



**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, R.S.B.C. 1996, c. 267

Licensee:	502664 B.C. Ltd. dba West Hotel 488 Carrall Street Vancouver, BC
Case:	EH04-065 and EH04-117
Appearances:	
For the Licensee	Jack E. Spitz, Shareholder Peter Fairchild, General Manager
For the Branch	Shahid Noorani, Advocate
Enforcement Hearing Adjudicator	M. G. Taylor
Date of Hearing	November 15, 2004
Place of Hearing	Vancouver, BC
Date of Decision	December 16, 2004

INTRODUCTION

The Licensee operates a bar in the West Hotel (the 'Bar') under Liquor Primary Licence No. 019960. The Bar is located at 488 Carrall Street in the Downtown Eastside (DTES) of Vancouver. There are approximately ten (10) licensed premises within a three (3) block radius of the West Hotel.

The Bar is licensed to operate between 11:00 A.M. and 1:00 A.M. Monday through Saturday and until Midnight on Sundays. The licensed capacity is 75 patrons in Area 01 and 75 patrons in Area 02.

ALLEGED CONTRAVENTIONS

1. By Notice of Enforcement Action (NOEA) dated August 31, 2004, the branch alleged that on January 24, 2004, the Licensee contravened section 33 of the Liquor Control and Licensing Act, by selling, giving or otherwise supplying liquor to a minor.
2. By Notice of Enforcement Action, NOEA, dated October 7, 2004, the branch alleged that on August 12, 2004, the Licensee contravened section 33 of the Liquor Control and Licensing Act, by selling, giving or otherwise supplying liquor to a minor.

RECOMMENDED ENFORCEMENT ACTION

The prescribed penalties for these contraventions are contained in *Liquor Control and Licensing Regulation*, Schedule 4, Item 3. The ranges of penalty for a first contravention are 4 to 7 day licence suspension and \$5,000 to \$7,000 monetary penalty.

The branch's recommended enforcement action for alleged contravention No. 1 is a four (4) day licence suspension, commencing on a Saturday and continuing on successive business days until completed.

The branch's recommended enforcement action for alleged contravention No. 2 is a four (4) day licence suspension, commencing on a Thursday and continuing on successive business days until completed.

RELEVANT STATUTORY PROVISIONS

Liquor Control and Licensing Act

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.

(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.
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(6) A person who contravenes this section commits an offence and is liable on conviction to a fine of not less than \$500.

ISSUES(S)

The licensee agreed that both contraventions had occurred but disputed the proposed penalties.

EXHIBITS

Exhibit No. 1	Branch's Book of Documents, tabs 1 - 32
Exhibit No. 2	Licensee's Book of Documents

EVIDENCE

Two Liquor Inspectors gave evidence for the branch. The Licensee's General Manager and Shareholder gave evidence for the Licensee.

General Evidence

It was common evidence that the area of the downtown eastside (DTES) in which the Bar is located is known as an area of intense illicit drug activity and alcohol abuse. The area attracts homeless people, people looking for low income housing, and people with mental health problems. It also attracts young people. Generally, it is an area with many socioeconomic issues.

Both Inspectors testified to the serious problem of minors consuming alcohol and noted that young people are not able to metabolize alcohol at the same rate as adults. They stated that statistics indicate that alcohol consumption in young people is linked to other serious crimes.

The Branch's Evidence

The Contraventions

On Saturday, January 24, 2004, two Vancouver Police Officers entered the West Hotel shortly after 12:00 Noon. They reported that there was no staff at the door controlling entry. They found an underage female and male inside. The female said she did not have identification. The Officers removed her from the Bar, identified her, verified her date of birth, and served her with a violation ticket. The male, who was drinking a bottle of beer, produced his immigration papers. The officers removed him from the Bar and ran his data on the computer system to verify his identity and age. They confirmed that he was underage to be in the premises.

The Officers spoke with the Bartender and issued a Licensed Premises Check (LPC). Subsequently, the branch issued the Contravention Notice (CN) dated April 1, 2004 and the Notice of Enforcement Action (NOEA) dated August 31, 2004.

On Thursday, August 12, 2004, two Vancouver Police Officers entered the West Hotel, shortly before 10:00 P.M. The Officers spoke with the door security, an employee of a security company called Genesis ("door security"). There were approximately 25 to 30 patrons inside. The Officers found an underage male who produce his immigration papers as identification. The Police spoke with door security and took him to the table where the minor was sitting. Door security said he had not seen the young man enter the bar.

The Police also spoke with the Bartender who said he had seen the minor and his female friend enter the bar, and that the female had purchased the drinks from the Bar. The Bartender indicated that it was the door security's job to ensure that minors were not admitted.

The Officers issued a LPC to the Bartender and a Violation Ticket to the minor. Subsequently, the branch issued the CN dated September 7, 2004 and the NOEA dated October 7, 2004.

Liquor Inspector No.1

The Inspector reviewed the Liquor Licence, Exhibit No. 1, tab 12, and the Guide to Liquor Licensees, tab 13, and in particular the Licensee's responsibility for understanding the Act, Regulation, the terms and conditions of the licence and for ensuring that employees follow the laws and terms and conditions of the licence. The Inspector also pointed to the guide section on minors and the requirement for checking identification.

The Inspector testified that he decided to pursue enforcement action for the January 24, 2004, contravention because of the seriousness of the situation. He pointed to the fact that there were two (2) minors in the premises, there was no door control and the Bartender had accepted inappropriate identification from the male patron.

The Inspector noted that another branch Inspector had conducted a Compliance Meeting with the licensee on July 16, 2003. One result of that meeting was that the Licensee was going to employ front door security for an eight (8) hour shift with a focus on problem areas and times (tab 18). However, as of January 24, 2004, the Licensee did not have door security posted.

The Inspector referred to the branch's file documentation including an application for liquor licence, dated August 14, 2000, and an inspection interview with the Licensee in which the branch representative reviewed the liquor licensing information and requirements. This interview report, at tab 16, demonstrates that the branch discussed the prohibition against minors and the requirement for particular types of identification.

The Inspector went through the branch's record of compliance for this Licensee. He noted the Compliance Meeting of July 16, 2003, and referred to Contravention Notices (CN) and Police Licensed Premises Checks (LPC) for alleged contraventions as follows:

- July 17, 2003 for unlawful advertising;
 - February 2004, for disorderly conduct;
 - February 22, 2004, for alleged intoxicated patron;
 - February 26, 2004 for employee failure to produce a Serving It Right certificate (Responsible Beverage Service);
 - March 5, 2004, for unlawful activities;
 - April 6, 2004, for unlawful activity;
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- April 8, 2004, for unlawful activity;
- April 13, 2004, for unlawful activity;
- April 19, 2004, for unlawful activity;
- April 24, 2004, for unlawful activity;
- April 28, 2004, for unlawful activity;
- April 28, 2004, for unlawful activity;
- May 14, 2004, for unlawful activity;
- May 15, 2004, for unlawful activity;
- May 31, 2004, for unlawful activity.

The Inspector indicated that no action has been taken against the Licensee for those allegations.

The Inspector testified that before the current Licensee took over there were more problems in the Bar. However, he also noted that recently it appears there has been an increase in problems. He acknowledged that in the DTES Police and Liquor Inspectors are likely to find more false identification and more false passports than in other areas of his jurisdiction. He also acknowledged that it seems a majority of the people in the DTES only have their immigration papers as identification.

The Inspector was aware that these Licensees operate other licensed premises, that they have been endeavouring to make improvements in the operation of the bars in the DTES, and that they operate at least one bar where the Inspector has not encountered any contraventions.

Liquor Inspector No. 2

Inspector No. 2 was involved with the August 12, 2004, contravention. The Inspector recommended enforcement action because this was not the first contravention for serving minors and he felt enforcement was necessary to send a message to this licensee and to the community. He recommended the minimum, four (4) day suspension.

The Inspector had met with the minor after this incident and testified that in his view the minor looked quite young and he would expect the Licensee to require the minor to produce identification.

The Licensee's Evidence

The Licensee presented the documents in Exhibit No. 2 to demonstrate the Licensee's attempts to deal with the authorities and to respond to the issues raised. Additionally, the General Manager gave evidence that they are involved in community activities, including the "Tuesday Group" which includes civil servants and community organizations who meet to review policing problems and issues in the community.

The General Manager testified that there have been concerted efforts in the community to move the drug trade and clean up the neighbourhood. The difficulty for the West Hotel is that the drug trade has moved to the alley behind the Hotel. In April 2003, the City of Vancouver bought the licence for the Peninsula Hotel at the corner of Hastings and Carrall and closed that bar. The result has been a movement to the West Hotel which has increased problems. The Police began an operation in 2003 which was one of the reasons for the Compliance Meeting in July 2003. The Licensee made a number of commitments to deal with the problems, including the commitment to provide door security. The Licensee also arranged for the Liquor Inspector to meet with the staff.

The Licensees testified that they have a constant dangerous environment outside the Hotel. The Police do not have the resources to deal with the lawlessness and want the licensees to handle it.

The Bartenders who were working when these contraventions occurred have been employed for 28 years and 20 years, respectively. The Bartender who was working on January 24, 2004, had never before received any violation notice.

The Licensee testified that they do not want minors in the premises and the Bartenders would not knowingly admit or serve a minor. The requirement for two (2) pieces of identification is posted in various places in the bar. The staff regularly use the identification requirements to prevent undesirables from being inside.

The Licensees testified that the finances do not support having full time door security and initially they put security on after 6:00 P.M. and then double security after 11:00 P.M. However, in April 2004, they decided they needed more security and they hired

Genesis Security who began the contract in June. When they hired Genesis they checked with the Police Department to ensure they had a good reputation. Because of the high cost, they can still not afford to have them on full time. The Licensee continues to experience problems with the drug trade in the alley behind the Hotel and the traffic that brings to the Hotel.

The Licensees made reference to the CNs contained in Exhibit No. 1 noting that for many of the alleged contraventions the branch had not taken action and the Licensee does not have paperwork or reports from the Police or the branch. Due to the lack of documentation and the passage of time, the Licensee could not clearly recall the events.

The Licensees referred to six (6) other premises that it operates and submitted that they have been committed to being responsible and effective operators. They submitted that their reputation as responsible operators should not be clouded by a single issue, or even a group of issues, in one premises. It should be expanded to include all of their operations and efforts to make a difference in all the buildings and to the community as a whole.

In Exhibit No. 2, the Licensees provided details of security arrangements they have made since they took over responsibility for the bar in August 2000. The documents include samples of the Bartenders' Daily Report, as indicative of daily issues and interaction with regulatory agencies. In approximately September 2000, the Licensee installed a number of new cameras in the Bar, as a condition of the liquor licence. One of the documents notes that, in March 2004, the Licensee installed a monitoring camera outside the premises. In June 2004, they hired the professional security firm which they noted has been relatively effective but extremely expensive. The Licensees noted that there are issues specific to this area with which they have requested assistance of the Police Department. However, they noted that the Police Department which does not have sufficient resources to provide the necessary assistance nonetheless demands that the Licensee improve its security arrangements, despite a similar lack of resources.

The Licensee provided a Chronology of Events and Relevant Attachments, demonstrating

the considerable efforts we have made to engage the police, deal effectively with the City, respond immediately to problems raised by liquor licencing and others, etc. Basically, from our perspective, page after page of requests for help, documentation of how help was not forthcoming, inappropriate/aggressive behaviour by the police even as we were working with them to the best of our ability and some of the challenges affecting all sides of the many problems in the DTES.

The reason for including this chronology and the attachments is to demonstrate our due diligence throughout all of our operations and the lack of any effective response from the people supposed to be charged with helping us.

The Licensee also included correspondence to the Mayor, Vancouver Police Department, and others about issues it has faced since 2000 and particularly about problems in 2003/04 concerning street activities and drug related activities and the Licensees' concerns that traffic would gravitate toward the West Hotel due to the closure of another bar.

SUBMISSIONS

The Licensee submitted that the West Hotel is located in a difficult operating environment and that there is constant Police presence. The Police are in the premises once to twice per week and some weeks they are there three (3) to four (4) times per day. Given the number of Police inspections, it speaks well of the Licensee's efforts that they found only two (2) contraventions in six (6) months. These contraventions occurred through honest mistakes by experienced Bartenders who have good records for not serving minors.

The Licensee submitted that both Inspectors said the reason for the enforcement action is to send a message to the Licensee. Given the constant problems in this neighbourhood, the Licensee's ongoing attempt to curtail the problems, including interaction with Police and other municipal departments, the Bartenders' years of experience, the hiring of Genesis, the Licensee submitted that it is well aware of the problems and is probably the least requiring of a message.

Further, if the intent of the branch is to increase their awareness, the proposed suspensions are very onerous ways of doing it. The West Hotel Bar is a marginal operation.

In considering penalty, the Licensees asked that I consider their general reputation, their success on many fronts in a difficult environment and the dedication/financial commitment the Licensees have made and continue to make. The Licensees asked that I consider a penalty in the range of two (2) to four (4) days, to be served concurrently.

ANALYSIS AND DECISION

The Licensee admitted that there had been contraventions of serving minors, but submitted that the circumstances warrant a lesser penalty being issued.

Compliance History

There is no record of similar prior contraventions, offences or enforcement actions ("compliance history") for this licensee or this establishment within the year preceding either of these incidents. Therefore, these contraventions are considered first contraventions for the purposes of the Penalty Schedule. If the branch had proceeded separately on these incidents, the second one would have been considered a second contravention and the range of penalty would have been ten (10) to fourteen (14) day licence suspension.

The branch's evidence includes numerous unproven contraventions. Although I have referred to them, and set out the nature of the alleged contraventions, I am not considering them as proof of the contraventions but as indicative of the type of issues have been brought to the Licensee's attention, through Contravention Notices or Compliance Meetings. Such evidence can indicate that the branch had been communicating with the Licensee in an attempt to achieve voluntary compliance and could have an effect on my assessment of the Licensee's efforts at voluntary compliance and the Licensee's submissions on 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 *Regulation*.

The branch's primary goal in determining the appropriate penalty is achieving voluntary compliance. The branch considers 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 Licensee requested that I impose lesser penalties and make them concurrent. Under the *Regulation*, I have no discretion to impose a penalty that is less than the minimums although I do have authority to impose no penalty or a higher penalty. Section 66 of the *Regulation* requires that if there is more than one contravention for which penalties are being imposed, the period of the suspension must be the sum of the penalties. This means imposing consecutive suspensions and rules out the possibility of concurrent suspensions.

There have been occasions when the branch has not imposed a penalty because of extenuating circumstances. I find that the Licensee has not demonstrated a degree of due diligence or extenuating circumstances that would warrant no penalty being imposed, for reasons I set out below.

The Licensee has documented the considerable difficulties associated with the drug trade and other problems that are, at this point, seemingly endemic to this area of the DTES. The Licensee submitted that because of dealing with these problems every day, the Licensee is well aware of problems and the need to be vigilant and, accordingly, does not need the severity of the message that the minimum penalties impose.

I can appreciate the Licensee's view. However, I note that the bulk of the evidence was directed to unlawful activities associated with the drug trade and violence, whereas these contraventions are specific to serving minors. From my reading of the evidence, on neither occasion was this Bar too crowded or the atmosphere too distracting for the staff to have been able to detect the presence of minors. In considering due diligence, I find there is no evidence that the Licensee engages the staff in regular training, has a written policy on minors or identification that would assist the staff, or has a policy manual that sets out staff discipline for serving minors.

I find that the recommended penalties are appropriate and I order this licence suspended for two consecutive periods of four (4) days, for a total suspension of eight (8) days.

ORDER

Pursuant to section 20(2) of the *Act*, I order a suspension of the Liquor Licence No. 019960, issued to the licensee 502664 B.C. Ltd., for the contraventions of section 33 which occurred on Saturday, January 24, 2004, and Thursday, August 12, 2004, for a period of four (4) days each, for a consecutive total of eight (8) days. I order the suspension to commence as of the close of business on Thursday, January 13, 2005, 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 *Regulation*).

Since I do not know whether the West Hotel Bar would normally be open seven (7) days per week as of January 2005, I do not know what the "business days" will be. To ensure that this Order is effective, I direct that the Primary Liquor Licence No. 019960 for the West Hotel be held by the branch or the Vancouver Police Department from the close of business on Thursday, January 13, 2005, until the licensee has demonstrated to the branch's satisfaction that the West Hotel Bar has been closed for eight (8) business days.

Original signed by

Date: December 16, 2004

M. G. Taylor

cc: Vancouver Police Department

Liquor Control and Licensing Branch, Vancouver Regional Office
Attention: Lee Murphy, Regional Manager

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