



**DECISION OF THE  
GENERAL MANAGER  
LIQUOR CONTROL AND LICENSING BRANCH**

IN THE MATTER OF  
A hearing pursuant to Section 20 of  
**The Liquor Control and Licensing Act RSBC c. 267**

**Licensee:** 631825 BC Ltd.  
dba Burrowing Owl Pub

Case Number: EH02-88

**Appearances:**

For the Licensee David Rankin

For the Branch Lisa Field

Enforcement Hearing Adjudicator Suzan Beattie

Date of Hearing November 28, 2002 and  
December 10, 2002

Place of Hearing Penticton and Vancouver, B.C.

Date of Decision April 9, 2003

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**Ministry of Public  
Safety and Solicitor  
General**

Liquor Control and  
Licensing Branch

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**INTRODUCTION**

The licensee, Burrowing Owl Pub, is located at 7605 - 83 Street, Osoyoos, B.C. It holds a Class "I" Restoration Public House Licence #172297 for the sale and consumption of all types of liquor.

The hours of the liquor licence are Monday to Saturday from 11:00 A.M. to 1:00 A.M. and on Sunday from 11:00 A.M. to 12:00 Midnight. The liquor licence dated March 11, 2002, permits a maximum capacity for area 1 of 125 patrons and for the patio of 31 patrons.

**ALLEGED CONTRAVENTION AND RECOMMENDED PENALTIES**

The Liquor Control and Licensing Branch alleges that on July 20, 2002, the licensee contravened sections 33 and 35 of the *Liquor Control and Licensing Act* by supplying liquor to minors and by allowing minors on the premise, contrary to the *Act*.

Schedule 4 of the *Liquor Control and Licensing Regulations*, provides a range of licence suspensions and monetary penalties for each contravention. For the contravention of minors on licensed premises, the penalty range is one to three days or \$1,000 to \$3,000 for the first contravention. In this case, the branch is recommending a two (2) day suspension, the medium penalty for a first contravention.

For the contravention of supplying liquor to minors, the penalty range is four to seven days or \$5,000 to \$7,000 for the first contravention. In this case, the branch is recommending a five (5) day suspension for a first contravention.

The suspension will commence on a Friday and will continue on successive business days until completed, for the alleged contravention of sections 33 and 35.

The relevant statutory provisions of the *Liquor Control and Licensing Act and Regulations* state:

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### **33 Supplying liquor to minors**

- (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.

### **35 Minors on licensed premises**

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

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

### **ISSUES**

1. Whether the licensee contravened sections 33 and 35 of the *Liquor Control and Licensing Act*.
2. If so, is it proper to find contraventions for both sections of the *Liquor Control and Licensing Act*?
3. If so, are the recommended penalties appropriate in the circumstances?

### **COMPLIANCE AND ENFORCEMENT HISTORY**

There is no record of prior contraventions, offences or enforcement actions for this licensee ("compliance history") or for this establishment. However, the branch file shows a Licence Premise Check dated April 26, 2002, regarding permitting an intoxicated person to remain in the part of the licensed establishment where liquor is supplied.

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**WITNESSES**

The branch called two of the four alleged minors and an R.C.M. Police officer as witnesses. The licensee did not call any witnesses.

**EXHIBITS**

The branch and the licensee presented the following exhibits:

**Exhibit 1****Book of Documents**

- Tab 1 Liquor Licence No. 172297
- Tab 2 Floor Plan
- Tab 3 Notice of Enforcement Action dated August 28, 2002
- Tab 4 Enforcement Action Recommended Report dated August 23, 2002
- Tab 5 Contravention Notice No. A001113
- Tab 6 Licensed Premise Check
- Tab 7 RCMP Facsimile Report
- Tab 8 Licensed Premise Check dated April 26, 2002
- Tab 9 Compliance and Enforcement Policy regarding Minors
- Tab 10 Guide for Licensees: Introduction and pg. 10
- Tab 11 Licensee Letter of Authorization
- Tab 12 Statement of Joshua Stevenson
- Tab 13 Statement of Cameron Marven

**Exhibit 2****Hearing Decisions**

- Tab 1 EH01-40 – 567326 BC Ltd. dba Red Lion Inn
  - Tab 2 EH01-49 – Uppal Holdings Ltd. dba Champagne's Cabaret
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- Tab 3 EH01-31 – AMPM Holdings Ltd. dba Oasis Hotel
- Tab 4 EH02-49 – XYZ Investments Ltd. dba Jungle Cabaret
- Tab 5 LAB L-9905 – Ed Bulley Ventures dba Planet Sports Lounge
- Tab 6 LAB L-9214 – Dell Hotel (1965) Ltd. dba Colony Motor Inn

**Exhibit 3** Letter dated November 13, 2002 from Lisa Field to Dave Rankin re: agreed facts.

## **EVIDENCE, SUBMISSIONS AND FINDINGS ON CONTRAVENTIONS**

### **Evidence**

Two of the four alleged minors testified that on July 20, 2002, they were underage. They described the events up to and including their removal from the establishment by the officer.

The officer testified that, while on routine patrol, he observed a minor known to him on the street in front of the establishment. He entered the establishment to find the minor he observed seated with three others at the bar, all with a beer in front of them.

The officer, in explaining the events of July 20, 2002, clarified two points in his hand-written police report. First, he agreed that the minors did not obtain off-sales and second, he clarified the phrase “2nd offence by [named individual]” as used in his report.

The officer’s clarification included the fact that the named individual he spoke to was an employee of the licensee and not a member of management. Further, the “second offence” comment referred to was a discussion between the officer and the licensee’s employee and was not in any way related to alleged contraventions involving minors. The officer typed his hand-written notes on August 12, 2002, and sent them by fax to the branch. The Notice of Enforcement Action based on the officer’s notes was issued on August 28, 2002.

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At the conclusion of the branch's evidence, the licensee agreed it had permitted minors on the premises contrary to section 35 of the *Liquor Control and Licensing Act*.

It also agreed that it had supplied liquor to a minor contrary to section 33 of the *Liquor Control and Licensing Act*.

### **Submissions**

The licensee argues that the offence of minors on licensed premises (section 35) is an included offence (as that term is used in criminal proceedings) within the offence of supplying liquor to minors (section 33).

It argues that it has been charged with both offences based on the same set of facts. The licensee says that, having admitted contravening section 33 by supplying liquor to minors it has no defence to the contravention of minors on the licensed premises.

The licensee questions whether there is ever a circumstance it could be found to have not had minors on licensed premises and be found to have supplied liquor to minors, contrary to section 35 of the *Act*.

The licensee argues that facing these two contraventions is a form of double jeopardy and a violation of section 11(h) of the *Charter*.

The licensee also argues administrative fairness. First, it argues that there was a delay between the date of the incident (July 20, 2002) and the notification to the licensee (August 28, 2002).

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## Findings

Turning first to the licensee's submission on administrative fairness, I acknowledge there was a delay between the date of the incident and notification to the licensee. However, I do not find this delay is a mitigating factor in the circumstances of this case.

However, I agree with the licensee that section 33 and section 35 represent one group of contraventions where proving one of the group means that the other contravention has been proven. On the Notice of Enforcement Action, the branch states all related contraventions so that, even if one of the group is not proven, the branch can still seek to prove that the related contravention occurred.

For example, the branch, in circumstances similar to this case, may allege both contraventions in the Notice of Enforcement Action. In the event that, at the hearing, the adjudicator found a contravention of a minor on the premises but not a contravention of supplying liquor to a minor, notice of the lesser contravention will have been given to the licensee.

The difficulty in this case is that, on the face of the Notice of Enforcement Action, it is not clear that, although both contraventions are alleged, the branch will only penalize the licensee for the higher of both contraventions.

As a result, in the case before me, the only appropriate contravention facing the licensee is section 33.

I find, based on the evidence before me and the licensee's admissions, that the licensee contravened section 33 of the *Act* on July 20, 2002.

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## **PENALTY SUBMISSIONS AND DECISION**

Pursuant to section 20(2) of the *Act*, having found that the licensee has contravened the *Act*, the *Regulations* and/or the terms and conditions of the licence, I have discretion to order one or more of the following enforcement actions:

- impose a suspension of the liquor licence for a period of time
- cancel a liquor licence
- impose terms and conditions to a licence or rescind or amend existing terms and conditions
- impose a monetary penalty
- order a licensee to transfer a licence

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

### **Submissions**

The licensee argues the penalty recommended in the Notice of Enforcement Action was based on the officer's report. As the officer testified, his written report with respect to off-sales and previous warnings was potentially misleading on its face.

### **Decision**

The *Regulations* provide for a graduated scale of penalties for contraventions of the *Act*. The graduated nature of the penalties is necessary for the consistent and vigorous enforcement of the provisions in the *Act* and *Regulations*.

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The branch's primary goal in determining the appropriate penalty along the scale 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 public safety and the well being of the community.

I am persuaded by the licensee's submissions that the recommended penalty of a five (5) day suspension is based on the two misunderstandings in the officer's report to the inspector. As a result, I am not convinced that a medium penalty is warranted in this case. The contravention of service of liquor to minors is serious and, notwithstanding the licensee's favourable compliance history, it presents a public safety risk and a risk to the community.

However, I find, based on these factors, that the minimum penalty of four (4) days is appropriate to signify to this licensee and others the seriousness of this contravention.

#### **ORDER**

Pursuant to section 20(2) of the *Act*, concerning the Class "I" Restoration Public House Licence #172297, I order as follows:

For the contravention of section 33 of the *Liquor Control and Licensing Act* on July 20, 2002, I order the licence suspended for four (4) days. I order the licence suspension to take effect as of the close of business on Thursday, May 22, 2003 and to continue each succeeding "business day" until the suspension is completed.

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Since I do not know whether the establishment would normally be open 7 days per week as of Thursday May 15, 2003, I do not know what the "business days" will be. To ensure that this order is effective, I direct that the liquor licence, Class "1" Restoration Public House Licence #172297, be held by the branch or the Osoyoos Detachment of the R.C.M.P. from the close of business, Thursday, May 15, 2003, until the licensee has demonstrated to the branch's satisfaction that the licensed establishment has been closed for four (4) business days.

The suspension sign notifying the public shall be placed in a prominent location by a liquor inspector or police officer. A member of the R.C.M.P. Osoyoos Detachment will be requested to attend the premises, take possession of the liquor licence and hold it in safekeeping during the term of the suspension.

*Original signed by*

Suzan Beattie  
Enforcement Hearing Adjudicator

Date: April 9, 2003

cc: R.C.M. Police Osoyoos Detachment

Liquor Control and Licensing Branch, Vancouver Island & the Interior Region  
Attention: Gary Barker, Regional Manager

Liquor Control and Licensing Branch, Surrey Regional Office  
Attention: Mac Matoul, Advocate

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