



**DECISION OF THE
GENERAL MANAGER
LIQUOR CONTROL AND LICENCING BRANCH
IN THE MATTER OF
A hearing pursuant to Section 20 of
The Liquor Control and Licensing Act RSBC c. 267**

Licensee:	The Drifter Motor Motel Ltd., dba Clover Inn 5708 – 176 th Street Cloverdale, B.C.
Case:	EH03-027
Appearances:	
For the Licensee	Peter Fan, President & CEO of Corporate Licensee
For the Branch	Marc Matoul
Enforcement Hearing Adjudicator	Edward W. Owsianski
Date of Hearing	May 1, 2003
Place of Hearing	Surrey, B.C.
Date of Decision	June 16, 2003

INTRODUCTION

The licensee, The Driftwood Motor Motel Ltd. operates the Clover Inn at 5708 – 176th Street, Cloverdale, B.C. The licensee holds several liquor licences within this establishment. This hearing deals with the operation of those areas covered by Liquor Primary Licence No. 12744 and known as the Legacy Show Room (the licensed premises). The licence permits the sale and consumption of liquor during the hours of sale from 12:00 Noon to 2:00 A.M. Monday through Saturday and from 11:00 A.M. to Midnight on Sunday. The licence permits 125 patrons in Area 1 and 60 patrons in Area 2. Exotic dancer entertainment is performed within the licensed premises.

ALLEGED CONTRAVENTION AND RECOMMENDED ENFORCEMENT ACTION

The Liquor Control and Licensing Branch has alleged:

that on or about January 30, 2003, minors were permitted on the licensed premises, contrary to section 35 of the *Liquor Control and Licensing Act*, (the *Act*) and has recommended a licence suspension penalty of a 1 day suspension to occur on a Thursday. The Regulations to the Act at Schedule 4 provide for a range of penalties for a first contravention of this nature of a licence suspension of 1 to 3 days or a monetary penalty of \$1000 to \$3000.

Section 35 of the Act states as follows:

Minors on licensed premises

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

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

ISSUES

1. Whether the licensee contravened Section 35 of the *Act* on or about January 30, 2003?
2. If so, is the recommended penalty an appropriate penalty in the circumstances?

EXHIBITS

The following exhibits were presented:

- A** Opening Statement of the Branch Advocate
- B** Book of Documents
- C** Book of Documents – Licensee Disclosed Documents
- D** Opening Statement of the Licensee
- E** Clover Inn Disclosure Documents

EVIDENCE - The Liquor Control and Licensing Branch

A Constable (Cst. A) from the Surrey Detachment of the R.C.M. Police testified that on January 30, 2003, at approximately 9:00 P.M. he attended at the Legacy Show Room of the Clover Inn accompanied by another R.C.M. Police Constable (Cst. B) for the purpose of checking for contraventions of the Act. They entered through the side entrance. There was no door staff present. He first checked the washrooms then the main area, noting approximately 20 patrons in the licensed premises with a waitress and a bartender on duty. Lighting was brightest on the stage where an exotic dancer was performing and over the pool table, it was more subdued in the remainder of the room, however was sufficient to make out the features of the patrons. All of the patrons appeared to be of age with the exception of a group of 4 males seated around the stage, approximately 10 – 15 feet from where he was standing who appeared to be between 16 – 20 years of age. He overheard Cst. B asking the waitress if

she had obtained ID from that group. She responded that she had, they were all born in 1981. He exited the licensed area via the side door after being inside for approximately 10 – 12 minutes. About 2 minutes later at approximately 9:14 P.M., 3 of the young appearing males also left via the side door. He requested their ID and received B.C. Drivers Licences from 2 of them indicating that they were 18 years of age. The 3rd did not have ID and he was also determined to be 18 years old. They all denied having consumed liquor and there was no indication that they had. One stated that he had been inside for approximately 40 minutes, the other two stated they had been there for approximately 15 minutes, arriving just prior to the police officers' arrival. The Cst. returned inside and checked the ID of the 4th male still seated beside the stage, he was found to be of age. The Cst. issued a Licensed Premises Check form (LPC) (exhibit B, tab 5) to the manager on duty. He wrote up his notes (exhibit , tab 7) immediately following.

A 2nd Cst. (Cst. B) from the Surrey Detachment of the RCMP testified that he attended at the Clover Inn on January 30, 2003, at approximately 9:00 P.M. with Cst. A to conduct a routine licensed premises check. They entered via the side door and he proceeded to the area in front of the liquor service bar. There was no door staff present, a waitress and bartender were working and one other male person was standing behind the bar. There were approximately 20 patrons inside, the majority of whom appeared to be of age. He noted 4 young males, 17 – 18 years of age sitting at the side of the stage approximately 20 feet from where he stood. He asked the waitress whether she had checked their ID. She replied that she had and they were all born in 1981. This surprised him as they did not appear to be that old. Lighting in the establishment was best on the stage and the pool table, dimmer elsewhere but sufficient to distinguish the features of the patrons inside. He left the licensed premises via the side door and assisted Cst. A in dealing with the 3 young males that had just left. He was certain that they were 3 of the 4 young appearing males that he had noted to be seated at the side of the stage and of whom he had pointed out to the waitress. Upon

determining that they were all 18 years old he re-entered the establishment and spoke again with the waitress and told her they were only 18 years old. She said that she may have only checked 2 of the 4 patrons. He and Cst. A left the establishment shortly thereafter and he wrote up his notes (exhibit B, tab 8) upon returning to the Detachment office.

EVIDENCE - The Licensee

A **waitress** testified that she has been employed at the establishment for more than 11 years, 6 years in the Licensee Retail Store and the remaining time as a bartender and part-time waitress. She referred us to the establishment's policy requiring the checking of ID (exhibit C, tab 2) and of the new Branch policy commencing in January 2003 requiring 2 pieces of ID to be produced (exhibit C, tabs 3 & 4). She also referred to a letter received from a Regional Manager of the Branch dated February 12, 2003, (exhibit E, tab E) which commended the establishment on checking for 2 pieces of ID of agents employed by the Branch on February 7, 2003, a date on which she was working. She testified that she was working as a waitress in the Show Room during the evening of January 30, 2003, when 4 young males entered through the side door and sat at a table against the wall near the disc-jockey booth. She requested their identification and each produced 2 pieces of ID as required. Two ordered water, two did not order anything. Shortly thereafter the police officers entered and Cst. B asked her if she had checked the ID of the 4 young appearing persons and pointed in the general direction of the 4 that she had checked previously. She told the Cst. that she had checked their ID. The police officers left and she then noticed the 4 young males seated at the stage near the other 4. She began to walk towards them and as she approached them they got up and left via the side door. She was certain that the minors had only been in the establishment for a maximum of 10 minutes. Shortly thereafter the original 4 left via the front door. The police officers then re-entered the establishment and she spoke again with Cst. B who told her that they had checked 3 of the 4 patrons seated near the

stage and they were only 18 years of age. She stated that she was confused and frustrated when she told Cst. B that she may have missed checking the ID of 2 of the patrons. She stated that she had written out a statement (exhibit C, tab 5) at a later date following the licensee receiving notification from the Branch.

A **bartender** testified that he has been employed at the establishment and was on duty during the evening of January 30, 2003. There were approximately 25 – 30 patrons in the establishment at around 8:00 P.M. and the waitress was busy cleaning in the area near the pool tables when 3 police officers entered through the side door and 3 – 4 kids came through the front door and sat at the side of the stage near the door. The establishment's policy requires the waitress to check for ID however she did not have the opportunity to do so when they left through the side door followed by the police officers. The young patrons had only been in the establishment for approximately 5 minutes. He did not check their ID as he was busy behind the bar and knew that she would check when she took their drink orders.

SUBMISSIONS

Liquor Control and Licensing Branch

The Branch Advocate in his oral and written submissions referred us to the following cases:

Liquor Appeal Board decision of November 23, 1992, Dell Hotel and Flamingo Hotel (dba Colony Motor Inn) and General Manager LCLB
Hotel Douglas, decision of the GM, LCLB Oct 2, 2001
Red Lion Inn, decision of the GM, LCLB, case #EH01-40/41/42
Champagne's Cabaret, decision of the GM, LCLB, case # EH01-49
Oasis Hotel, decision of the GM, LCLB, case # EH01-31

He submitted that the evidence of the police officers was clear, 3 minors were found within the licensed premises, having been there for up to 40 minutes. The licensee's policies do not set down procedures for implementation nor were they implemented in this instance. Vigilance is required on the part of the licensee and its employees and was not met on January 30th, 2003. The Branch had

raised concerns regarding minors with this licensee on 3 previous occasions in 1999, 98 and 96 (exhibit B, tabs 10, 12 & 13). The Branch's recommended penalty is the minimum suspension for a first contravention of this type and is necessary to bring home to the licensee the necessity for diligence.

The Licensee

The licensee in his written and oral submission submitted that he has operated this establishment as licensee since 1995, understands the requirements of the law, attempts to work with the Branch and the police and to deal with problems. He has recently received a letter from a Regional Manager of the Branch commending the establishment on their operation. He submitted that the evidence indicates that the minors had only been in the licensed premises for 5 minutes, were not served liquor and left when being approached by the waitress. He referred to the Hotel Douglas decision of the General Manager (October 2, 2001), "...mere presence of a minor in a licensed establishment is not sufficient to found the contravention. There must be some act, or lack of act on the part of the licensee to substantiate that the licensee authorized or permitted the presence. In this case the evidence establishes that there was less than 5 minutes between the earliest time that the young person could have entered the premises...." He submitted that in this case the licensee did not authorize or permit minors in the licensed premises and as such there is no contravention.

REASONS AND DECISION

Having carefully considered all of the evidence and for the reasons that follow I find that the licensee permitted minors to enter and to be on the premises where liquor is sold or kept for sale and in so doing contravened Section 35 of the Liquor Control and Licensing Act.

In finding that the licensee permitted minors to enter and to be on the licensed premises I accept the evidence of the police officers that they were on site for

approximately 14 minutes, the 3 minors were in the premises upon their arrival leaving at the time of the police officers' departure. The minors were thus on the premises for no less than 14 minutes. More than sufficient time for one of the staff on duty to check their identification. There appears to be an opinion of the staff at the establishment that it is the sole responsibility of the waitress to check for identification upon taking a liquor order. That does not meet the requirements of the law. It is clear that the provisions of the Act at Section 35, "must not authorize or permit a minor to enter or to be on premises" requires a high standard on the part of a licensee and its employees. That standard was not met in this instance. The licensee has chosen not to employ door staff to monitor and control entrance to the licensed premises, that being the case it should be a priority of all staff to ensure that minors are not permitted to enter. Here there were 2, perhaps 3 staff on duty, none of whom took the responsibility of the requirement of section 35 as being their first priority. An establishment offering exotic dancing entertainment is bound to attract the attention of underage males and requires a high degree of diligence on the part of the licensee and its employees.

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 license or rescind or amend existing terms and conditions
 - impose a monetary penalty
 - order a licensee to transfer a license
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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*. The purpose of the Branch in bringing enforcement action is to encourage voluntary compliance on the part of all licensees. The licensee was pleased with its commendation. However, the fact remains there have been concerns raised in the past and in this case there were three minors within the premises. I find these circumstances do not mitigate against imposing the minimum one day licence suspension. In my view, this may be a light penalty but I will accept the branch's recommendation.

ORDER

I suspend the liquor licence for one business day starting as of the close of business Wednesday July 23, 2003, and continuing on successive business days until the suspension is completed. "Business Day" means a day on which the licensee's establishment would normally be open for business (section 54(1) of the Regulations to the Liquor Control and Licensing Act.)

Since I do not know whether the establishment would normally be open 7 days per week as of July 23, 2003, I do not know what the "business day" will be. To ensure that this order is effective, I direct that the liquor licence be held by the Branch or the Surrey Detachment of the R.C.M. Police from the close of business Wednesday July 23, 2003, until the licensee has demonstrated to the Branch's satisfaction that the licensed establishment has been closed for one (1) business day. A suspension sign notifying the public shall be placed in a prominent location by a Liquor Inspector or Police Officer.

Original signed by

Edward W. Owsianski
Enforcement Hearing Adjudicator

Date: June 16, 2003

cc: R.C.M.Police Surrey Detachment

Liquor Control and Licensing Branch, Surrey Office
Attention: Mike Clarke, Regional Manager,

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