



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

Licensee:	Sandman Hotel Langley, Inc. dba Sandman Hotel (Langley) aka the Shark Club 8855 – 202 Street Langley, BC
Case:	EH05-002
For the Licensee	Kirsten Tonge
For the Branch	Sonja Okada
Enforcement Hearing Adjudicator	Edward W. Owsianski
Date of Hearing	May 31, 2005
Place of Hearing	Surrey B.C.
Date of Decision	August 15, 2005

INTRODUCTION

At the time of alleged contraventions the licensee, Sandman Hotel Langley, Inc. operated the Sandman Hotel (Langley) at 8855 – 202 Street Langley, BC. The hotel contained a food and beverage establishment known as the Shark Club for which the licensee held a Liquor Primary Licence and a Food Primary Licence. Through an agreement with the licensee, the details of which were not presented during the hearing, the Shark Club was operated as a separate business entity by other persons. Although it was operated as one business entity the Shark Club is divided into two distinct licensed establishments for liquor licensing purposes by the Liquor Control and Licensing Branch (the branch), one a Liquor Primary Licence, the other a Food Primary Licence. The hearing dealt exclusively with the operation of the Liquor Primary Licence.

Liquor Primary Licence No. 178849:

Effective Date: June 18, 2004

Expiry Date June 30, 2005

Hours of Sale:

Noon – 2:00 a.m. Monday to Saturday, 11:00 a.m. – Midnight Sunday

Capacity: Area 1, 195 Patrons, Patio 32

Terms and Conditions:

- This licence is subject to the terms and conditions contained in the publication 'Guide for Liquor Licensee in British Columbia'.
- Liquor may only be sold, served and consumed within the areas outlined in red on the official plan, unless otherwise endorsed or approved by the branch.
- Patio extension permitted as outlined in red on the official plan, patio capacity must be taken from inside capacity when patio in use.

ALLEGED CONTRAVENTIONS AND RECOMMENDED ENFORCEMENT ACTION

1. The branch alleges that on December 23, 2004, the licensee contravened Section 33 of the *Liquor Control and Licensing Act (the Act)* by supplying liquor to a minor.

The recommended enforcement action is a \$7000.00 monetary penalty.

2. The branch alleges that on December 23, 2004, the licensee contravened Section 45(2) of the *Liquor Control and Licensing Regulation (the Regulation)* by failing to request identification from a person appearing to be under 25 years of age.

The recommended enforcement action is a three (3) day suspension of the liquor licence commencing on a Thursday.

Schedule 4 of the *Regulation*, provides a range of licence suspensions and monetary penalties for each contravention.

For the contravention of supplying liquor to a minor the penalty range at item 2 of the Schedule is a four to seven day licence suspension and/or a five thousand (\$5,000) to seven thousand (\$7,000) monetary penalty for a first contravention.

For the contravention of failing to request identification from a person appearing to be under 25 years of age the penalty range of the Schedule at item 4 is a one to three day licence suspension and/or a one thousand (\$1,000) to three thousand (\$3,000) monetary penalty for a first contravention.

The licensee admits that the contraventions have occurred but contests the recommended penalties.

Section 33 of the Act states as follows:

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.
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(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.

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

Section 45(2) and (3) of the Regulations state as follows:

(2) A licensee must request 2 pieces of identification from any person appearing to be under the age of 25 before

(a) allowing the person to enter the licensed establishment, if the establishment is one in which minors are not allowed, or

(b) selling or serving liquor to the person.

(3) The pieces of identification required under subsection (2) must include

(a) one piece of the identification referred to in subsection (1), and

(b) one other piece of identification that displays the person's name and at least one of the person's signature and picture.

ISSUE

1) Whether the penalties recommended by the Branch are appropriate?

EXHIBITS

The following exhibits were presented:

Exhibit No. 1 Book of Documents

Exhibit No. 2 Booklet titled "Shark Club Bar & Grill Hire Pack"

EVIDENCE - THE LIQUOR CONTROL AND LICENSING BRANCH

A liquor inspector (the inspector) testified that on December 23, 2004, he was part of a multi-agency enforcement team visiting licensed establishments. At approximately 11:35 p.m. he was notified by a member of the R.C.M. Police that a 16-year-old minor had been located in the Liquor Primary licensed area known as the Shark Club in the Sandman Hotel in Langley, BC. The minor, a female, was in possession of an alcoholic beverage, a rum and coke. The inspector asked the doorman on duty whether he had checked the identification of the minor. The doorman told him that he had not done so, that the minor may have entered the establishment while he was on a break. The manager on duty at the establishment was advised of the incident and a contravention notice (CN) for supplying liquor to a minor and failing to request identification of a person appearing to be under 25 years of age was subsequently issued to the establishment.

The Inspector provided a review of the branch records for this licensed establishment. The liquor licence has been issued to the same corporate licensee since 1997 (Exhibit 1, tab13).

The records document problems occurring at the establishment:

- February 9, 2001 CN issued for minor in premises and contravention of term & condition (Exhibit 1, tab 14)
 - March 11, 2001 CN issued for supplying liquor to minors and permitting intoxication (Exhibit 1, tab 15)
 - May 16, 2002 CN issued for reduced liquor pricing and permitting gambling (Exhibit 1, tab 16)
 - October 4, 2003 CN and LPC issued for overcrowding (Exhibit 1, tab 17)
 - October 24, 2003 CN issued for failure to post the current liquor licence (Exhibit 1, tab 18)
 - December 13, 2003 CN for overcrowding (Exhibit 1, tab 19)
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- December 13, 2003 CN for permitting a minor on the premises and failing to request identification (Exhibit 1, tab 20). The CN lead to an enforcement hearing resulting in a two day suspension ordered for permitting a minor on the premises (Exhibit 1, tab 22) which was subsequently upheld on judicial review (Exhibit 1, tab 24).
- December 14, 2004 A Notice of Enforcement Action issued for failing to request identification arising from a visit to the establishment by agents employed by the branch (Exhibit 1, tab 1 at page 7 and tab 2 at page 5).

The inspector testified that in the past the branch has not always proceeded with enforcement action for each contravention when more than one has been alleged to have occurred. In reaching his decision to recommend that enforcement action be taken for the two contraventions and that the maximum penalty for each contravention be recommended, he considered the history of the establishment and the seriousness of the contraventions. He concluded that the establishment has an ongoing problem with how it deals with minors and with not checking identification of young appearing persons. He testified that allowing minors access to alcohol is a serious public safety and public interest issue which can have dire consequences.

EVIDENCE - THE LICENSEE

The general manager (gm) of the Shark Club testified that he has been employed at the establishment since being hired as the assistant general manager in January, 2004. He was promoted to the gm's position in September 2004. His responsibilities are to oversee all aspects of the operation including the hiring and training of staff. All staff receive an orientation and floor training and are advised of the requirements of checking the identification of patrons appearing under 25 years of age. A "Hire Pack" (Exhibit 2) is provided to and signed off by each employee. It includes the identification requirements. Staff manuals have been developed, are regularly updated and are kept in the work areas. Regular staff meetings are held every sixty days.

He was not present at the time of the contraventions, however has discussed the incidents with the on-duty manager, the server and the doorman. As a result of the contravention the server has been terminated and the doorman, who is employed by a security company, has been re-assigned to other establishments. A new security company has been hired. At the time of the contraventions doormen were employed seven nights a week and checked the identification of patrons entering the establishment. Staff were required to do a second check of identification as well. The establishment has since changed their procedures whereby there are now doormen on duty three nights a week only and staff are required to check identification of all persons appearing under 30 years of age. Managers make spot checks of identification as well. The change was made as it was thought that staff were placing too heavy a reliance on the doormen. Communication with the area liquor inspector has been improved. An application as been made to change the liquor licensing configuration for the establishment to that of liquor primary only, thus eliminating the food primary areas.

The contraventions are acknowledged and taken seriously. Staff have been advised of the ongoing enforcement proceedings and he believes that everything possible has been done to prevent future problems.

LICENSEE SUBMISSIONS

Counsel for the licensee submitted that the branch in pursuing two contraventions arising out of the one incident was redundant and unnecessary. The failure to request identification lead to the minor obtaining liquor. The licensee has admitted and taken responsibility for the contraventions. The contraventions have been treated seriously and have lead to the server being terminated, the doorman being re-assigned and the security company being replaced. The licensee has implemented new procedures and provided additional training for staff. An application has been made to change the licensing structure of the establishment to alleviate confusion over where minors are and are not permitted. While there has been a prior history of problems with minors at the establishment the recommended maximum penalties for first contraventions are neither reasonable nor appropriate. The minimum penalties should be considered.

REASONS AND DECISION

The licensee has admitted the contraventions. I find that the contraventions, as alleged, have occurred.

Pursuant to Section 20(2) of the *Act*, having found that the licensee has contravened the *Act*, the *Regulation* 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 minimums set out in Schedule 4 of the *Regulation*.

In considering whether a suspension penalty is warranted I note that there is no record of prior contraventions, offences or enforcement actions of these types for this licensee or this establishment within the year preceding these contraventions ("compliance history"). Therefore, the contraventions are considered as first contraventions for the purposes of the Penalty Schedule.

The *Act* and *Regulation* provides the discretion to the general manager whether to take action against a licensee for the licensee's contravention of the *Act* or *Regulation*. In this case the liquor inspector has elected to proceed with two contraventions arising out of a 16-year-old minor being permitted to enter a licensed establishment without being requested to produce identification and whilst in the establishment being supplied with liquor. The decision was made after examining the circumstances surrounding the contraventions, the seriousness of the contraventions and the compliance and operating

history for the establishment. The inspector has recommended the maximum penalties for first contraventions of their type.

The licensee has argued that the branch has not always proceeded with two contraventions in such circumstances and it is unnecessary and redundant to do so at this time. Further, the history of the establishment does not support the recommendation for the maximum penalty for each contravention and the subsequent action taken by the licensee should serve to mitigate the recommended penalties.

The evidence of the liquor inspector in reviewing the record for the licensee revealed several instances where concerns related to minors were brought to the attention of the licensee. In light of the record for this licensee, I am satisfied that a penalty for each contravention is necessary to ensure future voluntary compliance.

Having considered all of the circumstances of this case I find that a mid-range penalty for each contravention is appropriate.

ORDER

For the contravention of Section 33 of the *Act*, supplying liquor to a minor, I order that the licensee pay a monetary penalty of \$6000.00 (six thousand dollars), to be paid to the general manager of the branch on or before Thursday, September 29, 2005.

For the contravention of Section 45(2) of the *Regulation*, failing to request identification from a person appearing to be under 25 years of age, I order that Liquor Primary Licence No. 178849 be suspended for two (2) business day commencing the close of business Wednesday, September 28, 2005, until the suspension is completed. "Business Day" means a day on which the licensee's establishment would normally be open for business (Section 67(1) of the *Regulation* to the *Liquor Control and Licensing Act*).

Since I do not know whether the establishment would normally be open seven (7) days per week as of September 29, 2005, I do not know what the business days will be. To ensure that this order is effective, I direct that Liquor Primary Licence No. 178849 be held by the branch or the Langley Detachment of the R.C.M. Police from the close of business Wednesday, September 28, 2005, until the licensee has demonstrated to the branch's satisfaction that the licensed establishment has been closed for two (2) successive business days. A suspension sign notifying the public shall be placed in a prominent location in or at the establishment by a liquor inspector or police officer.

Original signed by

Edward Owsianski
Enforcement Hearing Adjudicator

Date: August 15, 2005

cc: R.C.M. Police Langley Detachment

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

Liquor Control and Licensing Branch, Vancouver Regional Office
Attention: Sonja Okada, Advocate
