



**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:	Heritage Quay Developments Ltd. dba Canoe Brewpub, Marina, and Restaurant 450 Swift Street Victoria, B.C. V8W 1S3
Case:	EH06-014
For the Licensee:	Donald Calveley
For the Branch:	Shahid Noorani
Enforcement Hearing Adjudicator:	Sheldon M. Seigel
Date of Hearing:	June 27, 2006
Place of Hearing:	Victoria, B.C.
Date of Decision:	July 19, 2006

INTRODUCTION

The licensee owns and operates a bar and restaurant in the City of Victoria. The establishment holds more than one liquor licence. The bar is known as the Canoe Club and it holds Liquor Primary Licence No. 181721.

The Victoria Police Department, along with 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.

On September 30, 2005, the minor was allowed admission to the Canoe Club, 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 (MK), both during the process and in all written documentation relating to the process.

The branch and the licensee agreed that all copies of Exhibit No. 2 would be returned to the branch's file after the hearing.

The branch and the licensee agreed that neither MK, nor the handler would be required to provide *viva voce* evidence, and in lieu of that testimony agreed facts would be admitted.

The branch and the licensee agreed that neither the Compliance and Enforcement officer (C & E officer), nor the police sergeant would be required to provide *viva voce* evidence, and in lieu of that testimony, all of the references to and by those individuals as set out in the branch's Book of Documents (Exhibit No. 1) were agreed to be factual.

The branch and the licensee agreed that the documents contained in Exhibit No. 1 were authentic and the contents factual. The branch and the licensee further agreed that Exhibit No. 2 represented the identification that the police provided to MK, and MK was carrying during the operation.

ALLEGED CONTRAVENTIONS

On September 30, 2005, the licensee allegedly contravened both 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 the Notice of Enforcement Action (NOEA) and Contravention Notice #B007041.

RELEVANT STATUTORY PROVISIONS***Liquor Control and Licensing Act, RSBC 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?
 4. If one or both of the contraventions are proven, are penalties appropriate in the circumstances, and if so, what are the appropriate penalties?
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EXHIBITS

- Exhibit No. 1 Branch's Book of Documents
- Exhibit No. 2 Photocopy of "false" identification carried by MK
- Exhibit No. 3 Licensee's Book of Documents
- Exhibit No. 4 Package of photographs provided by the licensee
- Exhibit No. 5 Floor plan of the premises provided by the licensee

EVIDENCE

Agreed facts relating to MK:

- She was 17 years old on September 30, 2005.
- She may have looked less than 25 years of age, or older, to the server.
- She attended at the Canoe Club at approximately 11:15 p.m. on September 30, 2005.
- She was not asked to produce identification at the door.
- She ordered a beer at a table inside the establishment.
- When she ordered the beer, the server asked her to produce one piece of ID. She produced the "false" driver's licence, which was provided to her by the police. It was not taken out of her wallet nor turned over by the server.
- Exhibit No. 2 contains a photocopy of the ID used.

Agreed facts relating to the handler:

- She was 20 years old on September 30, 2005.
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- She may have looked 25 years of age, or older.
- She attended at the Canoe Club at approximately 11:15 p.m. on September 30, 2005.
- She was not asked for ID at the door.
- She ordered a beer at a table inside the establishment.
- When she ordered the beer, she was asked to produce one piece of ID. She produced her real driver's licence. It was not turned over for inspection.

The licensee called the chief executive officer (CEO) and president of the licensee. He testified as follows:

The company is 14 years old and has been quite successful. It contains four sizeable divisions. All of the divisions are service related. Three of them involve food service.

The corporate culture of the divisions is identical in each case. The divisions are managed with the aid of a single employee handbook (contained in Exhibit No. 3).

The licensee purchased the land, building, and business, which encompass the Canoe Club, four years ago. It was a "bad neighbour" with a poor compliance history. It had little management or policies in place. Revenues were less than 30% of what they are currently.

The licensee reinvested more than one million dollars in the establishment after purchasing it. Management met with the branch and planned the revitalization of the operation in order that it would meet with community expectations.

There have since been no compliance issues.

The Canoe Club is a very large and busy establishment with over 100 staff members on payroll in the summer months.

The licensee is "management heavy", and takes training seriously. The organizational culture includes the maintenance of the highest level of training and service in the industry. The Canoe Club has been named the "Best Bar in Canada".

The Canoe Club publishes a "server training manual" which was available and provided to each server.

The licensee called its vice president and director of business operations. He testified as follows:

He has considerable experience in the food service industry. He has not had to confront a compliance issue in more than 18 years of managing food and liquor establishments.

The Canoe Club has a large management team that includes five full time assistant managers. The minimum management experience accepted for applicants to that job is three years. The managers are well trained by the licensee - using the employees handbook and in the case of servers, the training manual. As well, the staff is very much trained by personal contact and supervision.

The hiring of servers is taken very seriously. They must have "Serving It Right" and have considerable past serving experience. Then they go through 30 days of training and evaluation. There is a follow-up 90-day performance evaluation. They are assigned to a supervisor, and that supervisor completes regular training checklists. All staff members go to "beer school", and "wine school," each of which are designed to educate as to the particular products and obligations that

service of that product includes. All staff members also attend "law school" and is subjected to "pop quizzes" at the hands of the assistant managers.

Each of the managers must have personal, one-on-one performance related communication with one staff member per day.

The licensee conducts seminars, quarterly meetings, and other regular general meetings for all staff members at the Canoe Club as well as all staff in the corporation regularly. There are weekly management meetings and twice-daily full-team meetings with the Canoe Club staff.

On any Friday night, there are three assistant managers on duty at the Canoe Club. They are visible and involved in all operations of the establishment.

There are lots of signs posted with respect to checking ID, as shown in Exhibit No. 4. There are pre-service "reminder talks" about the need to check for two pieces of ID.

The lighting is adequate for checking ID. The Canoe Club does not have a dark atmosphere. There are no discounted liquor prices at the establishment. Instead, the Canoe Club offers premium pricing and premium service. There are happy hour food specials, but no liquor specials. The establishment does not target a youth market.

SUBMISSIONS

The branch submitted that the agreed upon facts confirm that the contravention did occur. The branch recommended penalties of a four (4) day suspension for contravention of Section 33 of the *Act*, and a \$1,000 fine for contravention of Section 45(2) of the *Regulation* are reasonable and should be awarded.

The licensee submitted that it goes far beyond the local industry standards to try to prevent infractions of the *Act* and *Regulation*. They invest heavily in management, training, and policy directives for their staff. The licensee acknowledges that staff on the floor made a regrettable error, but the licensee has no information as to the circumstances under which that error was made. Management accepts full responsibility for the error, but claims that it is not systemic. The licensee will continue to improve implementation of its systems in order to minimize the risk of future contraventions.

ANALYSIS AND DECISION

The facts and evidence are clear that each of the components of the alleged contraventions did occur. The licensee did not submit to the contrary. The licensee failed to request production of two pieces of ID as required by Section 45(2) of the *Regulation*, and MK, a minor, was supplied with liquor contrary to Section 33 of the *Act*.

Due diligence is a complete defence to the allegation. In order to avail itself of this defence, the licensee must establish in part that it was a prudent licensee and did all that it could to prevent the specific contraventions from occurring.

I find on the evidence that the licensee has adequate policies and procedures in place. I find that the written manuals produced and distributed to the staff, the hiring prerequisites and training, the updating and monitoring of the systems, the degree of hands-on management, and the supervision and testing of the staff satisfies my expectation of a prudent licensee.

The question remains, as to whether this constitutes due diligence such as to exonerate the licensee.

In order to establish that the licensee did all that it could to prevent the specific contraventions from occurring, it must show not only that it operated as a prudent licensee, but also that the proximate cause of the contravention was something other than a systemic error or omission.

The minor was not asked for identification at the door. The server asked for one piece of ID. No details were put into evidence by the relevant employees as to the circumstances of the minor's entry or the act of serving her. No evidence of the proximate cause of the contravention was provided.

MK was a minor. She was supplied liquor by the server. The server was provided with a driver's licence. The photo on the licence was not of MK. The server did not turn over the driver's licence for further investigation. I take notice of the existence of particulars (height, eye colour, hair colour, weight) on the rear of a British Columbia driver's licence.

The onus rests firmly on the licensee to establish due diligence as a defence. I accept the evidence of the licensee with respect to all issues relating to policies and procedures. I find that the management and operations of the licensee is of a superior grade.

However, the evidence fails to disclose the causes of each of the contraventions. As the evidence does not disclose this information, the licensee has not met its onus. The defence must fail.

I am aware of the procedural challenges relating to the licensee obtaining information regarding the contraventions. The Canoe Club is a busy establishment. There is a large volume of patrons in the establishment during any individual staff member's work shift. By the time the licensee was informed of the alleged contravention it would have been unreasonable to expect that the server would remember the minor, or the circumstances under which the minor

was served. This procedural issue effectively prohibited the licensee from obtaining the information it required to successfully mount the defence of due diligence. In light of my finding that due diligence has not been established, I have no choice but to leave consideration of this issue to the question of penalty.

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 four (4) to seven (7) days suspension and/or a monetary penalty of five to seven thousand dollars (\$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 one thousand to three thousand dollars (\$1,000 - \$3,000). The branch recommended the minimum monetary penalty of \$1,000.

To exercise my discretion and determine that no penalty is warranted would be to ignore the overriding public issues relating to minors and liquor. 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. Therefore, I find that a penalty is warranted for supplying liquor to a minor.

In assessing the particulars of the penalty, I have considered the credible evidence of the licensee's witnesses with respect to their competence and management of the establishment. 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 the minimum 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. 181721 in respect of action EH06-014. The monetary penalty must be paid no later than the close of business on August 18, 2006.

[ORIGINAL SIGNED]

Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: July 19, 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
Attn: Shahid Noorani, Branch Advocate
