



**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:	G.S.A. Enterprises Ltd. dba Flamingo Motor Hotel 10768 King George Hwy. Surrey, BC
Case Number:	EH03-117
Appearances:	
For the Licensee	Les Redekopp
For the Branch	Peter K. Jones, Advocate
Enforcement Hearing Adjudicator	Suzan Beattie
Date of Hearing	November 25, 2003
Place of Hearing	Vancouver, B.C.
Date of Decision	December 1, 2003

**Ministry of Public
Safety and Solicitor
General**

Liquor Control and
Licensing Branch

Mailing Address:
PO Box 9292 Stn Prov Govt
Victoria BC V8W 9J8

Telephone: 250 387-1254
Facsimile: 250 387-9184

Location:
Second Floor, 1019 Wharf Street
Victoria BC

<http://www.ag.gov.bc.ca/lclb/>

INTRODUCTION

The licensee, G.S.A. Enterprises Ltd. holds liquor primary license No. 032080 for the Flamingo Motor Hotel in Surrey, B.C. The hours of operation on the license are Monday to Saturday from 7:00 P.M. to 2:00 A.M. and on Sunday from 7:00 P.M. to 12:00 Midnight.

The establishment has a capacity of 244 patrons.

ALLEGED CONTRAVENTION AND RECOMMENDED PENALTIES

The Liquor Control and Licensing Branch alleges that on the business day of Thursday, June 19, 2003, the licensee contravened section 35 of the *Liquor Control and Licensing Act* by permitting a minor to be on the premises where liquor is sold or kept, 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 section 35, the penalty range is one (1) to three (3) days or one thousand (\$1,000) to three thousand (\$3,000) dollars for the first contravention. In this case, the branch is recommending a three (3) day licence suspension. It recommends the suspension be served starting on a Thursday and continuing on successive business days until completed.

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

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 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.

ISSUE

The licensee conceded that the contravention occurred but disputed the recommended three (3) day suspension penalty.

COMPLIANCE HISTORY

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

However, the contravention notice does indicate the following information:

- In April 2001, the licensee had its license suspended for 4 days for contravening *Regulation 12(11)* by permitting free liquor to be served.
- A compliance meeting was held between the licensee and the branch in March 2002.
- Also in March 2002, the licensee paid a \$1,000.00 monetary penalty for a contravention of section 35 of the *Liquor Control and Licensing Act (the Act)* for permitting a minor to be on the premises where liquor is sold or kept, contrary to the *Act*.
- In May, 2002 there was a complaint of "minors on the premises" contrary to section 35 the *Liquor Control and Licensing Act* as well as allowing liquor to be consumed one half hour beyond closing contrary to section 8(2) of the *Regulations*. There is no indication any Contravention Notices were issued for these complaints.
- In April 2003, a Contravention Notice was issued for contravening a term or condition of section 12 of the *Act* by not having an approved floor plan available. The branch did not pursue enforcement action on this allegation.
- In June, 2003, a Contravention Notice was issued for contravening a term of condition of section 12 of the *Act* by not having an approved floor plan available as well as for permitting an intoxicated person to remain contrary to section 43

(2)(b) of the Act. The branch did not pursue enforcement action on this allegation.

WITNESSES

The branch called an R.C.M. Police Corporal and an R.C.M. Police Constable as its witnesses. The licensee called the waitress on duty the evening of Thursday, June 19, 2003, as its witness.

EXHIBITS

The branch presented the following exhibit:

Exhibit 1 Book of Documents

- Tab 1 Notice of Enforcement Action letter dated September 2, 2003
- Tab 2 Contravention Notice B002628
- Tab 3 Notes of the Constable and Continuation Report
- Tab 4 Documentation of enforcement record
- Tab 5 Liquor Primary Licence No. 032080
- Tab 6 Official floor plan of the establishment

EVIDENCE, PENALTY SUBMISSIONS AND DECISION

Evidence

The branch's evidence, contained in the narrative to the Notice of Enforcement Action, indicates the Constable and the Corporal attended the establishment on a routine inspection. The Constable noticed a female dancing on the dance floor who appeared to be a minor. When the music stopped, the minor and others in her party went to the smoking lounge. The Constable approached the party and asked the minor if she had any identification.

The minor gave the Constable a driver's license. While she had the same hairstyle as the individual pictured on the drivers' license, the Constable testified that neither the minor's facial features, height nor weight matched the details on the drivers licence. The minor was not able to give her license number nor could she confirm the address on the drivers' licence. Further, the minor's eye colour was different than that noted on the back of the drivers' licence.

The minor was removed from the establishment, given a violation ticket, her mother was contacted and the minor was released. The Constable retained the driver's licence subject to having the proper owner contact the R.C.M. Police Detachment. He was subsequently seconded to a police project. He believed it was standard procedure, that if the driver's licence was not claimed, it would be forwarded to the Motor Vehicle Branch.

Neither the original drivers licence, a photocopy of the driver's licence, nor the minor was presented as evidence in the hearing.

The Constable showed the Corporal the minor's driver's licence. The Corporal also recalled that, aside from the fact the minor was a female and had the same hairstyle as the individual in the drivers' licence, she was sufficiently physically different that the identification should have been challenged.

The minor told the Constable she had not been asked for any identification in the establishment.

The licensee agreed that there was no doorman on duty but disputed the minor's statement that she had not been asked for any identification. The waitress, who was the only person working the floor on the business evening of June 19, 2003, stated she did ask the minor for identification. At the time the waitress did the identification check the minor and her party were at a table in the main area of the establishment.

The waitress stated she checked the identification of the entire party while some individuals were seated and others getting up to dance or returning from the dance floor. The main floor area is darker than the smoking lounge. The waitress explained that, as she was the only staff person working on the floor, it was a busy evening for her. She absolutely recalls the distinctive hairstyle of the minor, knows she checked the identification, and believed the patron to be approximately 24 years old. The normal clientele of the establishment is between 25 - 40 years old.

Submission

The licensee admits responsibility for checking identification and admits that some issues can fall through the cracks in its own system. It emphasized that it did not want and was not seeking an underage clientele.

The licensee says that its waitress did check the minor's identification under difficult circumstances as it was dark and the minor and others in her party were leaving or returning to the table from the dance floor.

The licensee argues that a suspension penalty of three days is too severe for allowing a minor on the premises. It points to the fact that, given the length of its operational history, it runs its business well. A three day suspension would penalize its entire 20 - 25 person weekend staff. In the alternative, the licensee suggested a monetary penalty.

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 minimum set out in Schedule 4 of the *Regulations*.

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*.

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.

The branch has recommended the maximum suspension penalty for a first contravention. I accept that, in this case, the recommended penalty is necessary to impress upon this licensee the requirements of voluntarily complying with the *Act* and *Regulations*.

In making my decision I note that thirteen months ago, in March 2002, the licensee paid a minimum monetary penalty of \$1,000.00 for the same contravention of permitting a minor to be on the premises where liquor is sold or kept, contrary to the *Act*. I also note the police have demonstrated its concerns to this licensee on the issue of minors with a complaint in May 2002. These incidents demonstrate to me that the licensee has not put into place the necessary safeguards to ensure its establishment voluntarily complies with the *Act* and *Regulations*.

I also emphasize the requirement outlined in the *Guide for Liquor Licensees in British Columbia, Terms and Conditions of Licence for Liquor-Primary Establishments*, which states, any person who appears to be under the age of 25 years must be asked for two pieces of identification. The first piece of identification must be issued by a government agency (e.g. 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 person's name and include the person's signature and/or picture.

I note that in this case, had the licensee required two pieces of identification from the patron who appeared to the waitress to be under the age of 25 years, the patron's deception may well have become evident to the licensee. Any person who cannot produce two piece of acceptable identification that proves they are 19 years or older must be refused entry to the establishment. The rationale for requiring two pieces of identification is to prevent the type of occurrence encountered by the licensee in this case.

For all of these reasons I find the recommended maximum suspension penalty of a three-day suspension is appropriate.

ORDER

Pursuant to section 20(2) of the *Act*, concerning the LP Licence No. 032080, I order as follows:

For the contravention of section 35 of the *Liquor Control and Licensing Act* on Thursday, June 19, 2003, I impose a licence suspension of 3 (three) days to commence as of the close of business on Wednesday, January 14, 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 (section 54 (1) of the Regulations). I direct that the liquor licence be held by the branch or the RCMP Surrey Detachment from the close of business on Wednesday January 14, 2004, until the licensee has demonstrated to the branch's satisfaction that the establishment has been closed for three (3) business days.

Original signed by

Suzan Beattie
Enforcement Hearing Adjudicator

Date: December 1, 2003

cc: R.C.M.Police Surrey Detachment

Liquor Control and Licensing Branch, Victoria Office
Attention: Peter K. Jones, Advocate

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