



**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: JAC Management Co. Limited
dba Princeton Motor Hotel
258 Bridge Street
Princeton, BC V0X 1W0

Case: EH05-078

For the Licensee: Stephen Brodie

For the Branch: Shahid Noorani

Enforcement Hearing Adjudicator: Edward W. Owsianski

Date of Hearing: January 16, 2006

Place of Hearing: Princeton, BC

Date of Decision: February 16, 2006

Introduction

JAC Management Company Ltd. (dba Princeton Motor Hotel) holds Liquor Primary Licence No. 026040. The hours of sale are 11:00 a.m. to 1:00 a.m. from Monday to Saturday and 11:00 a.m. to midnight on Sunday. It is subject to the terms and conditions contained in the publication 'Guide for Liquor Licensees in British Columbia' ("the Guide"). The establishment is located in Princeton, BC and is operated in conjunction with a Licensee Retail Store.

Alleged Contravention and Recommended Enforcement Action

The branch's allegations and recommended enforcement action are set out in the Notice of Enforcement Action (the "NOEA") dated July 17, 2005, and the accompanying Schedule 1. The branch alleges that

1. On March 11, 2005, the licensee contravened Section 33 of the *Liquor Control & Licensing Act* by supplying liquor to minors. The recommended enforcement action is a four (4) day suspension of the liquor licence.

Schedule 4 at Item 2 of the *Liquor Control and Licensing Regulation* provides a range of penalties for a first contravention of this type, a licence suspension for four to seven days and/or a monetary penalty of five thousand (\$5000) to seven thousand (\$7,000) dollars.

2. On March 11, 2005, 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. The recommended enforcement action is a one (1) day suspension of the liquor licence.

Schedule 4 at Item 3 of the *Liquor Control and Licensing Regulation* provides a range of penalties for a first contravention of this type, a licence suspension for one to three days and/or a monetary penalty of one thousand (\$1000) to three thousand (\$3,000) dollars.

3. On March 11, 2005, the licensee contravened Section 43(2)(b) of the *Liquor Control and Licensing Act* by permitting an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied. The recommended enforcement action is a four (4) day suspension of the liquor licence.

Schedule 4 at Item 11 of the *Liquor Control and Licensing Regulation* provides a range of penalties for a first contravention of this type, a licence suspension for four to seven days and/or a monetary penalty of five thousand (\$5000) to seven thousand (\$7,000) dollars.

4. On March 11, 2005, the licensee contravened Section 45(2) of the *Liquor Control and Licensing Regulation* by failing to request two pieces of identification from a person appearing to be under the age of 25 before allowing the person to enter the licensed establishment, or before selling or serving liquor to the person. The recommended enforcement action is a one (1) day suspension of the liquor licence.

Schedule 4 at Item 4 of the *Liquor Control and Licensing Regulation* provides a range of penalties for a first contravention of this type, a licence suspension for one to three days and/or a monetary penalty of one thousand (\$1000) to three thousand (\$3,000) dollars.

The licensee disputes all four contraventions.

The relevant sections of *Liquor Control and Licensing Act and Regulation* are found in the Appendix to this decision.

Issues

1. Whether the licensee contravened the *Act* and/or the *Regulation* as alleged?
 2. If so, what penalties, if any, are appropriate?
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Exhibits

1. Book of Documents
2. Excerpt from establishment log dated January 14, 2005.
3. Undated letter from hotel employee to R.C.M.Police Constable with attachments.
4. Item Movement Report from Princeton Hotel Cold Beer, Spirits & Wine Store.
5. Excerpt from compliance and enforcement officer's notes dated March 15, 2005.
6. Excerpt from establishment log dated March 11, 2005.

Evidence - The Liquor Control and Licensing Branch

Witness #1 testified that on March 11, 2005, he was seventeen years old. On that date he entered the Liquor Primary area of the Princeton Motor Hotel using the side door to avoid being checked by staff and commenced playing pool with friends inside the licensed area of the establishment. He was not approached by any staff member and had been in the establishment for approximately one hour when an R.C.M.Police constable who knew he was not of legal drinking age required him to leave the establishment. The witness testified that he knows the owner of the Hotel and knows that the owner would not allow him into the licensed area nor to purchase liquor underage.

Testimony was received from two police officers from the R.C.M.Police Princeton Detachment.

Constable #1 testified that he has been a police officer since September 2003 and prior to that worked in security and loss prevention for six years. As a uniform police officer he has made several hundred walk-thru inspections of licensed establishments during the course of his duties. The walk-thrus are meant to deter problems arising

from intoxicated persons, minors and known troublemakers. As a police officer he has received training in detecting drug and alcohol use and administering standardized field sobriety tests. He is familiar with the signs of intoxication, which include impaired motor skills, divided attention, smell of liquor, poor balance and slurred speech. He has dealt with intoxicated persons in licensed establishment on several hundred occasions.

The constable testified that he was on duty during the evening and early morning hours of March 11, 2005. He had previously received information that he believed to be true that a fight was to take place in the Princeton Motor Hotel that night. He passed this information on to the two other police officers on duty. At approximately 9:30 p.m of that date he entered the Hotel to do a walk-thru inspection. He used the side-door entrance and noted that there was no employee at the entrance checking on patrons entering the establishment. Inside, two female servers were on duty. Approximately ten feet from the entrance, he noted a young male in the licensed area consuming from a typical pint beer glass. The glass was approximately three-quarters full of a brownish coloured liquid with foam on top and which he considered to be beer, an alcoholic beverage. He checked police records and confirmed that the male was eighteen years of age at that time. He brought the minor to the attention of server #1 and advised her that the minor was underage and was being ejected from the establishment. The server told the constable that she did not check the identification of the minor as she has done so on previous occasions and believed him to be of age.

The constable testified that after escorting the minor outside he re-entered the licensed area of the Hotel and noted another young male (witness #1) whom he knew to be seventeen years old. The minor was not noted to be in possession of liquor, however did display signs of intoxication, liquor on his breath, staggering, bloodshot watery eyes and slurred speech. He was ejected from the establishment.

The constable testified that upon entering the establishment he had noticed two other young appearing persons inside, who upon seeing him departed from the establishment. He noticed a group of seven young appearing persons seated at a table

with several glasses and a pitcher containing what appeared to be beer. When requested to produce identification, five showed him identification indicating that they were between 19 and 21 years old. Two were unable to produce identification. They told him that they lived a block from the hotel and would get their identification. They departed and did not return. He spoke with server #2 who was responsible for the table at which the group was sitting. She said that she did not request identification from persons in the group and appeared very unsure of her role as a server. She appeared to be under 19 years old so he requested that she provide her identification to him. She stated that she had been working at the Hotel for just over a month and had commenced employment in early February. She said that she was from out of province and that her identification had been stolen. She had not yet completed the "Serving It Right" certification for liquor service, however would be doing so in the future. The constable told her she could not continue working as a liquor server without being able to provide valid identification showing that she was of legal age and she was sent home. The constable then telephoned the owner and advised him what had transpired and suggested that he attend to assist the now lone server. The owner advised the constable that server #2 had only worked at the Hotel for a week. He arrived shortly thereafter, noted the two police officers outside of the Hotel and asked them whether they had nothing better to do.

The constable upon leaving the Hotel heard a male and female engaged in a domestic dispute screaming at each other on the street in front of the Hotel. He attended, the female was then running away with the male screaming at her. He spoke with the male and noted; that he was intoxicated, with gross motor skill impairment, stumbling, a heavy odour of liquor, bloodshot eyes and slurred speech. He was screaming obscenities. The intoxicated male was previously known to him and known to live only a short distance away. The constable advised him to return home or he would be arrested. The male departed. The constable testified that he had been advised that another police officer from the detachment (this officer was not presented as a witness) advised him that he had dealt with this male earlier in the evening at approximately

6:30 p.m. and the male was intoxicated at that time. The male had not been arrested by the police officer.

The constable left the Hotel area for other duties, returning at approximately 1:20 a.m. to ensure there was no fight taking place per the information he had earlier received. He entered the establishment with another police officer (constable #2). He noted that the intoxicated male had returned and was seated at a table near the bar and was consuming what appeared to be beer. The male upon observing the police officers shouted an obscenity at them. The staff on duty, server #1 and the owner, failed to take any action. The police officers told the intoxicated male to leave. He refused and was taken by the arm by constable #2 and escorted outside where he was once again told to return home or be arrested. The male exhibited signs of intoxication, heavy odour of liquor on his breath, bloodshot and watery eyes, slurred speech, staggering and wobbly on his feet.

The constable, later that night made notes of the events (Exhibit 1, tab 5) and completed a report (Exhibit 1, tab 6) which was forwarded to the branch compliance and enforcement officer together with a copy of a Licensed Premises Check form (LPC) (Exhibit 1, tab 4). The LPC was served on the bartender on duty at the establishment on March 18, 2005.

The constable testified that he was concerned with the number of incidents of violence that had occurred at the Hotel in the past three months (January – March 2005) and prepared a report (Exhibit 1, tab 8) that outlined the five incidents requiring police attendance.

Constable #2 testified that he has been a police officer for approximately eight and a half years during which time he has conducted more than a thousand walk-thru inspections of licensed establishments and dealt with hundreds of intoxicated persons. He testified that he was one of three police officers working in Princeton during the night and early morning hours of March 11, 2005. He attended with constable #1 near

closing time, sometime between 1:00 and 1:30 a.m. as a result of information received of a pending fight at the Hotel. Information had been received that one person was to be attacked by several others if located at the Hotel. Upon entering the Hotel a male patron known to the police officer was seated at a table holding a glass of what appeared to be beer and shouted an obscenity at them. The person was "highly inebriated", loud, obnoxious, swearing, eyes bloodshot, glassy and watery, speech slurred. He was escorted outside and told to go home or be arrested. So far as the constable knew the intoxicated male proceeded home. Had he returned he would have been arrested. The constable knows the person from previous dealings. He is generally uncooperative with the police and has been engaged in other criminal matters. Both constables left the Hotel but remained outside to watch for further problems.

The constable testified that generally speaking if there are problems at the Hotel it is in the Pub and not the Cold Beer, Spirits and Wine Store (LRS). The LRS has video surveillance, which assists police in investigations for theft and shoplifting. He testified that he had apprehended a minor in possession of liquor on Friday, January 13, 2006, and believing that he had obtained it from the LRS at the Hotel and had left a note to that effect at the Hotel (Exhibit 2). He is now aware that the liquor was not sold to the minor by the LRS (Exhibits 3 and 4).

A branch compliance and enforcement officer testified that she is responsible for the geographical area in which Princeton Motor Hotel Pub & Cold Beer, Spirits & Wine Store are located and is responsible for keeping the branch files for the establishment. She testified that the Liquor Primary Licence (Exhibit 1, tab 9) for the Hotel allows liquor service seven days per week and is subject to the terms and conditions contained in the branch publication "Guide for Liquor Licensees". A copy of the Guide has been provided to all licensees. The Guide in effect at the time of the alleged contraventions is found at Exhibit 1, tab 10. She referred to excerpts from the Guide dealing with: "Updates" (p 2); "Your Role as a Licensee" (p 3); "Minors" (p11); "Identification Requirements" (p11 & 12); and "Over-service and Intoxicated Patrons" (p 13).

She first became aware of the problems occurring at the Hotel on March 11, 2005, when she received a phone call from the sergeant at the detachment on that date, followed by the receipt of the LPC and the police report (Exhibit 1, tabs 4 & 6) on March 15, 2005. She telephoned the owner on the following day, March 16, 2005, to discuss the problems reported and to discuss his procedures in the hiring of staff. The owner became upset and said that the police and the government were harassing him. He said that you can't check everybody all of the time. He complained that he was being picked on and that he had videos of the government liquor store selling liquor to intoxicated persons. When asked about hiring underage employees he said that the server and her boyfriend were hired because they had no work and no place to stay. The boyfriend who was 17 years old was hired as a disc jockey. The server was hired after he checked out her identification in Ontario. The compliance and enforcement officer terminated the telephone conversation with the owner after approximately 30 minutes when it became clear he was raising his voice and venting his anger. She made notes of her conversation with the owner (Exhibit 5) and on the following day issued Contravention Notices (Exhibit 1, tab 3) and wrote up the Enforcement Action Recommended report (Exhibit 1, tab 2) in which she recommended the minimum prescribed suspension penalty for each contravention. She felt that a penalty was necessary given the seriousness and number of contraventions and the response of the owner blaming the police and government for the problems. She testified that prior to the night in question the establishment had a reasonable compliance record with the last incident being a warning letter dated November 6, 1995. She testified that she believed that a penalty was necessary to ensure future voluntary compliance and that the licensee did not exhibit due diligence through training and supervision of employees to ensure that they operated within the requirement of the *Act* and *Regulation*. She was also concerned that the licensee lacked co-operation with the police. She testified that she has been at the Hotel on approximately three occasions, none of which have been subsequent to the March 11, 2005, incidents. She has been busy on other duties and is aware that the police make regular walk-thrus of the establishment.

Evidence - The Licensee

The manager of the Cold Beer, Spirits & Wine Store (LRS) testified that she is employed as the manager of the LRS at the Hotel. She had previously been employed at the government liquor store (GLS), however sought other employment when it was announced that the GLS would be closing. She was not required to obtain "Serving it Right" certification while working at the GLS but has obtained it since taking the position of manager at the LRS. All employees of the LRS have obtained certification, usually paid for by the licensee. The owner requires her and all other employees of the LRS to check the identification of persons appearing to be under 30 years of age. She is responsible for training employees of the LRS and has made up a training manual for that purpose. The Liquor Primary area (the bar) and the LRS are operated separately. She has never worked at the bar and is unfamiliar with its operation. She believes that it is operated with similar policy and procedures to those of the LRS. The owner of the bar uses the computer at the LRS to train employees of the bar and she has overheard him telling them of the requirement to check two pieces of identification.

She testified that there is a good relationship between the R.C.M. Police officers and the staff at the LRS. She does not know what the relationship is between employees of the bar and local police officers. She is aware that constable #2 had apprehended a minor in possession of liquor on Friday January 13, 2006, and believing that he had obtained it from the LRS at the Hotel had left a note to that effect at the Hotel (Exhibit 2). She obtained a statement from the employee on duty at the time (Exhibit 3) and checked the liquor purchase records for the LRS (Exhibit 4) confirming that the liquor was not sold to the minor by the Hotel LRS.

She testified that she had hired an employee for the LRS who was engaged to an R.C.M. Police officer. The employee had sold liquor to a person who was drinking and driving and then phoned and advised the police. The owner told her to fire the employee as a result, a decision to which she did not agree. She felt that the employee could receive further training in dealing with persons who are drinking and driving and

perhaps be scheduled to work during the less busy times. The employee said that she couldn't continue working there so quit. The matter went to legal proceedings on the issue of wrongful dismissal and she believes was settled out of court.

She testified that she believes that at the LRS they use due diligence to prevent the sale of liquor to intoxicated or underage persons. She knows of only one incident where liquor was sold to a minor at the LRS. The owner upon learning of the incident became angry and hung notices at the cash register. She has refused the sale of liquor to a person who then has gone and purchased it from the GLS.

The owner/licensee of the establishment testified that he has owned the Hotel since November 1980. In that time, his liquor sales in the bar have decreased from \$1 million to \$277,000. There has been a large drop in sales in the past two years since the branch has moved from the Ministry of the Attorney General to that of Public Safety. This has also been responsible for ruining the good will with the R.C.M. Police. The detachment personnel are new, many are new recruits. This creates problems for all of the business community. While some aspects of policing are good there is an over emphasis on community policing. There are too many police officers for the size of the community, which leads to excessive policing. He believes that as a result of the employment problem with the fiancée of a police officer, the police members are harassing him. He questioned the competence of the officers' testimony. Constable #1 is a junior officer and the officers have a continuing working relationship with each other and an interest in the outcome of proceedings. He is prevented from fully cross-examining the officers as it could cause a backlash with the officers creating more problems for his establishment

He testified that server #2 only worked at the Hotel for four shifts and was laid-off as she did not provide identification showing her date of birth. When hired he discussed the rules with her. Server #1 who had been employed at the Hotel for eight months was fired the week following the incident. The most senior employee is now scheduled to work on Friday and Saturday nights. His employees are union members and the rules

require that he have three meetings with them prior to them being fired. In the course of owning and operating the Hotel he has hired and fired more than 200 employees. If an employee fails to show up for work the union rules require that another employee be given at least 48 hours notice prior to having their shift changed. If the police officers have a problem with an employee the officers should advise him, however have chosen not to do so.

He testified that he was present when constable #2 escorted the patron outside. The patron walked out rapidly on his own and returned, walking just as rapidly on his own. He was not told by the police officer why the patron was being escorted out. The patron returned after approximately five minutes and when asked what that was all about, said that the police officer had wanted to talk to him about missing a court date. The owner testified that the patron was going to provide evidence as a witness at this hearing but is currently in jail, a circumstance that he believed was conveniently arranged by the police.

He testified that as the licensee he couldn't be present 24 hours a day. The community consists primarily of miners and loggers and has a high number of unemployed and persons on welfare. It is a difficult atmosphere in which to operate a Hotel. The clientele are difficult to deal with. At his expense he has ensured that all staff have obtained "Serving It Right " (SIR) certification and he has spent several hours with each employee taking the SIR program. He is familiar with the "Guide for Licensees, considers it important and makes it available to employees. They are asked if they have questions about their duties and he clarifies any uncertainties. With regard to training, senior staff work with new employees showing them how to handle the product, conduct identity and age checks, look for signs of impairment and show them how to bar persons. A list is kept of persons barred from the establishment. An incident log is kept on a daily basis that must be reviewed by staff. This serves as a record of occurrences and a deterrent for staff and is part of his training procedures. During his testimony, the owner reviewed the incident log for March 11, 2005, (Exhibit 6) it did not contain references to the minors found in the establishment. He also made a brief

review of the log relating to the requirement to check two pieces of identification of persons appearing to be under 25 years old and intoxicated persons. Entries were noted for dates following the March incident, however, none were noted in dates previous to March 11, 2005. He testified that staff meetings are held daily, however no records are maintained. He is aware that there were fights at the Hotel in previous weeks requiring police attendance. He testified that there are continuously fights at the Hotel and that there are fights in every establishment across the country on a regular basis and have been for hundreds of years.

He testified that during his time as the owner of the Hotel he has received over a thousand LPCs, 99.9% of which are positive. Normally the police officers write up the LPCs while on the premises and give a copy to management. In this instance, neither constable wrote up an LPC at the time. Constable #1 came to the Hotel at a later date and gave a copy to the employee on duty who refused to sign for it. He as the owner did not receive a copy for six weeks. The police officers did not arrest the alleged intoxicated patron nor did they charge any of the minors found in the establishment nor the staff on duty. Instead they chose only to pursue action against the Hotel.

SUBMISSIONS

The licensee submitted that due diligence has been shown. The Hotel operated for a number of years without a negative incident. It has not been shown that the licensee deliberately permitted minors, overservice or drunkenness. The patron alleged to be intoxicated did not display signs of drunkenness and does not have a history of drunkenness in the community. The training provided for staff should prepare them for proper service techniques but there is always the potential for failure. As the owner, he has the most involvement as an investor, time in operation and consequences. He bears responsibility for everything, staff, servers, etc. He assumes a reasonable amount of responsibility and due diligence. He has endured longer than most in the industry. He acknowledges that as the licensee he is responsible for staff supervision and training, however some staff are just lazy in performing their duties. He attempts to

comply with all *Regulations*, and a closure of the establishment is not necessary for future compliance.

Findings and Decision

1. Whether the contraventions, as alleged have occurred.

A.

- Section 33 of the *Liquor Control & Licensing Act* by supplying liquor to minors.
- 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.
- Section 45(2) of the *Liquor Control and Licensing Regulation* by failing to request two pieces of identification from a person appearing to be under the age of 25 before allowing the person to enter the licensed establishment, or before selling or serving liquor to the person.

The licensee did not challenge the evidence of constable #1 and witness #1 nor produce evidence to the contrary. The evidence is that on March 11, 2005, constable #1 entered the Liquor Primary licensed area of the establishment and noted a number of young appearing patrons. One, witness #1, was determined to be 17 years old. Another young male who was found in possession of what I am satisfied was liquor purchased at the establishment was determined to be 18 years old. The server told the officer that she had checked identification from that person on a previous occasion. There is no evidence of what identification was checked and whether the server had carefully examined it for authenticity. The police officer noted two young appearing persons leaving the establishment upon his attendance. A table at which seven young appearing persons were seated was checked by the police officer and it was determined that five were between 19 and 21 years old. None had been requested to produce two pieces of identification by the server. The age of the remaining two persons at the table who left the establishment and did not return with their identification, was not determined.

I find that the contraventions, as alleged have occurred.

- B.** Section 43(2)(b) of the *Liquor Control and Licensing Act* by permitting an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied.

The evidence is that the three police officers on duty in the community on the evening and early morning hours of March 11, 2005, separately dealt with an individual previously known to them and who was described as being intoxicated by each of the police officers. On each occasion the officer allowed the individual to proceed with an admonishment that he should return to his residence or face arrest for public intoxication. Whether to arrest for public intoxication is entirely within the discretion of the police officers. The individual failed to heed the advice given on each occasion and found his way back into the licensed establishment where the owner who was now in attendance spoke with him. The owner gave evidence that he observed the individual when he was being escorted out of the establishment by the police officer and spoke with the individual when the individual returned to the establishment after being escorted out. The owner did not believe the person to be intoxicated.

The police officers have experience and training in identifying and dealing with intoxicated persons. The owner as a licensee of considerable tenure has the experience upon which to assess levels of intoxication.

I believe that the police officers' attention was drawn to the individual as they entered the establishment not so much by any immediately notable signs of intoxication, but rather by his shouting of an obscenity at them. Given the relationship between the parties that may not be an uncommon occurrence, sobriety or intoxication notwithstanding.

For the contravention to be proven the condition of intoxication must be apparent. On the whole of the evidence I do not find that the contravention as alleged has been proven on a balance of probabilities.

Due Diligence

The licensee is entitled to a defence to the allegations of the contraventions if it can be shown that he was duly diligent in taking reasonable steps to prevent the contraventions from occurring. The licensee must not only establish procedures to identify and deal with problems, he must ensure that those procedures are consistently acted upon, and problems dealt with. I am satisfied that has not occurred in this instance. The licensee has an uneven process of training and supervision of employees at the establishment. While the evidence given by the manager of the LRS of her training and supervision of employees was impressive, it applied only to those employees of the LRS. The owner took responsibility for the training of employees for the Liquor Primary area. Unlike the manager of the LRS he did not have a training manual. He relied on the employees reading the branch publication "Guide for Licensees" and notes made in the incident log. A brief review of the incident log revealed that it contained little detail of the problems occurring the night of March 11, 2005, other than the presence of police officers. It made no mention of the fact that underage persons had been escorted out of the establishment by a police officer or that one of the employees had been sent home at the instructions of the officer. I am not satisfied that it serves as an effective training manual or a means of communicating problems encountered by staff. The owner permitted a young inexperienced server to work without effective supervision and without being satisfied that she was of lawful age to work in a licensed establishment. The owner scheduled the most experienced staff to work during day shifts and night shifts early in the week and permitted lesser experienced and inexperienced staff to work weekend night shifts. He is aware that weekend night shifts could present the most challenge in operating the establishment. In conclusion, I am satisfied that a defence of due diligence has not been made out.

2. 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 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; and
- 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*.

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.

The purpose of the branch in bringing about enforcement action and in determining the appropriate penalty is to encourage voluntary compliance. The record indicates that this establishment has operated for the past ten years without a problem being brought to the attention of the branch. That is impressive. I am concerned however, that the owner/licensee does not accept responsibility for the circumstances leading to the contraventions. Rather, he envisions a conspiracy of harassment by police members and branch officials, which is not supported by the evidence. That does not bode well for future voluntary compliance.

Having considered the evidence, I am satisfied that a penalty for the most serious of the contraventions, i.e. Section 33 of the *Liquor Control & Licensing Act*, supplying liquor to a minor, is necessary to ensure future voluntary compliance. I am satisfied that in the circumstances no penalty is required for the contravention of Section 35 of the Act and the Section 45(2) of the *Regulation*.

In the circumstances of this case, I find that the recommended minimum penalty of a four day suspension is appropriate.

Order

Pursuant to Section 20(2) of the *Act*, concerning Liquor Licence No. 026040, I suspend the Liquor Licence for a total of four (4) days starting as of the close of business Thursday, March 23, 2006, 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 67 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 March 24, 2006, I do not know what the "business days" will be. To ensure that this order is effective, I direct that the Liquor Primary Licence be held by the branch or the Princeton Detachment of the R.C.M.Police from the close of business Thursday, March 23, 2006, until the licensee has demonstrated to the branch's satisfaction that the licensed establishment has been closed for four (4) business days. A suspension sign notifying the public shall be placed in a prominent location by a compliance and enforcement officer or police officer.

Original signed by

Edward W. Owsianski
Enforcement Hearing Adjudicator
cc: R.C.M.Police Princeton Detachment

February 16, 2006

Liquor Control and Licensing Branch, Victoria Office
Attention: Russell Boucher, A/Regional Manager
Vancouver Island/Okanagan/Kootenay

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

APPENDIX

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.

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

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.

Drunkenness

43 (1) A person must not sell or give liquor to an intoxicated person or a person apparently under the influence of liquor.

(2) A licensee or the licensee's employee must not permit

- (a) a person to become intoxicated, or
 - (b) an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied
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REGULATIONS

Minors

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.

(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.
