



**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:	Small House Ventures Inc. dba Lucky Bar 517 Yates Street Victoria, BC V8W 1K7
Case:	EH06-013
For the Licensee:	Gregory N. Harney
For the Branch:	Sonja Okada
Enforcement Hearing Adjudicator:	Sheldon M. Seigel
Date of Hearing:	May 11 & 12, 2006
Place of Hearing:	Victoria
Date of Decision:	May 25, 2006

INTRODUCTION

The licensee owns and operates a bar in Victoria. The establishment is known as Lucky Bar. It holds Liquor Primary Licence No. 207078.

The Victoria Police Department, along with the Liquor Control and Licensing Branch (the branch) and the Victoria Bylaw Office initiated a project on the business days of September 30, 2005, and October 14, 2005, to determine if minors in the community were being served liquor in licensed establishments in the City of Victoria.

The project consisted of the use of a 17-year-old female, a 20-year-old female auxiliary police officer (handler), and a plain-clothes undercover police team. The 17-year-old and the 20-year-old attempted to gain entry to liquor primary establishments and sought to be served liquor, while the police team provided support.

Early in the morning of October 1, 2005 (the business day of Friday, September 30, 2005), the minor was allowed admission to Lucky Bar without having two pieces of ID checked and was allegedly served liquor.

The branch issued a Notice of Enforcement Action (NOEA) for failing to request ID contrary to Section 45(2) of the *Liquor Control and Licensing Regulation*, and for supplying liquor to a minor contrary to Section 33 of the *Liquor Control and Licensing Act*.

PRELIMINARY MATTERS

The branch requested that the identity of the minor not be disclosed publicly during these proceedings in the interest of her security.

I ruled that all reference to the minor would be by her initials only, both during the process and in all written documentation relating to the process.

The licensee requested that a photograph taken of the minor on September 30, 2005, prior to going out on the police project, be made available to the witnesses for their testimony. The branch objected to the photograph being part of the evidence on the grounds that it might compromise the security of the minor.

I ruled that the photograph be made available to the witnesses for their testimony. The photograph will not be an exhibit or evidence in the case, but the witnesses' testimony with respect to the photograph will be acceptable. I found that this ruling was within my jurisdiction in light of the well-established principle that administrative tribunals allow a degree of flexibility with respect to the rules of evidence in order to address particular issues unique to the administrative environment. I found the identity of the minor was relevant to the evidence of the witnesses, but the security of the minor was a legitimate concern, and justified the exclusion of the photograph from the evidence.

The licensee objected to the fact that two allegations were made in this case, Section 45(2) of the *Regulation* and Section 33 of the *Act*, whereas only the Section 33 contravention was alleged in the case of *Palomino's The Rock'n Horse Cabaret Ltd. dba Evolution* (EH06-018, April 27, 2006), which arose out of a virtually identical fact situation. The licensee's objection was presumably one relating to arbitrary enforcement.

I ruled that an enforcement adjudicator has authority granted under the *Act* by the operation of the delegation of the general manager of the branch. That authority permits an adjudicator to make determinations at the enforcement hearing, but does not grant authority to decide what matters may be placed

before the adjudicator. Accordingly, I overruled the objection and proceeded with the hearing.

ALLEGED CONTRAVENTIONS

On October 1, 2005, the licensee allegedly contravened Section 45(2) of the *Regulation* by failing to check two pieces of ID as prescribed, and Section 33 of the *Act* by supplying liquor to a minor, as set out in Notice of Enforcement Action (NOEA) EH06-013 and Contravention Notice No. B007047.

RELEVANT STATUTORY PROVISIONS

Liquor Control and Licensing Act, R.S.B.C. 1996, Chapter 267

Section 33(1) A person must not

- (a) sell, give or otherwise supply liquor to a minor

Liquor Control and Licensing Regulation, BC Reg. 244/2002

Section 45(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.

ISSUES

1. Did the licensee supply liquor to a minor?
 2. Did the licensee fail to check two pieces of ID as required by the *Regulation*?
 3. Did the licensee exercise due diligence in its activities such as to excuse it from findings of contravention?
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4. If one or both of the contraventions are proven, are penalties appropriate in the circumstances, and if so, what are the appropriate penalties?

EXHIBITS

Exhibit No. 1 - Licensee's Book of Documents

Exhibit No. 2 - Branch's Book of Documents

Exhibit No. 3 - Photocopy of four pieces of identification

Exhibit No. 4 - Photocopy of back of driver's licence shown in Exhibit No. 3

Exhibit No. 5 - Photograph of posted sign outside licensee's door

EVIDENCE

The branch called a sergeant with the Victoria Police Department (VPD). He testified as follows:

- He is the operations officer for the VPD. In particular, he is responsible for operations involving bars, crowd issue, and liaison with liquor establishments.
 - He is the director of the relevant ID check police project.
 - He spent considerable time looking for a suitable minor who was physically and emotionally able to participate in a program such as this.
 - He chose the minor identified as MK.
 - He met with MK and her parents and all agreed to enter into a service contract.
 - He sorted through many packages of identification in the possession of the police department, looking for one that did not resemble MK in any way.
 - He found a package of ID that described an individual physically very different from MK. The physical descriptors: hair colour, eye colour, size, and weight, were completely different.
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- Exhibit No. 3 is a copy of that ID.
- Exhibit No. 4 is a copy of the reverse side of the driver's licence in Exhibit No. 3.
- Four officers were trained for this project. The goal was to ensure the safety of MK and a "handler".
- MK's role was to present the "false" ID and attempt to gain entrance to the establishment. Once inside, MK would attempt to be served liquor.
- The handler is a police reservist.
- On October 1, 2005, he met with the four-trained officers, MK and the handler, at the police station for a briefing, and gave the package of ID to MK.
- He parked his car out of view of the bar because he is well known in the area. He did not see MK or the handler go into the establishment.
- He reviewed the photograph taken of MK that night and confirmed that she looked as she does in the photo on October 1, 2005, and very much as she does today.
- He contributed to the police report appearing in Exhibit No. 2 (at tab 5)
- He is familiar with the operators of Lucky Bar. He originally met the principal operator at a Good Neighbour meeting that he hosted.

The branch called MK. She testified as follows:

- Her birth-date is ^[1] 1988. She was 17 on October 1, 2005.
- She has brown eyes, is 180 cm or 5'11" in height and was 170 lbs.
- Her hair is brown with blonde streaks. On October 1, 2005, she looked as she does now. Her hair colour and style are the same, except her hair may have been "a bit blonder on that night".
- She was dressed similarly on the day of the hearing.
- She worked with the VPD on contract on October 1, 2005.

^[1] Personal information severed pursuant to Freedom of Information and Protection of Privacy Act.

- Her job was to go into a bar with a handler to see if they checked her ID properly and to see if they checked ID when she ordered drinks.
 - She attended 12 establishments on two occasions as part of this project.
 - She was provided with the false ID by the Victoria Police Department.
 - There were four pieces of ID including Drivers Licence, CareCard, Social Insurance Card and a Bank Card.
 - She confirmed Exhibit No. 3 and Exhibit No. 4 are copies of the ID that she was given.
 - On October 1, 2005, she looked as she does in the photograph taken on that night.
 - At Lucky Bar, the bouncer asked for ID. She produced one piece but did not take it out of her wallet. The bouncer looked at it in her wallet. The lighting was good where they were standing.
 - Other pieces of ID were in the wallet and one – perhaps a Visa Card - might have been visible in the little window in her wallet above the piece that she displayed to the doorman.
 - The handler paid the cover charge for both of them and they went in.
 - Inside the bar, the lighting was dim and it was very crowded.
 - She waited in line for the bartender to come to her.
 - She asked for a Corona beer and he gave it to her. He did not ask her anything.
 - The bartender made eye contact and smiled when she asked for the beer.
 - When the bartender made eye contact, he might have been assessing her.
 - He placed the beer immediately in front of her on the bar.
 - She and the handler left the bar, went to the police car and made notes. The notes are at tab 6, of Exhibit No. 2.
 - The handler made notes too. They were sitting together in the police car when they made the notes.
 - Sometimes people think she is older than she is.
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- The handler was asked for two pieces of ID at the door.
- She was not trying to look older than her age.

The branch called the handler. She testified as follows:

- Her birthday is ^[1], 1984.
- She is employed with the police department as a reservist and by contract.
- She has branch experience as an agent regarding under-age identification checking and has been trained by the branch.
- On October 1, 2005, she was working with the police as a handler for MK in a project designed to report on liquor licensees' practices of checking the identification of minors.
- She accompanied MK for security because MK was a minor. She also reported on ID checks on herself.
- She started the shift on September 30, 2005, at the Victoria police station following a briefing.
- MK was given false ID and photos were taken of both of them.
- She identified Exhibit No. 3 and Exhibit No. 4 as copies of the false ID.
- MK looked the same then as she does today.
- The photograph of her looks the same as she did on October 1, 2005, and pretty much as she looked on the date of the hearing.
- When they approached the bar, there were two doormen. She approached first, was asked for two pieces of ID, and produced it.
- MK was asked for ID by a different doorman. She did not know what happened there.
- They paid the cover charge and went into the bar.
- It was busy and there were no seats available.
- They both went to the bar and each individually ordered beer.

^[1] Personal Information severed pursuant to Freedom of Information and Protection of Privacy Act.

- There was no conversation with the bartender except for each of them asking for a Corona beer.
- The bartender took each of the beer caps off and placed one beer in front of each of them.
- She paid for both beers.
- They left after ten minutes.
- She made notes in the police car. Her notes are at tab 7 of Exhibit No. 2.
- MK looked nothing like the false ID that she carried and the descriptions on the back of the licence were completely different.
- There was a sign over the door at the entrance indicating that two pieces of ID were required for entry to the bar.
- MK was taller than most of the people in the bar.
- The bartender might have been assessing her age when he made eye contact with her.
- The lighting was dim in the bar.
- In her opinion MK looks older than 17.

The branch called the compliance and enforcement officer (C & E officer). He testified as follows:

- He has been a C & E officer for two years. He is responsible for the area in which Lucky Bar is situated.
 - Issues involving minors are important public safety concerns to the branch.
 - He was not involved in the project and first found out about it when the Licensed Premise Check (LPC) and evidence were provided to him.
 - He identified all of the documents relevant to the contravention in Exhibit No. 2.
 - He arranged a meeting with MK at the police department to personally assess her age for enforcement purposes.
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- He reviewed the false ID and decided there was no resemblance between the false ID and MK.
 - He issued a Contravention Notice and served it.
 - He met with the principal operator of the bar and asked him the due diligence questions at tab 8 of Exhibit No. 2.
 - He recorded the licensee's responses and discussed the licensee's policies and procedures with the principal operator.
 - He made recommendations for improving staff training and implementing a "secret shopper" program for evaluating the procedures.
 - He did not feel that there was an adequate training program in place or adequate procedures, so he recommended them, and then in due course, issued the NOEA.
 - He identified all of the documents relevant to the compliance history of the licensee in Exhibit No. 2.
 - All of the licensees at the establishments that served liquor to MK during the project were issued NOEAs.
 - He considered whether the licensee showed due diligence with the systems and procedures in place at the time of the alleged contravention. He decided they had not achieved that level. He thought it was not close. He recommended some steps to improve their policies and procedures and the licensee adopted those after the fact.
 - He decided not to pursue a contravention for allowing a minor in the premise.
 - He did not know about the operator's involvement in the Good Neighbour program, but that would not have changed his mind about pursuing enforcement action.
 - He indicated that the operator produced 51 pieces of ID that had been confiscated from patrons at the bar. That did not convince him that the system was effective, but rather that it "sometimes works, some of the time."
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The licensee called the principal third-party operator of the licensee. He testified as follows:

- He has been in the hospitality industry for 18 years.
 - He understands the *Regulation* and strives to abide by them.
 - Lucky Bar is not interested in catering to under-age patrons or even to 19-23 year old legal patrons.
 - "Because Lucky's is so small, we have a lot of control over what kind of people are in that room. We are not fishing with a large net. On slow days, even though there are only 50-60 [patrons] in there, we still get to choose who we want. We don't care if you are going to be upset about getting ID'd."
 - "Before I purchased the bar I knew the doorman and the bartender and the manager and when I purchased it I asked if they would stay. They are both experienced and competent."
 - Staff meetings are held four times per year, plus one annual meeting.
 - Accountability agreements were in place for all employees when he got there. He up-dated them, but they remained in place.
 - Bartenders and door personnel are instructed about requiring two pieces of ID constantly.
 - "Minors are not much of an issue for us because rarely are 19 year olds wanting to come to our bar. It may be our advertisements or the music or whatever, but on any given day it is not likely they will want to get in."
 - The 51 pieces of ID that they confiscated were from more than one year of checking.
 - "I would have guessed MK was older than the handler. I would have guessed 21 years at least, but not 30."
 - The bar has a policy of checking for ID for anyone not appearing 30 years old.
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- Since October 1, 2005, he has tightened up the procedures further by implementing a staff exam and a "secret shopper" program.
- He has been to "Good Neighbour" meetings and talked with the inspector about help with compliance in the past.
- The doorman was suspended for failing to check ID. "We talked to him and the bartender about it."

The licensee called the manager of Lucky Bar. He testified as follows:

- He has been in the liquor service industry for 14 years.
 - His policy at Lucky Bar is "110% compliance."
 - The bar does not target young patrons. It is primarily an event venue and is known as a "graduate bar".
 - The doormen are carefully chosen and very well trained.
 - The doorman who failed to check two pieces of ID that night was well trained and is diligent. He cares about doing a good job and routinely turns away people who do not produce ID as required.
 - The establishment offers no discretion to its employees to deviate from the rules.
 - The bartenders are instructed to check ID if they are unsure of whether the patron appears under 30.
 - The receipt of the contravention was a disappointment. The systems failed. He is dismayed and is motivated to improve the measures to ensure compliance.
 - The staff accountability agreements have been up-dated and are used regularly.
 - There are published door responsibilities lists. He identified them as being those at tab 8, Exhibit No. 1.
 - He reviewed the obligations of the published lists with the doorman in question after the event.
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- He indicated that they keep minutes of meetings in which ID is regularly discussed. He identified those minutes as at tab 8 of Exhibit No. 1.
- Drink prices are not cheap at Lucky Bar. The bar competes with service and calibre rather than price, and that keeps the younger patrons away.
- The doorman was suspended for a week without pay after the event and put on probation. He was retrained, and they revisited accountability statements together and had the doorman sign-off on them again. He was reprimanded.
- The employee tests were not in place at the time of the contravention but were put in place shortly afterward as a result of the suggestions of the C & E officer.
- "The bartender was reprimanded but not suspended. He should have caught [the minor] but it would be hard to punish him for that. It is his secondary responsibility - the doorman made the more serious mistake."
- After the contravention, the new tests were put into the policies and "the employees have to sign-off on them too."

The licensee called the doorman. He testified as follows:

- He has worked as doorman at the Lucky Bar for 22 months as of October 1, 2005.
 - He had previous experience as a doorman and was trained by Lucky Bar and his previous employer.
 - He knows the rules, including the requirement to check two pieces of ID from anyone appearing under 25 years of age.
 - He signed the accountability agreements at Lucky Bar and understood his obligations.
 - He believes he is to check ID from anyone appearing under 30, and then get a second piece of ID if the ID shows they are under 25. "If they are less than 25, I absolutely have a second piece, if 30, I ask usually for a second piece."
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- He attends all staff meetings several times each year.
- He knows he has no discretion to deviate from the rules.
- He has been retrained, reprimanded, and examined since the incident.
- He has no recollection of the particular minor but understands that he "got it wrong and was put on probation and suspended as a result."
- "I have accepted responsibility for the incident. It was not anyone else's mistake. It seems pretty obvious about that. I can't imagine what I was thinking at the time. The fact that the minor was served liquor in the bar was my responsibility - the door staff is the first line of defence."
- "There was a different approach taken after the suspension... more intensive and more of a rehashing and with more scrutiny."

The licensee called the bartender. He testified as follows:

- He was originally trained as a doorman at Lucky bar and became a bartender in 2003.
 - There is a small meeting before each shift and large ones three or four times per year.
 - In the big meetings, the staff goes over the policies and procedures and review the accountability agreements and ID policies.
 - He was trained to ask for two pieces of ID from anyone appearing under 30. That is the bar's policy.
 - "As a bartender, my job description includes not serving minors."
 - "I ask for ID if they appear under 30, or if I am not sure. Then if they are of age, I can serve them. If they produce one piece and they are under 25, I ask for another one. It happens every shift."
 - He does not remember the incident, but acknowledges that it is his job to ask for ID if a patron appears to be under 30 years of age.
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SUBMISSIONS

The branch submitted that the evidence supports the allegations that the licensee served liquor to a minor and failed to check two pieces of identification of a patron appearing under the age of 25.

The branch further argued that the licensee did not establish due diligence such as would be a defence to the alleged contraventions, and that the licensee put too much reliance upon the door staff to screen patrons for identification.

The licensee acknowledged that liquor was supplied to a minor, but offered by way of explanation that the doorman was a properly trained employee, who without warning abandoned his responsibilities. This explanation qualifies under the established defence of due diligence, and therefore the contravention must be found not to have occurred.

The branch submitted that the systems and procedures in place at the establishment at the time of the alleged contraventions were inadequate, but the licensee argued that the branch was unable to identify the deficiencies in the systems.

The licensee argued that if the deficiencies in its system had been pointed out by the branch in advance, it would have had the opportunity to remedy the situation before a contravention occurred.

The licensee submitted that one doorman did not check two pieces of ID as required, but the other did (in the case of the handler), and that is evidence that the system was working. The failure was not systemic, but situational and the doorman failed to follow the policies of which he was aware. As the deficient doorman was sanctioned, the existence of a satisfactory system was supported.

The licensee also argued; "There are only 12 staff - this was not a system error - it is a tight little system."

Further, the licensee argued that the minor was hand picked by police to confound the reasonable efforts of the licensee, in that MK was remarkably tall, composed, and articulate, for a minor of her years. She was accompanied by a handler who was experienced and also particularly mature for her years, and together they appeared to compliment each other as a team of drinking age patrons.

The licensee argued; "There was no evidence that the bartender had any reason to believe that MK was not of drinking age."

The licensee submitted that in the event that the contraventions are found to have occurred, a monetary fine would be adequate in the circumstances, as the licensee does not require deterrence.

ANALYSIS AND DECISION

Supply to a minor

The alleged contravention is one of supplying liquor to a minor. The evidence establishes that MK was at all relevant times a minor.

It is contrary to the *Act* to provide liquor to a minor. The fact that an establishment has allowed a minor entry does not affect in any way the establishment's continuing obligation to refuse to serve a minor or to check for identification as prescribed if the individual appears to be under the age of 25.

The bartender had an obligation to ask for prescribed identification if the individual appeared under the age of 25. I find on the evidence that MK did appear under the age of 25.

The evidence indicated that the bartender made eye contact with the minor and MK acknowledged that the bartender may have been "assessing her". I have found that the 17-year-old minor did not look over 25 and therefore, she should have been asked for the prescribed identification before being served.

The bartender had an obligation to refuse service to a minor. The licensee argued, "There was no evidence that the bartender had any reason to believe that MK was not of drinking age". I find this is the inverse of the thought process, that the bartender was obliged to employ for he had no established reason to believe MK was of drinking age.

Two pieces of ID

I have found that MK appeared under the age of 25 years of age. In addition, the principal operator of the licensee testified that; "I would have guessed MK was older than the handler. I would have guessed 21 years at least, but not 30."

I find on the evidence that the licensee had two occasions on which it was obligated by *Regulation* to check for two pieces of identification: upon MK presenting to the doorman for admission to the bar, and upon requesting a beer of the bartender.

The evidence establishes that the licensee had a stated policy of checking for ID if a person appeared to be under 30 years of age. The testimony of the doorman and the bartender confirm an irregularity: A single piece of ID is requested if the patron appeared under 30 years of age, and then a second one if the identification indicated an age of less than 25 years. As the *Regulation* states

that two pieces of ID are required if the patron appears under the age of 25, the evidence suggests a potential flaw in the licensee's policy. If the patron appears to be under 25, but the first piece of ID establishes her age as greater than 25, she would not be asked to produce a second piece of ID as is required by law.

Both the doorman, and after MK was allowed admission, the bartender, were obligated to request two pieces of identification from MK. The evidence is uncontroverted that neither one of the employees did so.

Due Diligence

Due diligence is a complete defence to the allegations if established on the evidence. I find the evidence of due diligence on the part of the licensee to be insufficient. The defence fails.

In examining the defence of due diligence, reference must be made to timing in two respects. The diligence must have been evident from systems and policies in place at the establishment at the time of the alleged contravention. This disentitles the licensee from claiming that actions taken in response to the alleged contravention are indicative of systemic diligence. The systems and policies must be scrutinized as of the moment of the contravention.

The discipline metered out to the doorman after the allegations came to light, do not affect the assessment of due diligence. It might however, be properly considered when considering penalty.

The diligence must relate to the occurrence on which the alleged contravention is based. The training and procedures followed by a bartender or server must be considered when assessing diligence related to the allegation of supplying liquor to a minor. The training and procedures followed by a doorman must be considered when assessing diligence related to the allegation of failing to request

ID in accordance with the regulations, or allowing a minor to enter a licensed premise.

In this hearing, both the bartender and the doorman took responsibility for failing to perform their obligations. The bartender served a minor, and did not check for two pieces of identification. The doorman failed to require production of two pieces of identification. Although there are only two alleged contraventions, the licensee actually failed to meet the standard of Section 45(2) of the *Regulation* twice, in that neither the doorman nor the bartender asked MK for two pieces of ID as required.

The licensee provided a copy of the branch's Compliance and Enforcement Desk Reference. It argued that the description of due diligence contained therein set a standard to which this adjudication must adhere.

I disagree. Due diligence is a defence which may be raised by a licensee at an enforcement hearing. As indicated above, if found, it is a complete answer to the alleged contravention. The desk reference is not law. It is a tool utilized by C & E officers to establish whether or not to proceed to enforcement action against a licensee. Although this is useful to the C & E officer and to the branch from the standpoint of consistency in enforcement, a decision by the C & E officer to proceed to enforcement as a result of a failure of the licensee to demonstrate due diligence neither fetters the discretion of, nor binds an enforcement hearing adjudicator.

The licensee argued that the standard of due diligence applied by the C & E officer was incorrect in law. I find this argument to be ineffective. A C & E officer, as ultimate delegate of the general manager, is entitled to pursue enforcement action at his or her discretion. In fact, the C & E officer makes recommendations regarding enforcement to a regional manager, who then approves the recommendations or otherwise. Policy initiatives provide guidance

and direction to the C & E officer in this capacity and identify indications of due diligence which might impact upon enforcement action taken. This examination of the facts leading up to a decision to pursue enforcement is irrelevant and *ex juris* from the standpoint of the adjudicator.

The licensee argued; "There are only twelve staff - this was not a system error - it is a tight little system." I find that such a system should be capable of closer monitoring. There were three failures in the system involving two employees with respect to MK on October 1, 2005.

The evidence of the doorman confirms that the licensee did not do all that it could prior to October 1, 2005, to prevent such contraventions from occurring. The management of Lucky Bar did alter its approach to compliance after the allegation: "There was a different approach taken after the suspension... more intensive and more of a rehashing and with more scrutiny."

I find it is not incumbent upon the branch to point out deficiencies in the licensee's system, nor to counsel the licensee in correcting deficiencies prior to an allegation of contravention. It is ultimately the responsibility of the licensee to comply with all applicable laws and *Regulation* relating to its licence.

Finally, the licensee submitted that MK was hand picked by the police to confound a licensee's procedures and systems. There is no evidence before me that would indicate that MK is outside of normal parameters with respect to her appearance or physical attributes. I find that the activities of the branch and police in this respect were reasonable measures utilized to monitor and enforce existing legislation and *Regulation*.

I find the contraventions have been proven.

PENALTY

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 the 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*.

The range of penalty for a first contravention of Section 33 of the *Act* in accordance with item 2 of Schedule 4 of the *Regulation* is a four (4) to seven (7) day suspension and/or a monetary penalty of \$5,000-\$7,000. The branch recommended the minimum suspension of four (4) days.

The range of penalty for a first contravention of Section 45(2) of the *Regulation* is a suspension of one (1) to three (3) days and/or a monetary penalty of \$1,000 - \$3,000. The branch recommended the minimum monetary penalty of \$1,000.

I find that a penalty is warranted for supplying liquor to a minor in the circumstances of this case. I accept that providing liquor to a minor is an activity that endangers the safety and security of the public in general, and minors in particular.

In assessing the particulars of the penalty, I have considered the credible evidence of the licensee's witnesses and in particular its employees. Both they and management have acknowledged their errors and are remorseful. Management acted immediately and with considerable impact, to address the misfeasance and re-emphasize the importance of compliance with the legislative requirements. I find that voluntary compliance is likely in the future. In balancing the interests of public safety and with deference to a management, which appears to have an interest in voluntary compliance, I find no suspension is warranted. I find that a monetary penalty of \$5,000 is appropriate for the contravention of Section 33 of the *Act*.

I also find that a penalty is warranted for failing to request ID in accordance with the *Regulation*. The recommended \$1,000 penalty is the minimum and not significant in terms of operation of the establishment. A penalty is, however, necessary to continue to demonstrate the importance of public safety and the commitment of the branch to its mandate. I find that a monetary penalty of \$1,000 is appropriate for the contravention of Section 45(2) of the *Regulation*.

ORDER

Pursuant to Section 20(2) of the *Act*, I order the licensee to pay monetary penalties totalling six thousand dollars (\$6,000) relating to Liquor Primary Licence No. 207078 in respect of action EH06-013. The monetary penalty must be paid no later than the close of business on August 4, 2006.

[Original Signed]

Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: May 25, 2006

cc: Victoria Police Department

Liquor Control and Licensing Branch, Victoria Office
Attn: Gary Barker, Regional Manager
Vancouver Island/Okanagan/Kootenay

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