



**DECISION OF THE
GENERAL MANAGER
LIQUOR CONTROL AND LICENCING BRANCH**

IN THE MATTER OF

A hearing pursuant to Section 20 of

The Liquor Control and Licensing Act RSBC c. 267

Licensee:	Waterview Enterprises dba Hampton's Pub
Case:	EH06-134
Appearances:	
For the Licensee	Ronnie Paterson
For the Branch	Shahid Noorani
Enforcement Hearing Adjudicator	Sheldon M. Seigel
Date of Hearing	October 10, 2006
Place of Hearing	Surrey, BC
Date of Decision	November 1, 2006

INTRODUCTION

The Licensee operates a licensed establishment in Surrey. The liquor primary license, LP 152511 relates to a bar, known as Hampton's Pub

The Licensee is an incorporated company and is part of a hospitality group which manages 11 licensed establishments (mostly pubs) and eight LRS retail outlets. The representative of the Licensee appeared at the hearing and stated that he is a shareholder of the parent group that owns the Licensee and has authorization to bind the Licensee.

On the evening of August 31, 2006, a Compliance and Enforcement Officer (CEO) attended to conduct a routine inspection. The inspection revealed minors in the establishment.

As a result of the inspections, the Branch issued a Notice of Enforcement Action EH06-134 to the licensee.

ALLEGED CONTRAVENTIONS

The Branch alleged that on August 31, 2006, the Licensee contravened s. 35 of the *Act* by allowing minors in the premises.

RELEVANT STATUTORY PROVISIONS

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.

ISSUES

1. Did the Licensee contravene section 35 of the Act?
2. Is a penalty warranted and if so, what is the appropriate penalty to be imposed?

EXHIBITS

Exhibit #1: Book of Documents (Branch)

Exhibit #2: Hospitality Group Handbook (Licensee)

EVIDENCE

The Branch called the CEO. She testified as follows:

- She is a veteran of thousands of inspections.
 - She attended at the establishment after 11:00 p.m. on August 31, 2006 to do a routine inspection.
 - There was no staff on duty at the door.
 - She noted one employee tending bar and one server working the floor.
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- There were five or six patrons on the patio and approximately 15 patrons inside.
- She observed a number of young-looking patrons seated at a table. She advised the bartender that she was going to check their identification.
- All but one of the patrons had two pieces of approved identification and was of legal age. A single patron had no ID.
- The patron without ID appeared to be sixteen or seventeen years of age. The young patron told the CEO her name and after some discussion admitted she was seventeen years of age.
- The CEO noted that the minor had "a smell of alcohol on her breath."
- The CEO did not see the minor consume any liquor.
- The CEO advised the bartender of the situation involving the minor.
- The CEO then informed the server of the situation involving the minor.
- The server told the CEO that she had asked for ID from the party of patrons but the minor was not with the rest of the party at the time. When the minor did join the party, the server did not ask her for ID because the minor only ordered a non-alcoholic beverage. The server explained that she is from England, where the rules are different, and minors are allowed into pubs if they do not drink alcohol.
- The CEO heard the bartender advise the server that minors are not allowed into the establishment under any circumstances.
- The CEO issued a contravention notice.
- In discussions with the representative of the Licensee, the CEO was advised that the Licensee took this allegation seriously, that they are diligent and compliant Licensees, and that their staff are well trained and this event was an isolated incident.

The Licensee's representative testified as follows:

- He does not deny there was a minor in the establishment.
 - The hospitality group has 350 employees and owns 11 pubs.
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- A comprehensive handbook (exhibit #2) is presented to each employee upon joining the group.
- Management takes the regulations and compliance seriously and has a good record of compliance throughout the hospitality group.
- There was some confusion in this instance when a server who had only been an employee for days, and perhaps only two shifts, did not feel it was necessary to check ID of an underage individual if she did not order liquor. She was confused with her old ways in England, where she worked in the past.
- The server was working with an experienced bartender who was charged with "shadowing" her for training purposes.
- The bartender is also the bar manager and is well equipped to train the server and assist with the server's duties.

The Licensee called the bartender. He testified as follows:

- He has five years of experience as bar manager and has been well trained at several prestigious establishments.
 - The coaching and training commitment of the hospitality group is considerable.
 - On August 31, 2006 there were just the two employees on duty at 11:00 pm.
 - It was his duty to supervise the new server, and he was doing so.
 - He saw the patrons at the table, including the individual later shown to be a minor.
 - He knows that one of the first rules is that no minors are allowed in the pub.
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SUBMISSIONS

The Branch submitted that the Licensee is experienced and should have explained the basic information regarding minors to any new staff member in this licensed premise. That would have prevented this contravention from occurring. The server was under a significant misunderstanding of her responsibilities at the time of the contravention.

The Branch also submitted that while the handbook provided to the employees deals with the obligation to check for identification from patrons who appear to be under the age of 25 years, it does not indicate anywhere that minors are not permitted in the licensed establishment.

The Licensee submitted that based upon the level of commitment and training and an exceptional record of compliance, the penalty is excessive. The Licensee feels that a warning would be more appropriate than a monetary penalty.

The Licensee submitted that this group of pubs has set the standard for compliance with the Branch rules. Although the handbook may be deficient in addressing minors, every new employee gets a "walk through" during which prominently placed signs are visible. Some of those signs indicate that no minors are allowed in the establishment. He noted also that the handbook would be changed to correct the oversight regarding minors.

Finally, the Licensee submitted that the server took the initiative to check ID from the group of patrons, but because of the unique circumstances, missed the minor. Based on her foreign background she was under a misapprehension of her obligations and did not check the minor when she should have.

ANALYSIS AND DECISION

The server was not called to provide evidence. The Licensee's representative only offered as an explanation, that she had another job.

The Licensee did not dispute the alleged fact that a minor was in the establishment. Rather, it put forth an explanation for the contravention in the nature of due diligence.

I accept that this Licensee is conscientious and is interested in compliance. The evidence, however, does not disclose a level of diligence, which would excuse the Licensee from a finding of contravention of the *Act*.

One of the fundamental premises of the *Act* and *Regulation* is the protection of minors. The rules are available and clear. I find there was no reasonable explanation given that would account for the oversight, leading to this contravention.

The duty to ensure the exclusion of minors falls not just on the servers, but all staff members on duty. Therefore the bartender also had a duty to be alert to the possibility of a minor gaining entry to the pub. The defence that the server was confused as a result of her background – even if accepted, would not relieve the experienced bartender of the obligation to check the identification of the minor who appeared so young. This is doubly so in light of his supervisory and training mandate on the evening in question.

No evidence was presented that the bartender inquired of the server that the minor be checked for ID. The uncontroverted evidence is that she appeared to be 16 or 17 years of age and therefore well under 25 (and therefore by regulation she was required to be checked).

The evidence disclosed no reasonable explanation for not training the server that minors are not allowed in the establishment.

Further, the handbook (exhibit #2) does not instruct that minors are not allowed entry to the establishment. This is a significant oversight of a fundamental provision of the *Act*.

Lastly, the evidence provided no specific indication of the training regime undertaken by the server. It is incumbent upon any Licensee to ensure that its staff are trained and well versed in the obligations under the *Act* and *Regulation* with respect to minors.

I find the contravention has been proven. Due diligence has not been demonstrated to a degree that would excuse the Licensee from this contravention.

PENALTY

Pursuant to section 20(2) of the Act, having found that the licensee has contravened the Act, the Regulations and/or the terms and conditions of the licence, I have 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 license or rescind or amend existing terms and conditions
 - Impose a monetary penalty
 - Order a licensee to transfer a license
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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*. I am not bound by the maximums and may impose higher penalties when it is in the public interest to do so. I am not bound to order the penalty proposed in the Notice of Enforcement Action.

For the contravention relating to August 31, 2006, the Branch recommended a one thousand dollar (\$1,000) monetary penalty.

The range of penalty for a first contravention of section 35 of the *Act* in accordance with Schedule 4 of the *Regulation* is one (1) to three (3) days suspension and/or a monetary penalty of \$1,000-\$3,000.

I find that a one thousand dollar (\$1,000) monetary penalty is appropriate for this contravention.

ORDER

Pursuant to Section 20(2) of the Act, I order the Licensee to pay monetary penalties totalling one thousand dollars (\$1,000) relating to Liquor Primary License #152511 in respect of action #EH06-134. The monetary penalty must be paid no later than the close of business on November 30, 2006.

Original signed by

Sheldon M. Seigel
Adjudicator

Date: November 1, 2006

cc: R.C.M Police
Surrey Detachment

Mike Clark, Regional Manager
Liquor Control and Licensing Branch

Shahid Noorani, Branch Advocate
Liquor Control and Licensing Branch
