



**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:	Strathcona Hotel of Victoria Ltd. dba Strathcona Hotel 919 Douglas Street Victoria, BC V8W 2C2
	The Magnolia Hotel Ltd. dba Magnolia Hotel – Hugo’s 621 – 625 Courtenay Street Victoria, BC V8W 1B8
Cases:	EH06-021 and EH06-022
For the Licensee:	Gregory N. Harney
For the Branch:	Shahid Noorani
Enforcement Hearing Adjudicator:	Sheldon M. Seigel
Date of Hearing:	May 26, 2006
Place of Hearing:	Victoria, B.C.
Date of Decision:	June 30, 2006

INTRODUCTION

The licensee owns and operates the Strathcona Hotel in Victoria, B. C. The establishment contains several licensed rooms, including a nightclub known as Legends. It holds Liquor Primary Licence No. 016686.

The licensee also operates a bar in the Magnolia Hotel in Victoria, B. C. That bar is known as Hugo's. It holds Liquor Primary Licence No. 184041.

Both establishments are operated under the same regime, by the same management, and with the same policies and procedures.

The licensee elected to present a single defence to the allegations relating to the establishments, and obtained the cooperation of the Liquor Control and Licensing Branch (the branch) in facilitating a single hearing.

The Victoria Police Department, along with the branch and the Victoria Bylaw Office conducted an undercover project on the business days of September 30, 2005, and October 14, 2005, to determine if minors were being served liquor in licensed establishments in the City of Victoria.

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

On October 1, 2005, (the business day of September 30, 2005) at 00:50 a.m., MK was allowed admission to Legends, and was served liquor.

On October 1, 2005, (the business day of September 30, 2005) at 1:35 a.m., MK was allowed admission to Hugo's, and was served liquor.

In each case, the branch issued a Notice of Enforcement Action (NOEA) for supplying liquor to a minor contrary to Section 33 of the *Liquor Control and Licensing Act* (the *Act*).

The licensee acknowledged that MK was supplied liquor in each establishment on October 1, 2005.

ALLEGED CONTRAVENTIONS

On October 1, 2005, the licensee allegedly contravened Section 33 of the *Act* by supplying liquor to a minor in each of the establishments, as set out in the Notice of Enforcement Actions EH06-021 and EH06-022 and the Contravention Notices No. B007044 and No. B007050.

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

ISSUES

1. Did the licensee supply liquor to a minor?
2. Did the licensee exercise due diligence in its activities such as to excuse it from findings of contravention?
3. 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 (a) Branch's Book of Documents for the Strathcona Hotel
(b) Branch's book of documents for the Magnolia Hotel

Exhibit No. 2 Page 1: Photocopy of four pieces of identification
Page 2: Photocopy of rear of driver's licence on page 1

Exhibit No. 3 Licensee's Book of Documents for both establishments

FACT and EVIDENCE

The parties submitted as an "Agreed Upon Statement of Facts", being the evidence of a police sergeant, MK, and the handler. The document provides as follows:

[Victoria Police Sergeant]

- Experienced Victoria Police Department (VPD) sergeant
- Became the officer responsible for licensed establishments within the VPD in or about 2004/2005
- Spent approximately one year seeking out a minor to assist in compliance project
- Selected MK eventually due to her maturity and her ability to deal with the requirements to approach the bars and respond to questions from the employees
- [Sergeant] not involved with the good neighbour agreement
- Discovered [the handler] who had spent a period of time doing compliance testing in other British Columbia cities

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- [Sergeant] did say that the other candidates he interviewed were too young and too young looking – conceded that height was a factor in gauging age
 - MK's appearance at hearing and at date of contravention were "fairly similar"
 - MK's maturity related to ability to give evidence, needed to be able to convincingly answer questions asked of her at hearings
 - Individual thing to gauge weight, MK wearing a jacket

MK

- D.O.B. – ^[1], 1988 – 17 years old at time of incident
- 5 ft 11 inches (180 cm)
- 77 kgs (170 pounds)
- Wore flat shoes on evening in question
- Has changed her hair colour from time to time and agreed that it was common for women of her age to change their hair colour
- High school student employed by the Victoria Police Department
- People often mistake her age or remark that she looks older
- Arrived at the door at the same time as [the handler]
- [The handler] was wearing high heels, so both of comparable height
- Both well dressed (although in jeans), wearing make-up (mascara, eyeliner, eye shadow, lip gloss), dead sober and of good behaviour
- ID signage visible @ Legends – did not see @ Hugo's
- Both were asked for and presented two pieces of identification
- Doorway was well lit
- [The handler] paid cover for both @ Legends – no cover for Hugo's
- MK admitted that she was taller than some of the patrons in her vicinity
- MK poised, has taken modelling course in the past

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

- MK requested and received a Corona
- No request for identification
- Admitted difficult to gauge weight with coat on
- European heritage
- MK admitted that the bartender made eye contact and may have been assessing her

[The Handler]

- 21 years old now, was 20 at the time of the incident
- 128 pounds
- A reservist with the Victoria Police Department
- Very experienced in testing compliance at licensed establishments – 1 ½ - 2 years experience
- On evening in question wore her hair down
- Wore 2 to 3 inch high heels which added to her 5 ft 7 inch height making her 5 ft 9 inches or 5 ft 10 inches
- Wore a comparable outfit to that of MK (who admitted that she was wearing a low cut shirt)
- wore make-up (mascara, powder, lip gloss)
- Produced the requested two pieces of real identification @ both premises
- She and MK were recognized to be together
- [The handler] admitted that MK was taller than some of the patrons
- [The handler] admitted that MK looked older than 17 years old
- [The handler] admitted that it was difficult to gauge the weight of an individual
- [The handler] obviously was sober
- Standing next to MK each would have been 5 ft 10 inches and 5 ft 11 inches
- September 30 - met with Victoria Police...

- MK – same appearance as that night
- [The handler] admitted that the bartender made eye contact and may have been assessing her

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

- He issued the Contravention Notices following a meeting with the licensee. The meeting related to both establishments.
- At the meeting, he asked the licensee questions regarding the licensee's level of diligence. A questionnaire is contained in Exhibit No. 1(a) and (b), tab 7 relating to each establishment.
- At the meeting, he was advised that the licensee was putting in place new initiatives relating to training and policies at the establishments.
- At previous meetings, the C & E officer emphasized the need for a structured training program for the establishments. On those occasions, the licensee indicated that he would implement some changes.
- "One of the things I said was that if you do not put this in place you are going to find yourself in a hearing situation."
- He concluded based on the Compliance Meeting of November 21, 2005, that the staff-training program should be enhanced and a testing process put in place to ensure compliance with the training.
- "Based on the contraventions, on my observations of the establishments I thought it needed some tidying up in the way [they were] operated".
- Following the meeting, the licensee supplied the C & E officer with a training manual.
- The manual contained "some procedures and some notes, but my opinion was that the primary purpose of [the manual] was for the door staff and security staff and it was really about what to do after an incident had occurred."

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- Some of the policy manual at Exhibit 3, tab 37, appears unfamiliar to him and he does not think it was provided to him by the licensee with the other materials following the Compliance Meeting.

The C & E officer identified all of the relevant documents contained in Exhibit No. 1 (a) and (b) relating to Legends and Hugo's.

The licensee called the principal of the licensee. He testified as follows:

- He is over 45 years old and has a Degree in Economics and a Masters Degree in Hotel Administration. He has much experience in the hospitality industry, beginning when he was a teenager and worked as a bartender in the Strathcona Hotel.
- The Strathcona Hotel has been his family business for generations.
- He is now chiefly responsible for the Hotel and for Legends.
- He is now responsible for Hugo's at the Magnolia Hotel as well.
- The management policies for Legends and for Hugo's are the same.
- Exhibit No. 3, tab 37, is the policy manual in use at both establishments.
- There has been a manual in place since 1990. It is up-dated regularly.
- There is a phone system that allows a bartender to call door staff to check ID. There is "hovering staff at the point of supply" allowing access to back-up help if required to check ID.
- "Every employee in the bar knows that patrons under 25 must produce ID."
- "Both Legends and Hugo's have a box that contains large volumes of confiscated ID. I have observed bartenders asking for ID and seen them taking their own initiative to ask for it."
- He believes that the bartenders are asking for two pieces of ID 10-15 times per night and making calls [to door staff] two-three times per night.

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- The "Doorman's Credo (Exhibit No. 3 tab 28) was distributed and intended to be relied upon or followed. It is instructive of how he wants the doormen to behave. He endorses the approaches taken in that book".

SUBMISSIONS

The branch submitted that as the licensee admitted that the minor MK was supplied with liquor without being requested to produce any identification by the bar staff at either establishment, contraventions must be found unless due diligence is established.

The branch further submitted that the evidence does not disclose that the licensee took all reasonable steps to prevent the occurrence of the contravention.

The branch relied upon the inadequacy of the licensee's policy manual, in that it contained "very little attention... to the issue of identification checking". In particular, the branch argued that the manual "is silent on the requirement to check two pieces of identification for a person appearing to be under the age of 25 years of age, and only indicates that "two pieces of identification be checked for underage persons." The branch also submitted that a reasonable interpretation of the evidence shows that the manual was not in place or being enforced at the time of the contravention.

The licensee submitted, "Door staff fully complied with the requirements under the *Act* by properly requesting and examining two pieces of proper ID".

The licensee submitted that as "the supply of liquor to the agent took place at the bar, the central issue is whether the licensee was duly diligent in training the bar staff to prevent the supply of liquor to minors".

The licensee submitted that all bar staff at the establishments receive a copy of the staff manual, which adequately sets out the bartenders' obligations with respect to checking for ID and refusing to serve minors.

ANALYSIS AND DECISION

I accept the evidence of the police sergeant, MK, and the handler, submitted as the agreed upon Statement of Facts.

I disagree with the licensee that as "the supply of liquor to the agent took place at the bar, the central issue is whether the licensee was duly diligent in training the bar staff to prevent the supply of liquor to minors". Due diligence is not proven simply by submitting that the bar staff was adequately trained. While I agree that the proximate time and place of the contravention occurred when the beer was passed across the bar, the licensee's ability to claim due diligence is not entirely dependent upon the particular bartender having been trained. Adequate training of the individual bartender must be established on the facts. Adequate policies must be in place as would bind the bar staff to a standard of conduct. Enforcement of those policies and supervision of the discharge of the bartender's duties must be established on the facts. The performance of those duties within the context of adequate policies must be established on the evidence.

The policy manual at Exhibit No. 3, page 15, tab 37, contains the directive: "if you require assistance ask a bartender manager or dial on any phone to have a floor-walker paged". This is consistent with the licensee's testimony that the phone system allows a bartender to call the door staff to check identification. I find that if such a policy was in place, there was no evidence that such activity was regularly employed. It is insufficient to have a policy, but to fail to apply or enforce compliance with it.

The licensee's policy manual contains (at tab 28) a copy of *The Doorman's Credo, a guide to nightclub security*. In his testimony, the licensee indicated that he intended this to be relied upon and "it is instructive" of how he wants the doormen to behave. Sections of it (page 17) were read to the witness and he confirmed that he endorsed the approaches described. Those quotes are as follows:

If you want to fight, one on one, I'll gladly do it... I could see he was shitting himself because he knew the moment he had pulled the knife, we were no longer playing. We were going to hurt him. And Bad.

... JC, one of my doormen, had snuck up behind him. JC is built like a bull dog. Short and Strong.

...WHAM. JC slammed into the asshole and 50 miles and hour, wrapped his arms around the kid and dumped him on his face. I moved in while my other doorman, Baz came steaming in. CRACK. Bri's steel toe boot connected with the kid's face, smashing his nose and shattering his left eye socket (orbital bone).

I find the text of this book as excerpted at Exhibit No. 3, tab 28, to be offensive in the extreme. It blatantly promotes activities to be exhibited by doormen that are highly distasteful, and possibly criminal. It clearly advocates the use of excessive violence on the part of door staff, arguably for revenge rather than for any appropriate purpose. The relevance to this hearing is that either the licensee has indiscriminately heaped printed materials upon his staff in the interest of proving a training protocol, or he has demonstrated poor judgement and unreasonable management of the establishments. In either case, this evidence adversely affects my evaluation of the licensee's credibility.

I accept that the licensee's employees know that persons appearing under the age of 25 must be checked for two pieces of identification, but I find that the evidence fails to disclose that they do so as required by the *Regulation*. Checking ID as required would have prevented the contraventions from occurring.

The licensee testified that bartenders at the establishments ask for two pieces of ID 10-15 times per night and call for the door staff to help with ID two-three times per night. As indicated above, I find that the evidence of the licensee cannot be relied upon. Further, the evidence provided is insufficient to establish whether these figures represent a statistically significant number of checks. I accept the licensee's evidence to the limited extent that he testified that bartenders do check for ID, but find on the evidence that they do not do so as required by the *Act*.

I am unable to determine from the evidence what information was available in the policy manual at the time of the contraventions. I find that even if the full extent of the policy manual submitted as an Exhibit was in place on October 1, 2005, there was a missing link between the provision of any reasonable training and process described therein, and the practices carried on at the establishments at the relevant time. I find that management simply did not make adequate efforts to ensure that its employees carried out the requisite duties.

I find that the evidence presented does not indicate that the licensee took all reasonable steps to prevent service to minors. The evidence is insufficient to disclose the level of diligence required to defend the allegations in each of the establishments.

Service to a minor was admitted by the licensee. The licensee bears the onus of establishing a defence of due diligence on a balance of probabilities. That onus has not been met.

I find that each of 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 \$5,000-\$7,000. The branch recommended the minimum suspension of four (4) days.

I find that a penalty is warranted relating to each of the contraventions for supplying liquor to a minor. 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.

I find a four (4) day suspension to be appropriate for the contravention of Section 33 of the *Act*.

ORDER

Pursuant to Section 20(2) of the *Act*, I order a suspension of the Liquor Primary Licence No. 016686 for a period of four (4) days, to commence as of the close of business on Thursday, July 27, 2006, and to continue each succeeding business day 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*).

Pursuant to Section 20(2) of the *Act*, I order a suspension of the Liquor Primary Licence No. 184041 for a period of four (4) days, to commence as of the close of business on Thursday, July 27, 2006, and to continue each succeeding business day 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 ensure this Order is effective, I direct that the Liquor Licence No. 016686 and No. 184041 be held by the branch or the Victoria Police Department from the close of business on Thursday, July 27, 2006, until the licensee has demonstrated to the branch's satisfaction that the suspensions have been served.

[ORIGINAL SIGNED]

Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: June 30, 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, Surrey Regional Office
Attn: Shahid Noorani, Branch Advocate