



**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: Butterworth Holdings, Frizzell  
Holdings Ltd. & Legree Holdings Ltd.  
dba College Place Hotel  
740 Carnarvon Street  
New Westminster, BC V3M 1E7

Case: EH06-037

For the Licensee: Wayne D. Murdoch

For the Branch: Sonja Okada

Enforcement Hearing Adjudicator: Sheldon M. Seigel

Date of Hearing: June 28, 2006

Place of Hearing: Surrey, B.C.

Date of Decision: July 19, 2006

## **INTRODUCTION**

The licensee owns and operates a bar in a Hotel in New Westminster, B.C. The Hotel holds several licenses. The bar is known as Mugs and Jugs and it holds Liquor Primary Licence No. 007446.

Early in the morning of January 27, 2006 (the business day of Thursday, January 26, 2005), a minor was allegedly allowed admission to Mugs and Jugs and was allegedly served liquor.

The Liquor Control and Licensing Branch (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).

## **ALLEGED CONTRAVENTIONS**

On January 27, 2006, the licensee allegedly contravened Section 33 of the Act by supplying liquor to a minor as set out in the NOEA and Contravention Notice #B001335.

## **RELEVANT STATUTORY PROVISIONS**

### ***Liquor Control and Licensing Act, RSBC 1996 Chapter 267***

#### **Supplying liquor to minors**

Section 33(1) A person must not

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

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**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 a finding of contravention?
3. If the contravention is proven, is a penalty appropriate in the circumstances, and if so, what is the appropriate penalty?

**PRELIMINARY MATTERS**

The branch advised that the recommended penalty is now a four (4) day suspension only. The documented recommendation for an amendment to the terms and conditions of the licence has been abandoned.

The licensee objected to the acceptance of many of the documents contained in the branch's Book of Documents as irrelevant or prejudicial. In particular, it argued that many of those documents relate to old and/or unconfirmed allegations of contraventions relating to the licensee. The licensee also argued that some of the documents that included reference to the licensee also included reference to other parties not related to the licensee, and therefore, those documents should be excluded from evidence. Finally, the licensee argued that the documents should only be entered as exhibits after being identified by witnesses.

I ordered that the branch's Book of Documents be marked as Exhibit "A" for identification purposes, for ease of reference and that only items identified by witnesses would be entered as Exhibits. Over the course of the hearing, each document in Exhibit "A" was identified by a witness, and each objection to the inclusion of a document was overruled. I therefore, ultimately accepted the branch's Book of Documents as evidence and marked it Exhibit No. 1.

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**EXHIBITS**

- Exhibit No. 1     Branch's Book of Documents
- Exhibit No. 2     Licensee's document entitled "Problem Response/Action Plan"
- Exhibit No. 3     Licensee's document entitled "Employees Duties and Responsibilities (Doormen)"
- Exhibit No. 4     Licensee's document entitled "Doorman Training Schedule"
- Exhibit No. 5     Newspaper article
- Exhibit No. 6     Correspondence from Hospitality Industrial Relations
- Exhibit No. 7     Correspondence dated March 13, 2006

**EVIDENCE**

The branch called a minor, J. He testified that he was 17 years of age on January 27, 2006. He went to Mugs and Jugs with some friends. He had his older brother's learner's licence and showed it at the front door. His friend went in through another door. J met his friend at a counter near the stage with his back to the bar. His friend had "a pitcher and a couple of glasses". He "had a couple of beers" with his friend, R. He saw staff members while he was in there but nobody asked him for ID.

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A police constable saw them in the bar and asked each of them for identification. Both J and his friend R had ID from J's brother. The police noticed that both of the pieces of ID had the same photo on them. J and R were removed from the bar.

J's brother K, was 20 years old at the time. Earlier in the evening, J stole K's identification and gave a piece of ID to his friend, R for the purpose of attempting entry to Mugs and Jugs.

The branch called R. He testified that he was 16 years of age on January 27, 006. He went to Mugs and Jugs on that date with his friend J, and another. He carried J's brother K's driver's licence. R was asked for ID at the door and showed K's licence only. He was admitted. He sat down just in front of the bar for a short time and then went to the bar and ordered a pitcher of beer and two glasses. There was no conversation with the bartender and the bartender did not ask him for identification. R and J were in the bar for a half hour before the police asked them for ID and removed them from the bar. He did nothing to make himself look older that night.

The branch called a police constable. She testified that she has been a constable for 18 years, most of which was on patrol. She was familiar with the area and described it as mixed residential and business.

She was working on January 27, 2006, and noticed a young looking male at the door of Mugs and Jugs as she drove by. She stopped and spoke to the young man and the doorman, who had not admitted the youth. She identified the minor as being 15 years old and in possession of identification of a 19-year-old. She transported him to the police station and returned to Mugs and Jugs.

As she walked through the establishment she noticed two males seated near the stage. They looked young. She asked them for ID. They were in clear view of

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the bar but had their backs to it. They were facing the stage. Other staff members in the bar would have been able to see them.

The minors both produced driver's licenses from the same individual- an "N" and an "L". Each of the photos was of K. Although the brothers J and K look similar to one other, R looks nothing like the photo of K in the driver's licence that R produced.

They each had a glass of beer in their hands. She knew it was beer because of the colour, odour, and head. She removed them from the bar. She later identified them as J and R.

She identified all documents in Exhibit No. 1 (previously "A") with which she was familiar.

The branch called the Compliance and Enforcement officer (C & E officer). He identified all of the documents in the branch's Book of Documents.

He confirmed the procedural details of the enforcement process followed in this matter. He made the recommendation for enforcement action and penalty based on issues of public safety, and his review of the licensee's file, and after discussions with the licensee.

The licensee called the Hotel manager. He testified that he has considerable experience managing liquor primary establishments.

He was satisfied that the doorman asked for two pieces of ID from one of the minors.

He believed that it was the doorman's responsibility to check for identification. If the ID is in order, the patrons are allowed in. He testified that if the patron looked

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young, they might be checked for ID seven or eight times in an evening, and "that is not feasible." The clientele includes lots of young people in the adjoining "Chicago" side through which one of the minors allegedly entered. The patrons "are not happy if they are checked for ID all of the time".

He testified that the bartender in Mugs and Jugs has a good elevated view of the front door and would be in a good position to know if a patron has been checked for ID by the door staff.

He described the hiring practices and training practices that he employed for the establishment.

He identified the contents of Exhibits No. 2 - No. 7.

He indicated that there is a high number of customers and a high number of police inspections in Mugs and Jugs. ID is an ongoing issue.

He said, "That is the problem we are facing today. Most 19 year olds look like they are 16."

He confirmed that the bar sells some brands of non-alcoholic beer.

He said, "It is not feasible to have staff checking everyone who looks young. It is within their right to check and I give them that power. But the focus is on the door- that is why we employ so many doormen."

## **SUBMISSIONS**

The licensee submitted that the history of unproven contraventions, and all documents and correspondence relating to allegations not proven were irrelevant

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and prejudicial to the licensee. The licensee argued that these documents should not have been viewed or considered by the adjudicator.

The licensee submitted that a correspondence provided by the branch to the licensee refers to "no compliance history" and therefore, the branch should be estopped from now using the history of allegations against the licensee.

The licensee submitted that it would be prejudicial for it to be required to produce evidence relating to all of the past unproven allegations and that the hearing schedule did not anticipate such activity. Therefore, the allegations should not be allowed to be before the adjudicator.

The licensee also submitted the following:

Two pieces of identification may have been requested of J at the door.

The substance in the jug was not beer.

If the substance in the jug was beer, it was not alcoholic beer and therefore, not liquor.

The requirement for a second piece of ID "is useless identification. This is pretty much meaningless. The real issue is if the driver's licence piece is genuine or fake-genuine, or fake."

Nobody but a police officer with considerable back-up resources would have been able to identify the ID as fake.

There were similarities in appearance between J and his brother K, in the photo on the identification.

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The minors should have been charged, as it was they who committed the offence. The licensee should not bear the consequences of the actions of the minors.

The licensee further submitted that, "it is not realistic or necessary that [patrons] be checked continually. The issue is have you satisfied yourself as best you can that they are of age to be served liquor."

Finally, the licensee submitted that there was ample evidence of due diligence on the part of the licensee.

### **ANALYSIS AND DECISION**

The licensee argued that all documents relating to the history of unproven contraventions were irrelevant and prejudicial to the licensee. I disagree. This process is not a purely quasi-judicial function. The enforcement adjudicator presides over the hearing as the general manager of the Liquor Control and Licensing Branch, by statutory authority. The branch is, therefore, not a party at the hearing, but rather the hearing is an administrative function of the branch. Accordingly, the adjudicator, sitting as general manager, has no obligation to disabuse him or herself of knowledge of the history of the licensee or any documents relating thereto which may be contained in the branch file.

In particular, branch policy and *Regulation* direct the adjudicator to the licensee's history, including unproven contraventions with respect to the issue of penalty. I have reviewed all of the documents contained in the branch's Book of Documents and I find all of them to be proper material to be before me.

The licensee argued that it would be difficult or impossible for the licensee to produce witnesses to speak to each of the past allegations that did not go to hearing or were not proven.

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The history of unproven allegations is of use only for the purposes of penalty. Further, the references speak only to the fact of the allegations, not of the truth of the matters alleged. I have taken this into account and been cautious to avoid characterizations of the licensee based upon unproven allegations. There is, however, no doubt that the past allegations instruct that the licensee has been alerted to issues relating to minors in the licensed establishment in the past.

With respect to the licensee's estop argument, I disagree. I find that the process leading up to the hearing was adequate to provide the licensee with satisfactory information with which to prepare its defence of the allegations. In particular, the licensee was aware of the branch's intention to utilize the documents provided to the licensee in advance in the branch's Book of Documents, to prove the appropriateness of the recommended penalties. I find that there was no prejudice or procedural unfairness visited upon the licensee as a result of the production of the documents or the pursuance of the recommended penalties.

There was considerable evidence provided by the witnesses regarding the "false" identification. The licensee also made multiple submissions, which were not relevant to the central issue of the supply of liquor to a minor at the bar. I find that none of this evidence is relevant to the issue before me. The allegation is of service to a minor. I accept the uncontroverted evidence that R was a minor on January 27, 2006. I accept the evidence of R that he was served a jug of beer. I find based upon the evidence of both J and R that the substance was beer. The licensee did not put the question of non-alcoholic beer or near-beer to the witnesses, and I accept that the typical reference to beer in absence of evidence to the contrary indicates that it contains alcohol and is therefore, liquor as defined in the *Act*. There is no evidence that the bartender asked R for identification or that any identification was produced to the bartender. R, a minor, was therefore, supplied with liquor.

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Further, I find that R looked younger than 25 years of age and the bartender therefore, had an obligation to check him for identification prior to serving him. The evidence of the Hotel manager confirms that the bar staff relies on the door staff to check for identification. I find this consistent with a finding that the bartender failed to check for identification as he was obligated to do.

The licensee submitted that, "It is not realistic or necessary that [patrons] be checked continually.... The issue is have you satisfied yourself as best you can that they are of age to be served liquor." I find that this is wrong in law. The *Regulation* requires that anyone appearing under the age of 25 must be required to produce two pieces of identification as prescribed. It is not sufficient that, "...you satisfied yourself as best you can that they are of age to be served liquor". It is also established law that the obligation to check for identification continues beyond the door staff to the employees within.

I find that the contravention has been proven.

I find the licensee has not established a defence of due diligence.

## **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;
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- 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 thousand to seven thousand dollars (\$5,000-\$7,000). The branch has recommended the minimum suspension of four (4) days.

The licensee argued that the minors should have been charged and that it is the minors that should bear the consequences of their action. The licensee argued that it should not be penalized for the criminal actions of the minors.

The *Act* and *Regulation* are clear, as are the terms of the licence with respect to the obligation of the licensee to comply with the requirements of the Legislation and the licence.

The licensee argued that the licensee has endured sufficient cost and inconvenience in preparing for the hearing of this matter and no further penalty is required. It argued further that the existing staff would be unfairly punished by the imposition of a penalty especially as the doormen who were on duty on January 27 2006, are no longer employed by the licensee.

The licensee also submitted that the penalty recommended is "outrageous" and at most, a monetary penalty should be imposed.

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I find that a penalty is warranted 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.

The licensee submitted that a \$5000 penalty should be considered as an alternative and more appropriate penalty to suspension. I disagree. I find that a four (4) day suspension is appropriate.

### **ORDER**

Pursuant to Section 20(2) of the *Act*, I order a suspension of the Liquor Primary Licence No. 007446 for a period of four (4) days, to commence as of the close of business on Wednesday, August 16, 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. 007446 be held by the branch or the New Westminster Police Department from the close of business on Wednesday, August 16, 2006, until the licensee has demonstrated to the branch's satisfaction that the suspension has been served.

[ ORIGINAL SIGNED ]

Sheldon M. Seigel  
Enforcement Hearing Adjudicator

Date: July 19, 2006

cc: New Westminster Police Department

Liquor Control and Licensing Branch, Surrey Regional Office  
Attn: Michael Clark, Regional Manager

Liquor Control and Licensing Branch  
Attn: Sonja Okada, Branch Advocate

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