



**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: 269852 B.C. Ltd.
dba Good Times Cabaret
45680 Hocking Avenue
Chilliwack, BC

Case: EH03-172 & 176

Appearances:

For the Licensee Sheila M. Robinson, Licensee

For the Branch Shahid Noorani, Advocate

Enforcement Hearing Adjudicator Edward W. Owsianski

Date of Hearing February 4, 2004

Place of Hearing Surrey, BC

Date of Decision March 8, 2004

Introduction

269852 B.C. Ltd. (dba Good Times Cabaret) holds Liquor Primary Licence No. 015284. The hours of sale are 7:00 P.M. to 2:00 A.M. Monday – Saturday, 7:00 P.M. to Midnight on Sunday. The patron capacity is 267. The establishment is located in Chilliwack, BC.

ALLEGED CONTRAVENTION AND RECOMMENDED ENFORCEMENT ACTION

1. The Branch alleges that on the business day of October 31, 2003, the licensee contravened section 12 of the *Liquor Control and Licensing Act* and section 71(2)(b) of the *Liquor Control and Licensing Regulations* by permitting more persons in the licensed establishment than the patron capacity set by the general manager, and the number of persons in the licensed establishment is less than or equal to the occupant load.

Schedule 4 of the *Regulations* provide a range of penalties for a first contravention of this type, a license suspension for 1 – 3 days and a monetary penalty of one thousand (\$1000) to three thousand (\$3000). The branch has recommended a \$1000 penalty.

2. The Branch also alleges that on the business day of October 31, 2003, the licensee contravened section 35 of the *Liquor Control and Licensing Act* by permitting a minor to enter on or to be on premises where liquor is sold or kept for sale.

Schedule 4 of the *Regulations* provide a range of penalties for a first contravention of this type, a license suspension for 1 – 3 days and a monetary penalty of one thousand (\$1000) to three thousand (\$3000). The branch has recommended a one day license suspension to take effect on a Friday.

The relevant sections of the *Liquor Control and Licensing Act (the Act)* are as follows:

Licences

- 12** (1) The general manager, having regard for the public interest, may, on application, issue a licence for the sale of liquor.
- (2) The general manager may, in respect of any licence that is being or has been issued, impose, in the public interest, terms and conditions
- (a) that vary the terms and conditions to which the licence is subject under the regulations, or
 - (b) that are in addition to those referred to in paragraph (a).
- (3) Without limiting subsection (2), the terms and conditions referred to in that subsection may
- (a) limit the type of liquor to be offered for sale,
 - (b) designate the areas of an establishment, both indoor and outdoor, where liquor may be sold and served,
 - (c) limit the days and hours that an establishment is permitted to be open for the sale of liquor,
 - (d) designate the areas within an establishment where minors are permitted,
 - (e) approve, prohibit or restrict games and entertainment in an establishment,
 - (f) exempt a class or category of licensee from requirements with respect to serving food and non-alcoholic beverages in an establishment,

- (g) vary seating requirements in the dining area of an establishment,
 - (h) vary requirements with respect to the location of an establishment,
 - (i) exempt a class of licensee from requirements with respect to marine facilities where liquor is sold,
 - (j) specify the manner in which sponsorship by a liquor manufacturer or an agent under section 52 may be conducted and place restrictions on the types of events, activities or organizations that may be sponsored,
 - (k) specify requirements for reporting and record keeping, and
 - (l) control signs used in or for an establishment.
- (4) Nothing in subsection (2) or (3) authorizes the general manager to impose terms and conditions that are inconsistent with this Act or the regulations.
- (5) A licence expires on the date specified on it as the expiry date.
- (6) The general manager may, on application by a licensee, amend the terms of, renew or transfer a licence.
- (7) If the general manager, following application, refuses to issue, amend the terms of, renew or transfer a licence, the general manager must give to the applicant or licensee written reasons for the decision.

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 Sections 12 and 35 of *the Act* on or about October 31, 2003?
2. If so, are the recommended penalties appropriate in the circumstances?

Exhibits

The following exhibits were presented:

1. Book of Documents
 2. Good Times Cabaret Code of Conduct
 3. Written statement of doorman
 4. Written statement of doorman
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Evidence - The Liquor Control and Licensing Branch

A **constable from the R.C.M. Police** Chilliwack Detachment testified that during the late night/early morning hours of October 31/November 1, 2003, (Halloween night) he and other police officers made routine patrols of the drinking establishments in the detachment area. They attended at the Good Times Cabaret at approximately 1:15 A.M. The establishment was busy, lighting sufficient to see people's faces. He checked the identification of several young appearing persons, one, a female, was determined to be 17 years of age. She was not in costume. She produced a driver's licence, the photo of which bore no resemblance to the minor. The driver's licence produced had the year of birth of the owner as 1976. The minor was born in 1986. The minor and the driver's licence were shown to the other police officers in attendance and as well to the manager of the establishment. They all agreed that the photo in the driver's licence did not resemble the minor in any aspect other than both were female. The minor told the constable that she had first entered the establishment at 9:00 P.M., there were no doormen on duty and she was not requested to produce identification. She left the establishment during the night for a period of time and when she returned, she was asked for identification and produced the false driver's licence. The minor was intoxicated and became hostile towards the police officers. She was subsequently incarcerated and released to a parent at approximately 9:50 A.M. She was issued a Violation Ticket for entering a licensed establishment.

A **liquor inspector** testified that she attended at the establishment on November 1, 2003, at approximately 1:15 A.M. with members of the R.C.M. Police for the purpose of making a routine inspection. The police officers checked for minors while she used a mechanical counter to count the number of patrons in the licensed establishment. She did not include the staff in her counts. The liquor license for the establishment permits a maximum capacity of 267 patrons. Her first count indicated a total of 337 patrons inside. She brought this to the attention of the manager and requested him to accompany her while she made a second count. The manager did not

accompany her during the entire counting process, nor did he make a count himself. Her second count indicated a total of 341 patrons. She requested one of the police officers use her mechanical counter to count the number of patrons while she spoke with the manager. The police officer advised her that he counted 320 on a first count and 330 on a subsequent count. The manager advised the inspector that he did not believe the establishment to be overcrowded. The doormen on duty had advised him that during the course of the night 324 patrons had entered the establishment and 53 had left. Thus, there were 271 patrons present. She asked the manager if persons leaving and returning were counted in and out by the doormen. The manager replied that it was possible that patrons were counted out upon leaving and not counted back in upon returning, thus making the doormen's counts inaccurate. The inspector testified; that the manager did not request that the lights be turned on and a further count conducted, nor did he offer to turn the lights on. Prior to leaving she told the manager to begin to reduce the number of patrons in the establishment.

The inspector testified that she saw and spoke with the minor female located in the establishment by the R.C.M. Police constable. The minor was young in appearance, perhaps 18 to 20 years old. The photo on the driver's license produced by the minor did not resemble her. The minor said that she had first entered the establishment at approximately 9 P.M. when there was no doorman on duty. Upon leaving later, she had her hand stamped, which allowed her to re-enter. She returned later, showed the doorman her hand stamp and the false driver's licence and was allowed in. The constable showed the driver's licence to the manager and the doorman. The manager asked the doorman why the minor was permitted into the establishment; he responded that it was difficult to see under the black light.

Evidence - The Licensee

The **manager of the establishment** testified that he has been employed as a doorman and as a manager. To keep track of the number of patrons in the establishment, the doormen use two mechanical counters, one for the number of patrons entering and one

for the number of patrons leaving. When the doormen start their shift they count the number of patrons already inside onto the "in" counter. At the time of the liquor inspector's visit on October 31/November 1, 2003, the counters read 330 "in" and 54 "out". He recalled telling the inspector that the doormen may not have counted the number of patrons re-entering the establishment, but he has since been advised by the doormen that patrons re-entering are counted. He testified that he did not count the number of patrons, but followed the inspector as she performed her count. He noticed that there were patrons being counted while they were on the dance floor that had been counted previously when they were in the smoking room. He brought this to the inspector's attention. She said that police officers would also be doing counts. He told her that if she wanted a true count he would turn the lights on and have patrons remain stationary while a count was performed. The inspector responded, "You don't want to go there".

The manager testified that the minor located in the establishment was an error on the part of the doormen due to the difficulties encountered on Halloween night when many of the patrons arrive in costume and may be required to disrobe as doormen are checking for identification and weapons. Halloween night is the most difficult night of the year as troublemakers and young persons are attracted to licensed establishments. He agreed that the doormen did not check the photo identification presented by the minor close enough, when she was allowed to re-enter the establishment. He was unable to explain the doormen's comment, that it was difficult to see identification due to the black light. He said that the doormen use flashlights for the purpose of checking identification and were using them that night. Security personnel that night consisted of him, two doormen and four floor control persons which is standard for a Friday night. Had he known that it would be a busy night he may have considered calling in an extra doorman.

The manager introduced Exhibit 2, the Code of Conduct for Employees of the establishment. A copy is required to be read and signed by all staff.

A **doorman** testified that he was one of two doormen working at the establishment October 31/November 1, 2003. He provided a copy of a written statement that he had prepared the following day (Exhibit 3). He testified that it is the duty of doormen to check the identification of persons wishing to enter and to check their level of sobriety. Those persons who cannot supply two pieces of acceptable identification, or who are intoxicated, are not permitted entry. Those persons permitted entry, pay a cover charge and have their hand stamped. The doormen keep track of the number of patrons entering and leaving the establishment, using two separate mechanical counters. People often leave for short periods of time and are not counted "out" of the establishment unless they indicate that they are leaving for the night. People with a hand stamp are not re-counted "in" unless they have been previously counted out. The doormen know the patrons by sight.

He testified, that the R.C.M. Police constable who apprehended the minor, showed her identification to him. He agreed that the photograph on the driver's licence was not hers and that he would not have permitted her into the establishment. It was an error on the part of the other doorman brought about by the difficulties encountered on Halloween night, which is the worst night of the year for doormen. Many patrons come in costume and known troublemakers who may be in possession of weapons or drugs seek entry. Consequently, it takes considerable time to check patrons at the door.

The **other doorman on duty** October 31/November 1, 2003, did not appear as a witness. A written statement signed by him was presented as evidence (Exhibit 4). He states that the minor was allowed entry as a result of the difficulties surrounding Halloween night. He did not look clearly at her face, but only at the name, signature and birth date on the two pieces of identification presented by her. It was an unfortunate error on his part.

SUBMISSIONS

The licensee representative submitted that the establishment kept track of the number of patrons inside through the use of counters by the doormen. If the number is disputed

by the liquor inspector, it is the inspector's duty to make an accurate count, not the manager's.

She agreed that a minor with unacceptable identification had been permitted entry into the establishment. It resulted from an error by one of the doorman. The establishment has policies in place, which were not followed on this occasion. The seriousness of licensing matters is recognized and the liquor inspector will be requested to meet with staff in order that they be in full compliance.

Findings and Decision

Having considered all of the evidence, I find that on October 31/November 1, 2003, the licensee permitted:

1. more persons into the licensed establishment than the patron capacity set by the general manager, and
2. a minor to enter and to remain in the licensed establishment.

In reaching this decision, I accept the evidence of the liquor inspector that the count of patrons in the establishment exceeded the patron capacity. While the count may have inadvertently counted some of the patrons twice as they moved about within the establishment, I am satisfied that the accuracy of the counts was sufficient to prove that the patron capacity was exceeded. I am not satisfied, that the manner in which the patrons are counted "in" and "out" was sufficient to provide an accurate count of the number of patrons inside at the time of the visit by the police and liquor inspector. The evidence of the doormen was that their attention that night was on the persons attempting to gain entry wearing costumes.

I am not satisfied, that the licensee has established a defence of due diligence for either of the contraventions. The evidence of the manager and doormen was that their attention was primarily directed towards those persons wearing costumes and who may have been carrying weapons or drugs. There is no doubt, that the circumstances

surrounding Halloween celebrations create a greater stress on security personnel. That in itself however, does not relieve the obligations of ensuring that the number of patrons permitted in the establishment does not exceed the allowable limit, or that the identification of all young appearing persons is carefully checked to ensure its bonafides. It is incumbent upon the licensee, to ensure that sufficient staff is on duty to carry out the responsibilities of the licensee under the Act and the Regulations, regardless of the nature of the celebrations. Greater potential for problems requires greater diligence.

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 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. If I decide; that the contravention(s) did occur and that enforcement action is appropriate, I may accept the penalty recommended in the Notice of Enforcement Action, impose a higher penalty, impose a lesser penalty or impose no penalty. 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 to the Act. .

There is no record of prior contraventions, offences or enforcement actions of the same type for this licensee or this establishment within the year preceding these incidents

("compliance history"). Pursuant to *Liquor Control and Licensing Regulation*, Schedule 4, section 1(1)(b), the branch has treated the allegations as first contraventions.

There is, however, a history of problems having been brought to the attention of the licensee. While these do not represent proven contraventions, they should serve to alert the licensee and its employees to potential problems and to act accordingly:

- on February 12, 1999, the branch issued a "warning letter" to the establishment as a result of receiving a police report that a 17 year old minor was found inside on January 14, 1999,
- on February 21, 2000, the branch issued a "warning letter" to the establishment as a result of receiving a police report that an 18 year old minor was found inside on January 10, 2000,
- on January 21, 2002, the branch issued a Contravention Notice to the establishment as a result of receiving a police report that disorderly conduct was permitted in the licensed establishment on December 19, 2001, enforcement action was not pursued by the branch.

There is one previous contravention:

- on November 12, 2002, the branch suspended the liquor license for one (1) day as a result of a contravention for permitting a 16 year old minor into the establishment on April 17, 2002.

The purpose of the branch in bringing about enforcement action and in determining the appropriate penalty is to encourage 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.

Having considered the evidence, I am satisfied that a penalty is necessary to ensure future voluntary compliance.

For permitting the number of patrons to exceed the limit set by the general manager I find that the recommended minimum monetary penalty of one thousand dollars (\$1000) is appropriate.

For permitting a minor to enter and to remain in the establishment I find that a penalty greater than the minimum suspension is appropriate.

Permitting minors in licensed establishments is a serious public interest issue. The history of the operation of this establishment indicates that there is a continuing problem with minors being permitted to enter the establishment. In the circumstances of this case, a 17 year old with obviously false identification was permitted into the establishment on two separate occasions during the business day of October 31/November 1, 2003. A two day suspension penalty is appropriate.

Order

Pursuant to Section 20 (2) of the Act, concerning Liquor Primary Licence No. 015284, I impose a monetary penalty on the licensee of \$1,000.00 (one thousand dollars) to be paid no later than Friday April 16, 2004, and I order the suspension of liquor licence No. 1015284, for two (2) days starting as of the close of business Thursday, April 15, 2004, 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 April 15, 2004, I do not know what the "business days" will be. To ensure that this order is effective, I direct that the liquor licence No. 015284 be held by the Branch or the Chilliwack Detachment of the R.C.M. Police from the close of business Thursday April 15, 2004, until the licensee has demonstrated to the Branch's satisfaction, that the licensed establishment has been closed for two (2) business days. 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: March 8, 2004

cc: R.C.M. Police Chilliwack Detachment

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

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