licensee's operations in connection with which the unlawful conduct arose, and, if that proof is provided, that those who are, in fact, responsible for that part of the licensee's operation were duly diligent in attempting to prevent the occurrence of unlawful conduct or activities.

The Licensee led some evidence about the training that it undertakes with its staff with respect to checking the ID of patrons seeking entrance into its establishment. It did not, however, provide documents or other evidence as to the specific nature of the training, how often it occurs, and how staff are tested for compliance with the obligation to check for ID both at the entrance to and inside the establishment.

It cannot be said that the employee who the Liquor Inspector spoke to over the telephone was a directing mind of the Licensee. Her evidence about the training she received is disputed by the Licensee. Since she was not called as a witness, her evidence in respect to her training was hearsay. The Manager was also working at the door on the evening in question. One of her responsibilities was to ensure that proper steps were taken to check for ID of patrons seeking admission into Heartbreakers. She did not discharge her responsibility.

While the Licensee testified about its policies to check for ID, and produced evidence of confiscated ID taken in the course of business, it produced no evidence of how its employees are trained to check the ID of patrons coming into the establishment. In fact, the Licensee spoke of the difficulty training staff because of the transient nature of the students that it hires to work in the establishment. Proper initial training and regular ongoing training and testing of staff with respect to their responsibilities under the *Act* are a requirement to demonstrate due diligence. I find in all of the circumstances that the defence of due diligence is not made out.

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 may do one or more of the following:

- Take no enforcement action
- Impose terms and conditions on the licence or rescind or amend existing terms and conditions
- Impose a monetary penalty on the licensee
- Suspend all or any part of the licence
- Cancel all or any part of the licence
- Order the licensee to transfer the licence

I am not bound to order the penalty proposed in the Notice of Enforcement Action. However, if I find that either a licence suspension or a monetary penalty is warranted, I am bound to follow the minimums set out in Schedule 4 of the Regulation. I am not bound by the maximums and may impose higher penalties when it is in the public interest to do so.

The primary goal of the Branch in bringing enforcement action and imposing penalties is to achieve voluntary compliance. The factors that are considered in determining the appropriate penalty include whether there is a proven compliance history, 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.

Suspension penalty

The Branch proposes a penalty consisting of a seven day suspension, which is the maximum penalty for a first contravention under the Schedule. The Branch relies in part on the prior incident which was the subject of a decision of a delegate of the General Manager on August 19, 2008. This incident occurred on December 23, 2007. As a result of the death of a minor who had been inside the licensed facility then known as the “Rum Jungle” an investigation was undertaken. Based on video surveillance evidence, it was determined that the Licensee had effectively no procedures in place to deal with the problem of underage patrons being admitted to the establishment. More than 100 patrons were granted access to the licensed establishment without proper ID checks. A 10 day suspension was applied.

The Branch relies on this prior incident to seek a seven day licence suspension under Schedule 4 of the *Regulation*. Section 1(1) of Schedule 4 of the *Regulation* provides:

For the purposes of this Schedule,

- (a) a contravention is of the same type as another contravention if each contravention is described by the same Item of this Schedule, and
- (b) a contravention by a licensee is
 - (i) a first contravention if the contravention was committed at or in respect of an establishment and the licensee has not committed a contravention of the same type at or in respect of that establishment within the 12 month period preceding the commission of the contravention...

The penalty range for a contravention of Section 35 of the *Act* (minors on licensed premises) is a 4-7 day suspension for a first contravention. The contravention in this case is a first contravention as described in the *Regulation*. When considering the range of penalties for the contravention, I may consider the past history of the Licensee. The earlier suspension which occurred following the incident in 2007 was for a breach of Section 33 of the *Act* for selling liquor to a minor. While the breach was under a different provision of the *Act*, the surrounding circumstances were flagrant in that patrons were admitted to the establishment with only the most cursory of checks for ID. I am entitled to consider these past circumstances when deciding the range of the penalty for the contravention which is now before me.

I find this to be a first contravention for the purposes of Schedule 4 and for the calculation of a penalty. On the other hand, the circumstances in which the minor was admitted to the licensed establishment were fairly egregious. She told police she had been inside the establishment earlier and had been drinking there. When she entered the facility again, she was not asked for ID at all at the door; nor was she asked for ID when she was inside the licensed establishment. I conclude that a suspension is warranted in all of the circumstances here, and when considering the current contravention coupled with the prior history, I am satisfied that a seven day licence suspension is sufficient to ensure voluntary compliance in the future.

Terms and conditions

I turn now to address the terms and conditions which the Branch seeks to add to the licence of the Licensee. I will deal with each in turn. I begin with proposition that the Branch must establish on the evidence that there are proper and reasonable grounds to establish the need for each of the proposed terms and conditions. Such grounds are normally established by considering not only the current contravention of the *Act* but the entire compliance history of the Licensee with the Branch.

Video surveillance term and condition

The Branch proposed the following term and condition with respect to video surveillance:

1. Video Surveillance

- (a) Licensee must have video surveillance at all ID checking areas.
- (b) Licensee must have video surveillance at all entrances and exits to the establishment and must cover the exterior and interior area of the exits and entrances.
- (c) The video surveillance system must be capable of producing video records on demand by the police or the liquor inspector.
- (d) Licensee must not permit any patrons to enter the establishment in the event that the video surveillance system is not working.
- (e) The video surveillance system must be capable of retaining seven days worth of data.

The Licensee testified that it would be required to buy a new video system in order to satisfy the areas that this proposed term would require. Further, if the system requires service, it might be out for some time and the business would be effectively shut down while it was repaired.

I agree that this term as proposed could have an impact of suspending the licence of the Licensee far beyond that which would be available under the *Regulation*. Further, the video surveillance footage was used during the hearing before the delegate in 2008, and was found to be of good quality. The delegate also had evidence that the lighting at the entrance to the establishment was good. The current video system is capable of retaining the amount of data required by the Liquor Inspector according to the Licensee.

He was also able to place another camera at the outside of the establishment on his current system but the camera was stolen. Another camera could be placed in the same spot with a cage or other device to prevent theft. I would therefore substitute the following Term and Condition for that proposed by the Branch:

1. Video Surveillance

- (a) Licensee must have video surveillance at all ID checking areas.
- (b) Licensee must maintain and use video surveillance cameras at all interior entrances and exits to the establishment, and one additional video camera must be added and used to cover the exterior of the establishment.
- (c) The video surveillance system must be capable of producing video records on demand by police or the liquor inspector.
- (d) Licensee must inform the liquor inspector as soon as reasonably practicable when the video surveillance system fails or is not functional for other reasons such as replacement or upgrading of the system. The Licensee must also advise the Liquor Inspector when the video system will be returned to service.
- (e) The video surveillance system must be capable of retaining seven days of data.

Identification verification term and condition

The Branch proposed the following term and condition with respect to identification verification:

2. Identification Verification

- (a) The Licensee must use electronic scanning equipment for ID verification for all patrons upon entry or re-entry of the establishment.
- (b) Licensee must not permit any patrons to enter the establishment in the event that the electronic ID scanning system is not working.

The licensee testified that it has the electronic scanning equipment in place. This evidence is undisputed by the Liquor Inspector. As with the video surveillance equipment, it would be unreasonable to shut the business down if the ID scanning system is not working. I would therefore substitute the following Term and Condition:

2. Identification Verification

- (a) Electronic scanning equipment for ID verification must be maintained in good working condition and all patrons must have their identification scanned and checked upon entry and any re-entry as the case may be.

Patrons term and conditions

The Branch proposed the following terms and conditions with respect to patrons:

3. Patrons

- (a) All patrons must enter and exit through the front main doors of the establishment.
- (b) Patrons may not enter at any time for any purpose through alternate entrances.

The Liquor Inspector agreed that the doors other than the main doors are alarmed and only used in cases of urgency. I would add the words "except in cases of emergency" after the word "purpose" so that the terms and conditions would read:

3. Patrons

- (a) All patrons must normally enter and exit through the main doors of the establishment.
- (b) Patrons may not enter or exit at any time for any purpose through alternate entrances to the establishment, except in cases of emergency.

Security staff term and condition

The Branch proposed the following terms and conditions with respect to security staff:

4. Security Staff

- (a) The Licensee must hire an adequate number of licensed security to conduct all required screening and other security functions.
- (b) The licensed security staff must conduct all screening required during all hours the establishment is open and operating.
- (c) The security staff must be briefed in detail on their duties and must be clearly identifiable as security staff.

This condition is said to be necessary to screen patrons and to check for intoxication. I agree with the Licensee that it would be obliged to ensure that the security staff is hired from a security agency complied with the requirements of the governing legislation. As well, there appears to be very little in the way of resources available in the community that can supply security staff with the appropriate training. The Licensee might be placed in a difficult position attempting to supervise and train the employees of another employer in order to achieve compliance with its obligations under the *Act* and *Regulation*. There was no proper basis laid in the evidence for this proposed term, and I would decline to order that it be added to the licence.

Police and liquor inspector authority term and condition

The Branch proposed the following terms and conditions with respect to police and liquor inspector authority:

5. Police and Liquor Inspector Authority

- (a) Upon demand, the police or liquor inspectors, have the right to examine the ID scanner, video recorder, at any time to confirm they are operational and working as intended.
- (b) On demand, the licensee will provide copies of all video surveillance maintained by the system.

There was some evidence that the Licensee declined to show the RCMP the video equipment which it said was unavailable and out for repair. The Licensee disputes this evidence. Nevertheless, the term and condition is reasonable and I order that it be added as a Term and Condition to the licence. The Liquor Inspector asserted that the RCMP needed to have access to the video recording system operated by the Licensee to ensure that it is working; it is to be available on demand in order to corroborate Branch or police evidence. The Licensee says that he cooperates with the police and the Branch, so this Term should not be controversial. I order that it be added as a Term and Condition to the licence as follows:

5. Police and Liquor Inspector Authority

- (a) Upon demand, the police or liquor inspectors have the right to examine the ID scanner and the CCTV video recorder at any time to confirm they are operational and working as intended.
- (b) On demand, the licensee will provide copies of all video surveillance maintained by the system.

Signage term and condition

The Branch proposed the following term and condition with respect to signage:

6. Signage

- (a) Signs advising patrons of what information is being captured by the ID scanning system and how it will be used will be placed in prominent locations.

The Liquor Inspector testified that signage is required to advise patrons that their ID will be scanned and shared with enforcement agencies. The Licensee did not seriously dispute the efficacy of this term, and so I order that it be added as a Term and Condition to the licence.

ORDER*Suspension*

Pursuant to section 20(2) of the *Act*, for the finding of a Section 35 contravention, I order a suspension of Liquor Primary Licence Number 031589 for a period of seven (7) days to commence at the close of business on June 27, 2013, and to continue each succeeding business day until the suspension is completed.

To ensure this order is effective, I direct that the liquor licence be held by the Branch or the Prince George RCMP detachment from the close of business on June 27, 2013, until the licensee has demonstrated to the Branch's satisfaction that the suspension has been served.

Signs satisfactory to the General Manager notifying the public that the licence is suspended will be placed in a prominent location in the establishment by a Branch inspector or a police officer, and must remain in place during the period of suspension.

Terms and Conditions

Pursuant to section 20(2) of the *Act*, I Order that the following Terms and Conditions be added to Liquor Primary Licence Number 031589:

1. Video Surveillance

- (a) Licensee must have video surveillance at all ID checking areas.
- (b) Licensee must maintain and use video surveillance cameras at all interior entrances and exits to the establishment, and one additional video camera must be added and used to cover the exterior of the establishment.
- (c) The video surveillance system must be capable of producing video records on demand by police or the liquor inspector.
- (d) Licensee must inform the liquor inspector as soon as reasonably practicable when the video surveillance system fails or is not functional for other reasons such as replacement or upgrading of the system. The Licensee must also advise the Liquor Inspector when the video system will be returned to service.
- (e) The video surveillance system must be capable of retaining seven days of data.

2. Identification Verification

Electronic scanning equipment for ID verification must be maintained in good working condition and all patrons must have their identification scanned and checked upon entry and any re-entry as the case may be.

3. Patrons

- (a) All patrons must normally enter and exit through the main doors of the establishment.
- (b) Patrons may not enter or exit at any time for any purpose through alternate entrances to the establishment, except in cases of emergency.

4. Police and Liquor Inspector Authority

- (a) Upon demand, the police or liquor inspectors have the right to examine the ID scanner and the CCTV video recorder at any time to confirm they are operational and working as intended.
- (b) On demand, the licensee will provide copies of all video surveillance maintained by the system.

5. Signage

- (a) Signs advising patrons of what information is being captured by the ID scanning system and how it will be used will be placed in prominent locations.

Original signed by

A. Paul Devine
Enforcement Hearing Adjudicator

Date: May 27, 2013

cc: Liquor Control and Licensing Branch, Surrey Office
Attention: Michael Clark, Regional Manager

Liquor Control and Licensing Branch, Vancouver Office
Attention: Peter Mior, Branch Advocate