

COPY

IN THE SUPREME COURT OF BRITISH COLUMBIA

VICTORIA
AUG 26 2005
REGISTRY

Date: 20050816
Docket: 05-1577
Registry: Victoria

Between:

Cambie Hotel (Nanaimo) Ltd. dba Cambie Hotel

Petitioner

And:

General Manager of the Liquor Control and Licensing Branch

Respondent

Before: The Honourable Mr. Justice R.D. Wilson

Oral Reasons for Judgment

In Chambers
August 16, 2005

Counsel for Petitioner:

I. Waddell

Counsel for Respondent:

D. Roberts

Place of Trial/Hearing:

Victoria, B.C.

[1] **THE COURT:** This is an application to review a decision made by the general manager of the Liquor Control and Licensing Branch. The review is sought pursuant to the provisions of the *Judicial Review Procedure Act*. For the purposes of this decision I accept the standard of review is "reasonableness".

[2] The decision made by the general manager was that the licensee did permit a minor to consume liquor in the licensed premises contrary to s. 33(1)(c) of the

Liquor Control and Licensing Act. The petitioner alleges seven grounds to quash the decision. I am satisfied that the manager's decision is unreasonable with respect to the evidence of the age of the person in question, and the substance being consumed, I need not deal with the other five grounds, and do not do so.

[3] The circumstances established in the material before me are these. The petitioner is a holder of a license under the **Liquor Control and Licensing Act**, for a premise in Nanaimo, British Columbia; and was the holder of such a license at all material times. At approximately eight o'clock in the afternoon of 23 July 2004, two members of the R.C.M. Police detachment in Nanaimo were present at the petitioner's licensed premises, as well as a liquor inspector. The two R.C.M. Police officers, I understand, were present as a result of a complaint of a narcotics transaction. The liquor inspector was there in the ordinary course of her duties.

[4] While on the premises, these three persons had their attention drawn to a female person. There was a conversation between one of the R.C.M. Police officers and this person, and in result this person was issued with notice that she was illegally in a licensed premises. The liquor inspector had observed this person to be drinking a yellow-coloured liquid with foam on the top contained in a beer mug, at the licensed premises, seated at a table with two older-looking persons who were consuming similar liquids.

[5] The manager had before him, as witnesses at the hearing, one of the R.C.M. Police officers and the liquor inspector. There were three other witnesses, but none of them were the person who had attracted the attention of the police officers and

the liquor inspector on the evening of 23 July. In the extract from his reasons for decision, the manager said this, at page 17 [as read in]:

I find on the evidence that the alleged minor was indeed a minor. She provided a birth date, though it took two attempts, which was corroborated by the information provided by the R.C.M. Police CPIC check. The constable was satisfied that the minor was properly identified. The liquor inspector was satisfied that the minor was properly identified. The minor did not dispute her age when the constable provided her with a notice of offence for being underage. The absence of her testimony provided no impediment to so finding.

[6] There is no admissible evidence of the age of this person. Ms. Roberts tells me that the law is that hearsay evidence is admissible in administrative proceedings to prove the truth of the facts asserted in the out of court declaration. I am aware of no such law of evidence.

[7] Section 20 of the ***Liquor Licensing and Control Act*** empowers the manager to conduct or to take action. S. 20(1) reads:

In addition to any other powers the general manager has under this Act, the general manager may, on the general manager's own motion or on receiving a complaint, take action against a licensee for any of the following reasons:

(a) the licensee's contravention of this Act or the regulations or the licensee's failure to comply with a term or condition of the licence. . .

[8] Subsection (4) of s. 20 prescribes as follows:

On taking action against a licensee under subsection (2), the general manager must

(a) provide the licensee with written notice of the action in accordance with the regulations,

(b) set out in the notice the reasons for taking the action,

- (c) set out in the notice the details of the action including
 - (i) if a monetary penalty is imposed, the amount of the penalty and the date by which the penalty must be paid, and
 - (ii) if a suspension is imposed, the period of the suspension and the dates on which the suspension must be served. . .

[9] Subsection (4.1) reads as follows:

For the purposes of any hearing referred to in subsection (2), the general manager, by summons, may require a person

- (a) to attend as a witness, at a place and time mentioned in the summons, which time must be a reasonable time from the date of the summons, and
- (b) to bring and produce before the general manager all documents, writings, books, deeds and papers in the person's possession, custody or power touching, or in any way relating to, the subject matter of the hearing.

(4.2) A person named in and served with a summons referred to in subsection (4.1) must attend before the general manager and answer on oath, unless the general manager directs otherwise, all questions touching the subject matter of the hearing, and produce all documents, writings, books, deeds and papers in accordance with the summons.

(4.3) When the general manager exercises a power under subsection (4.1), a person who fails or refuses to comply with subsection (4.2) is liable, on application to the Supreme Court, to be committed for contempt as if in breach of an order or judgment of the Supreme Court.

[10] Those legislative provisions lead me to the conclusion that this is designed to be a formal hearing; that witnesses are to be heard under oath unless the general manager provides otherwise. And that the rules of evidence are the formal rules of evidence.

[11] On the authorities counsel have referred to me, the observation has been made on numerous occasions that the ramifications of a finding that there has been a contravention of a provision of the statute, or a lack of compliance, may result in a serious or severe sanction. The gravamen of the conduct with which this licensee was charged is described in s. 33(1) of the Act, which reads as follows:

(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.

[12] "Minor" is defined in s. 1:

. . . means a person under the age of majority established by the Age of Majority Act;

[13] In my opinion, procedural fairness requires that if the government is going to allege a significant fact such as "minor", then that is a fact which it must prove by admissible evidence. The manager found that the person in question provided a birth date. That is hearsay. That person was never heard from. That was not admissible evidence. He went on to say that the hearsay evidence was corroborated by information provided by the R.C.M. Police CPIC check; that is to say, hearsay evidence was corroborated by more hearsay evidence. The minor did not dispute her age when the constable provided her with a notice of offence for being underage, said the manager. There is more corroboration of hearsay

evidence by the lack of more hearsay evidence. That is an unreasonable conclusion to come to on the evidence in this case. Counsel have spoken at length on the standard of proof. Standards of proof presuppose onuses of proof, and the onus was on the government to prove a minor was involved. The government could not do that with inadmissible evidence because inadmissible evidence is not evidence.

[14] The second aspect of this non-compliance allegation was that the minor was consuming liquor. Liquor means, again under subsection (1):

- (a) fermented, spirituous and malt liquors,
 - (b) combinations of liquors, and
 - (c) drinks and drinkable liquids that are intoxicating,
- and includes beer. . .

[15] Read in context, that definition suggests to me that it must be the kind of beer that is intoxicating or that contains liquor, not simply beer; not root beer, not near beer.

[16] The manager made more findings of fact with respect to that critical aspect of this alleged infraction. He said again at page 17 [as read in]:

I find that the minor was consuming liquor in the bar. I accept the evidence of the inspector with respect to her observations of the minor consuming a yellow liquid with a foam top in a beer mug. I find that this was beer. Given the location, a liquor primary licensed establishment, the vessel, a beer mug, the presence of identical-looking substances in front of the people sitting with the minor, the time of day, 8:30 p.m., the proximity of the minor to the bar and the description of the liquid, it is difficult to imagine it being anything but beer. Further, I accept the evidence of the R.C.M. Police constable that the minor was intoxicated.

[17] It is not beer which is prohibited, it is beer as defined under the word "liquor" that is proscribed, and the finding of fact, on that evidence relied upon by the general manager, I find to be unreasonable. In a result, the decision of the manager is quashed. Costs to follow the event.

A handwritten signature in black ink, appearing to read 'Wilson', written over a horizontal line.

Mr. Justice Wilson