



**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: The Viper Room Cabaret Inc.
11 – 11355 Cottonwood Drive
Maple Ridge, BC

APPEARANCES

For the Licensee: Dominic F. Merlo, Owner
For the Branch: Shahid Noorani, Advocate
Enforcement Hearing Adjudicator: M. G. Taylor
Case No. EH03-114
Dates of Hearing: November 13, 2003
Place of Hearing: Surrey, B.C.
Date of Decision: November 27, 2003

**Ministry of Public
Safety and Solicitor
General**

Liquor Control and
Licensing Branch

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Introduction

The licensee operates The Viper Room Cabaret under a Liquor Primary Liquor Licence #213427. The cabaret is located in Maple Ridge in a commercial area. It has been in operation since October 2001.

The licence permits the cabaret to operate from 7:00 P. M. to 2:00 A.M. seven days per week. At present, the cabaret opens only on Tuesdays, Fridays, Saturdays and Sundays. The licensed capacity is 225 patrons.

Alleged Contraventions and Recommended Enforcement Action

By Notice of Enforcement Action dated July 31, 2003, the branch alleged that on July 13, 2003, the licensee supplied liquor to a minor contrary to section 33 of the *Act*. The branch recommended a licence suspension of four (4) days, commencing on a Saturday and continuing on successive business days until completed.

Schedule 4 of the Liquor Control and Licensing Regulations, BC Reg. 608/76, Enforcement Actions, provides a range of licence suspensions and monetary penalties for each contravention. Under Schedule 4, Item 2, the range for a contravention of section 33 is 4 to 7 day suspension, or \$5,000 to \$7,000 monetary penalty.

Compliance History

There is no record of prior contraventions, offences or enforcement actions ("compliance history") for this licensee or this establishment within the year preceding this incident. Therefore, this contravention, if proved, would be considered a first contravention for the purposes of the Penalty Schedule.

On May 24, 2002, September 5, 2002 and May 3, 2003, the branch issued Contravention Notices for alleged contraventions relating to entertainment, advertising and the floor plan. The branch did not pursue enforcement action on any of those notices.

Issues

1. Did the licensee require the minor to produce identification?
2. If the licensee committed the contravention as alleged, is the branch's recommended enforcement action appropriate?

Exhibits

Exhibit No. 1	Book of Documents
Exhibit No. 2	Photocopies of confiscated identification

Applicable Statutory Provisions

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.
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(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.

Evidence

The branch's witnesses were the minor, who was compelled to attend by summons, and the liquor inspector. The licensee's witnesses were the cabaret manager and bartender.

The undisputed facts are that the liquor inspector and a police officer attended The Viper Room at approximately 12:25 A.M. on July 13, 2003, and discovered a female minor who had been drinking in the cabaret for approximately 2 hours. The minor entered with a male friend who was a known regular. The minor consumed at least 3 or 4 beers.

The disputed facts are whether the cabaret had door security on duty and whether that person asked the minor for identification. The minor testified that she was not asked for identification and that her friend told door security she was celebrating her 19th birthday. The branch evidence indicates that she did not have any identification on her when approached by the police officer. The bartender testified that when the 'regular' introduced him to the young woman, he was concerned about her age because she did not come up to the bar to be introduced, but stayed at their table. The bartender testified that he looked over at the door security and received a positive indication that she had been checked for identification.

The police officer did not testify. The inspector testified that she did not see an employee at the door when they entered, or during her approximate 20 minutes in the cabaret. The licensee's witnesses attested to there always being door security from 8:30 P.M. onward and said that there was door security on this night. The door security employee did not attend the hearing, having been fired for unrelated activities.

Another disputed fact was the number of patrons in the Viper Room that night. The inspector testified that it was quite busy however the licensee's witnesses testified that there were only 12 or 15 patrons.

The licensee's witnesses testified that they have started confiscating false identification since this occasion. The cabaret manager and the owner had a meeting with a police officer to discuss identification issues after this incident.

Submissions

The licensee says that the staff acted with due diligence and did not knowingly or through negligence permit the minor to enter or consume liquor. The licensee's view of the facts is that the minor showed false identification which the door security found convincing and that the minor subsequently went outside and got rid of the identification. The licensee says that this was an isolated incident. The licensee is proud of the service he offers to the community, particularly compared to some other licensed establishments in the area. He submits that his cabaret caters to an older crowd, 25 years and up, provides live music, does not provide cheap drinks, and operates in accordance with the liquor regulations and with a careful regard to community safety and standards. The cabaret has received accolades for its service, music and décor.

Reasons and Decision

The licensee and his staff impressed me as providing a clean and safe environment. I accept that the licensee has high standards of integrity for himself and the staff. However, based on the agreed facts, it is clear that on this occasion a minor was admitted and served.

It is a defence to the contravention to demonstrate that the licensee required identification and acted on the authenticity of the identification. I find that the licensee has not demonstrated that was done. I accept the cabaret manager's evidence that there is door security on every night. I accept the licensee's evidence that this was a slow night and there were only 12 – 15 patrons. I do not accept the hearsay evidence that the door security required this minor to show identification. Rather, I prefer the evidence of the minor that she was not required to show any identification.

In my view, the evidence suggests that the more probable scenario is that the door security accepted the word of the 'regular' and did not do a proper check. When the bartender had a concern, it would have been prudent for the bartender to ask for identification. I can appreciate that it can be difficult on a personal basis to challenge a 'regular' or a friend by not taking his word, but it has to be done. Afterall, it is the licensee and the staff who bear the legal responsibility.

My view of the evidence is that the licensee's staff was lax on this occasion. There was a suggestion that they were told it was her 19th birthday. In my view, that would be pretty cogent reason to ask to see her identification – she was on the borderline of being legal. The bartender would have been justified in asking to see identification, despite assurances from the door security.

I find that the licensee contravened section 33(1) and I further find that the licensee has not established a defence under section 33(5) or a defence of due diligence.

Penalty

Pursuant to ss. 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

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 range for a first contravention of this section is 4 to 7 days license suspension, or \$5,000 to \$7,000 monetary penalty.

I have taken into consideration that these are the first proven contraventions since this establishment opened and that the staff was cooperative with the liquor inspector. I have given weight to the compliance history only to the extent that it demonstrates the branch has told the licensee in the past of concerns relating to other issues.

I have given careful consideration to whether I should exercise my discretion not to impose a penalty. The branch's main goal in imposing penalties is achieving voluntarily compliance. If there are extraordinary or mitigating circumstances, I might decline to impose a penalty.

This licensee impresses me as sincere in his endeavour to provide a high standard of music and service, in a safe environment. For the most part, the under 25 age crowd is not attracted because of the music, ambience, and drink prices. However, as Exhibit No. 2 indicates, some young people are attracted and this licensee has to be vigilant.

The legislature has set the minimum penalties for liquor contraventions. Serving minors is one of the most serious contraventions, as can be seen from the penalty schedule. In this case, the facts establish that the minor was in the cabaret for a couple of hours and drank at least 3 beers. In all probability, each of the licensee's staff would have seen her at some point and each would have deferred to the door control, assuming he had done an identification check. That does not suggest to me that this case establishes any extraordinary or mitigating circumstances. Rather, it suggests to me that the cabaret staff inappropriately relied on the word of a 'regular', which has proven to be a great mistake.

It may be, as the licensee suggests, that there are other cabarets and bars in the area that contravene more regularly, and more egregiously, than this licensee. This licensee got caught. It may be that others are in the process of enforcement action also. In my view, I would be sending an inappropriate message to the industry if I did not impose a penalty. The object is to obtain voluntary compliance. This licensee is learning an expensive lesson. Other licensees may also learn from this decision.

I asked the licensee for, and received submissions on, whether a licence suspension or monetary penalty would be more appropriate for this establishment. He indicated that the suspension would be lesser of the two penalties, financially.

I find that this is an appropriate case to impose a suspension penalty. I find that the minimum suspension of four (4) days is sufficient.

Order

For the contravention of supplying liquor to a minor contrary to section 33 of the *Act*, I impose a licence suspension of four (4) days to commence as of the close of business on Friday, January 16, 2004, 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 (s. 54(1) of the *Regulations*).

At present The Viper Room is open on Tuesday, Thursday, Friday and Saturday. However, given that could change and to ensure that this Order is effective, I direct that the liquor licence for The Viper Room be held by the branch or the municipal police from the close of business on Friday, January 16, 2004, until the licensee has demonstrated to the branch's satisfaction that The Viper Room has been closed for four (4) business days.

Original signed by

M. G. Taylor
Enforcement Hearing Adjudicator

Date: November 27, 2003

cc: R.C.M.Police Ridge-Meadows Detachment

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

Liquor Control and Licensing Branch, Surrey Regional Office
Attention: Shahid Noorani, Advocate
