IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: ***Butterworth Holdings Ltd. v. General Manager of the Liquor Control and Licensing Branch,*** 2007 BCSC 1513

Date: 20071011
Docket: S103293
Registry: New Westminster

Between:

Butterworth Holdings Ltd., Frizzell Holdings Ltd. and Legree Holdings Ltd. doing business as College Place Hotel

Petitioner

And

General Manager of the Liquor Control and Licensing Branch

Respondent

Before: The Honourable Madam Justice Loo

Reasons for Judgment

Counsel for the Petitioner	W. D. Murdoch
Counsel for the Respondent	R. C. Mullett
Date and Place of Hearing:	25 and 27 July 2007 New Westminster, B.C.

A. Introduction

[1] This is an application for judicial review of an adjudicator's finding that the petitioner contravened sections 33 and 35 of the ***Liquor Control and Licensing Act***, R.S.B.C 1996, c. 267 (the "***Act***") and order that the petitioner's business close for 13 days.

[2] The petitioner holds a liquor license and operates a pub in the College Place Hotel in New Westminster.

[3] The Liquor Control and Licensing Branch alleged that the petitioner contravened s. 33 by supplying a liquor to a minor on March 4, 2006; and contravened s. 35 by permitting a minor to be on its premises on April 9, 2006.

[4] The relevant words of ss. 33 and 35 of the ***Act*** provide:

> **Supplying liquor to minors**
>
> **33** (1) A person must not
>
> (a) sell, give or otherwise supply liquor to a minor,
>
> …
>
> (c) in or at a place under his or her control, permit a minor to consume liquor.
>
> …
>
> (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.

…

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.

[5] An enforcement hearing was held on October 12 and 13, 2006. In the decision dated December 15, 2006, the adjudicator found that the petitioner contravened the sections as alleged. He imposed a penalty by ordering that the petitioner's pub close for 10 days for the March incident and 3 days for the April incident.

[6] The petitioner seeks an order quashing the decision, or alternatively, remitting the matter back for rehearing before an alternative adjudicator. The grounds for the appeal are set out in the Petition as follows:

1. The Adjudicator failed to properly consider all the evidence or applied an inappropriate standard of proof.

2. The Adjudicator erred in law in the application of the defense of due diligence.

3. The Adjudicator erred in failing to consider the lack of enforcement history of the licensee and imposing a penalty that was unreasonable, unwarranted and wholly out of proportion to the facts as found.

4. The Adjudicator erred in considering he was bound to impose a penalty as set out in Schedule 4 of the Regulations under the *Liquor*

> *Control and Licensing Act*, and further, in failing to consider a monetary penalty rather than a license suspension.

[7] The respondent contends that identical challenges were made by the same petitioner in an unsuccessful application for judicial review before Madam Justice MacKenzie in ***Butterworth Holdings Ltd. v. British Columbia (General Manager, Liquor Control and Licensing Branch)***, 2007 BCSC 6. That application arose out of an adjudicator's finding that the petitioner contravened s. 33 on January 27, 2006.

B. The Legal Principles on an Application for Judicial Review

[8] In ***Butterworth*** at ¶ 16-22, Madam Justice MacKenzie set out the general principles that the parties agree apply to this application for judicial review. She stated:

> **General Principles**
>
> [16] A petition pursuant to the ***Judicial Review Procedure Act*** involves the application of administrative law principles. A court will only rarely make the decision which legislation assigns to an administrative tribunal: ***Dennis v. British Columbia (Superintendent of Motor Vehicles)***, 2000 BCCA 653, at ¶26. In this case, that decision is assigned by legislation to the general manger.
>
> [17] The role of the court on judicial review in this context is supervisory; it is not to re-hear and re-assess evidence, but merely to ensure that the adjudicator did not make a decision that was outside his or her jurisdiction. It is not within the power of the court to examine the appropriateness of the decision and substitute its own view for that of the adjudicator: ***Wells v. British Columbia (Superintendent of Motor Vehicles)***, 2000 BCSC 1857 at ¶9 to 11, following ***Toronto (City) Board of Education v. OSSTF, District 15***, [1997] 1 S.C.R. 487, where Cory J. said at ¶45 that when a court is reviewing a tribunal's findings of fact or the inference is made on the basis of the evidence, it can only intervene where the evidence, viewed reasonably, is incapable of supporting a tribunal's findings of fact. See also D.P. Jones & A.S. de Villars, *Principles of Administrative Law, 2d ed*. (Toronto: Carswell, 1994) at 6-8; and D.J.M. Brown & J.M. Evans, *Judicial Review of Administrative Action in Canada* (Toronto: Canvasback, 2004) at 12-9.

> [18] The standard of review for findings of fact in this case is that of patently unreasonable. The standard of review for questions of mixed fact and law is reasonableness *simpliciter*.
>
> [19] The ***Act*** is public safety legislation that balances various competing interests, including: the interests of a licensee to maximize profits and the interest of public safety to minimize the adverse and sometimes tragic consequences of underage drinking.
>
> [20] Under s. 33(1)(a) of the ***Act*** a person must not sell, give or otherwise supply liquor to a minor.
>
> [21] Section 45(2) of the ***Regulation*** provides that a licensee must request two 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.
>
> [22] The prohibition against serving liquor to minors is a public safety issue serious enough to justify legislation prohibiting the service of liquor to a minor. The penalties set out in the ***Regulation*** reflect this seriousness: ***Act***, s. 33, ***Regulation***.

[9] The difference between an unreasonable decision and a patently unreasonable decision was considered in ***R. v. Gordon***, 2002 BCCA 224 at ¶ 19 and 20, 100 B.C.L.R. (3d) 35:

> [19] Before the instant case the decisions in the Supreme Court all supported the view that "patent unreasonableness" was the proper standard of review. The cases are discussed comprehensively by Macaulay J. in ***Jones v. British Columbia (Superintendent of Motor Vehicles)***, [2001] B.C.J. No. 1738. Macaulay J. doubted that the reasonableness simpliciter standard was correct, but concluded that he was bound to apply it because of the decision under appeal.
>
> [20] The difference between the two standards was set out by Iacobucci J. in ***Canada (Director of Investigation and Research) v. Southam Inc.***, [1997] 1 S.C.R. 748 at 776:
>
> > … An unreasonable decision is one that, in the main, is not supported by any reasons that can stand up to a somewhat probing examination. Accordingly, a court reviewing a conclusion on the reasonableness standard must look to see whether any reasons support it. The defect, if there is one, could presumably be in the evidentiary foundation itself or in the logical process by which conclusions are sought to be

> drawn from it. An example of the former kind of defect would be an assumption that had no basis in the evidence, or that was contrary to the overwhelming weight of the evidence. An example of the latter kind of defect would be a contradiction in the premise on an invalid inference.
>
> The difference between "unreasonable" and "patently unreasonable" lies in the immediacy or obviousness of the defect. If the defect is apparent on the face of the tribunal's reasons, then the tribunal's decision is patently unreasonable. But if it takes some significant searching or testing to find the defect, then the decision is unreasonable but not patently unreasonable ….

C. The Evidence Before The Adjudicator

[10] The evidence that was before the adjudicator with respect to this application is set out in the petitioner's written outline of submissions as follows:

> FACTS:
>
> The March 4, 2006 incident:
>
> 3. The first witness for the Branch was B. Grossman. She testified that she was born August 11th, 1987, so was 18 on March 4, 2006 (would turn 19 that August).
>
> 4. She entered the licensed premises knowing that it was illegal for her to do so, and then lied to the police about her age when checked by them.
>
> 5. Despite the police intervention and *Liquor Control and Licensing Act* proceedings against the licensee herein, she was not ticketed for the offence under the Act, nor charged criminally with impersonation.
>
> 6. The only way the policeman was able to get past her lie about her age was by using his radio to search a driver's license data base. She then admitted she was underage.
>
> 7. Her friend purchased a drink for her - she did not buy any drinks from any licensee staff (so was not served liquor by them as alleged).
>
> 8. When the policeman asked her for her ID, she lied and claimed she didn't have any on her. In fact she had fake ID

with her, as she always did to facilitate entry, being the driver's license of a friend that looked sufficiently like her that she had used it to enter licensed premises successfully on ten to fifteen previous occasions.

9. She believes that if asked by licensee staff to show age ID that night they would have accepted that she was of age because the photo looked so much like her.

10. The 2nd witness for the branch was police constable Dyck, who dealt with Ms. Grossman. He also testified that she lied about her age to him and that the only way he was able to determine that was by the use of police resources that hotel staff would not have access to, via his police radio. He also confirmed that he did not ticket her under the *Act* or charge her criminally with respect to the false information she had given him.

11. When he checked her that night, she did not disclose to him that she had her girlfriend's driver's license on her, and her purse was no longer to be seen. He agreed it was quite possible that when she saw him approach she had passed her purse to someone else to avoid him finding and seizing her fake ID that she had with her to facilitate entry.

12. He testified in re-examination by Branch Counsel that Ms. Grossman may well have been asked for ID by licensee staff on entry, provided her fake ID (the friend's driver's license with photo that looked like her), and thereby had them believing she was of age.

13. Marco Sahabi testified that he was working the door for the licensee on March 4th, 2006. He had considerable experience in working at various liquor licensed businesses.

14. He checked Ms. Grossman for ID on entry and was satisfied from the ID she produced that she was at least 19 years old. She had a purse at the time, but when later checked by the police she was no longer carrying the purse.

<u>The April 9, 2006 incident:</u>

15. Police constable Carrie testified that he dealt with a woman later known to be Ursulak and 2 males to do with drugs, outside the College Place Hotel on that date. Ursulak indicated to him that she was 19 years old.

16. Later, inside the licensed premise, constable Carrie was only able to determine that she was in fact under 19 by warning her of the offence of obstruction and by utilizing police data banks that hotel staff do not have access to.

17. She advised him that she was not supplied any drinks by hotel staff.

18. It was admitted on behalf of the licensee, that the doorman that night had not checked Ursulak for ID on entry as required to do by the licensee, as she had produced apparently valid ID when asked on previous occasions, and was with an ex-doorman who he was confident wouldn't bring someone under age in.

19. None the less, the doorman in question was disciplined by the licensee by way of a 4 day suspension without pay.

[Underlining in the original]

[11] Ms. Grossman also gave the following evidence in direct examination:

Q And were you asked for any identification by any of the doormen?

A No.

Q What did you do once you were inside the establishment?

A I -- we walked into the door. It was quite busy. Just kind of went through all the people. Went straight to the bar.

Q When you went to the bar, did you order a drink?

A My friend did who was right beside me, and he handed it to me right in front of the bartender.

Q Did the bartender look at you or ask you for I.D. or anything?

A No.

[12] On cross-examination she testified:

Q Okay. So at no time when you were in there were you -- did you buy or acquire a drink directly from any of the hotel staff?

A No.

…

Q You weren't handed it by any hotel staff, you've already told me, correct? You didn't -- you've already told me just a minute ago that you didn't acquire any alcoholic beverage from any of the hotel staff.

> A Okay. Well, I can't remember if I was handed directly it or if my friend was handed it and he handed it to me, but I was standing right there at the bar. It was obvious that it was for me.

[13] There was also evidence from Mr. Scott, an inspector with the Branch:

> Q … you actually met Ms. Grossman, did you not?
>
> A Yes, I did.
>
> Q And to your eyes, did she appear to be of legal drinking age, or was it questionable?
>
> A No, it wasn't questionable at all. She was not old enough.
>
> Q I mean, even if you did not know the background, if you had not the access to the police Licence Premise Check and the fact that they found out she was a minor, in both cases and specifically Ms. Grossman, if you were to just look at her on the street, you would definitely want to question her or to ask her to produce some I.D. if she was going to enter?
>
> A Certainly, if I saw her in a licensed establishment, I'd have no difficulty wondering whether or whether or not she was old enough. She wasn't old enough.

[14] The Branch proposed a 10 day license suspension for the March 2006 contravention, which is the minimum suspension for a second s. 33 contravention in the same year. For the April 2006 contravention, the Branch proposed a 3 day suspension which is the maximum suspension for a first contravention under s. 35.

[15] The petitioner argued before the adjudicator and on this application that for more than 30 years it had no history of offences, and that a 13 day suspension will cause significant unrecoverable financial losses and irreparable harm, including approximately $130,000 loss of business, long-term loss of customers and revenue, and laying off 16 employees and 8 contractors.

D. The Decision of the Adjudicator

[16] The adjudicator found that on March 4, 2006 a drink was either handed to Ms. Grossman by the bartender or by her friend who handed it to her in clear view of the bartender. The adjudicator noted that there was no evidence to the contrary. He stated:

> There is conflicting evidence whether the minor was checked for identification when entering the licensed area. The minor says no, the doorman says that she was. In cross-examination the minor admitted that she was carrying false identification in the form of an expired driver's licence of a friend with a photograph which resembled her (the minor). There are inconsistencies in the minor's evidence, particularly as it relates to where the identification was kept. Witnesses say that she was not carrying a purse upon leaving and thus had handed the purse with the identification off to someone else upon being approached by the police officer.
>
> On the issue of whether the minor did produce identification to the doorman or not, there is difficulty in preferring the evidence of one over the other. There are as stated inconsistencies in the evidence of the minor. The evidence of the doorman is also not without question. It may be seen as self-serving given that it was his responsibility to check identification. Further it differs with that of other witnesses. The doorman testified that the minor entered with three other young females. This is contrary to the evidence of the minor on this point and is contrary to the evidence of the police officer (witness B) that observed the minor arriving and entering the establishment. In the end result, I am satisfied that the doorman did not satisfactorily check the identification of the minor. At best he viewed an expired driver's licence which did not belong to the minor. It did not bear her photograph and while it bore a photograph resembling the minor, the name and biographical information did not pertain to her. He did not examine the identification for it authenticity [*sic*].
>
> …
>
> In conclusion, on the evidence, I find on a balance of probabilities, that on March 4, 2006, liquor was, "otherwise supplied" within the meaning of Section 33 of the *Act* and in contravention of those provisions.

[17] The petitioner admitted that on April 9, 2006 the doorman permitted a minor to be on the premises contrary to s. 35.

E. Did the adjudicator fail to properly consider all the evidence or apply an inappropriate standard of proof?

[18] The petitioner argues that the adjudicator "misstated" the evidence and failed to properly consider all of the evidence by finding there was a conflict in the evidence of Constable Dyck, Mr. Sahabi, and Ms. Grossman. The petitioner contends that the evidence discloses three different points of view at different points in time and therefore the adjudicator ought to have accepted Mr. Sahbi's evidence that he checked Ms. Grossman's ID when she entered the premises and that her ID, albeit "fake", showed that she was at least 19 years old.

[19] It is not the function of this court on an application for judicial review to weigh or re-weigh the evidence, or determine issues of credibility. As long as there was evidence on which the adjudicator could base his findings, this court must not intervene. In this case, there was evidence on which the adjudicator could base his findings of fact which cannot be said to be unreasonable, let alone patently unreasonable.

F. Did the adjudicator err in law in the application of the defence of due diligence?

[20] The adjudicator stated:

> The licensee is entitled to a defence to the allegations of the contraventions, if it can be shown that it 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, it must ensure that those procedures are consistently acted upon and problems dealt with.

> Here the licensee has hired staff with previous experience in the industry and has provided training and instructions on how to perform their duties. The instructions are updated from time to time and staff is reminded of their responsibilities.
>
> …
>
> Counsel for the licensee has submitted that due diligence is planning ahead of time to prevent things from going wrong. I agree. Thus, it is appropriate to consider the actions of the licensee as it has planned ahead and the circumstances in which it has done so. Here the alleged contravention occurred on March 4, 2006, shortly following a previously alleged contravention of the same type that occurred in January 2006. Yet, there is no evidence that the licensee took any measures to improve the policies and procedures to prevent such recurrences. Further, there is no evidence that the licensee has any policies and procedures in place to instruct its bartenders not to supply liquor unless satisfied that the person is of age. While the bartender may have the authority to check identification, there is no policy providing guidance as to when that authority should be exercised. Here I am satisfied that in the circumstances the bartender knew or ought to have known that the liquor was being purchased for a young appearing person and should have ensured that the person was of age. It was not sufficient for the bartender to assume that a doorman had requested identification and carefully examined it for its authenticity. Such an assumption could lead to the very results of this case.

[21] With respect to the April 2006 incident, the adjudicator said:

> … Here the alleged contravention occurred on April 9, 2006, shortly following previously alleged contraventions involving minors that occurred in January and March of 2006. Yet, there is no evidence that the licensee took any measures to improve the policies and procedures to prevent such occurrences.

[22] In both instances, the adjudicator found that the petitioner was not duly diligent.

[23] The petitioner argues that due diligence does not require perfection but only what is reasonable in the circumstances and within the capacity of the licensee to effect. The petitioner contends that the adjudicator treated both offences as absolute liability offences requiring perfection.

[24] The petitioner argues that if the doorman failed to check Ms. Grossman's ID, he made a mistake: humans are always going to make mistakes. The doorman's mistake does not mean the petitioner failed to exercise due diligence. Even if the doorman or bartender had checked Ms. Grossman's ID, it would not have made any difference because Ms. Grossman had the expired ID of her friend whose photograph resembled her. She had used it successfully many times before. The police were only able to verify her age through its data bank which is unavailable to the petitioner.

[25] However, the adjudicator dealt with that aspect of the argument when he found that the doorman, even if he viewed Ms. Grossman's ID, did not examine it for its authenticity.

[26] The petitioner's written policies and procedures for doormen includes the following:

> College Place Hotel
> 740 Carnarvon St, New Westminster
>
> Employee Duties and Responsibilities (Doormen)
>
> The primary functions of doormen are as follows:
>
> - To provide access control and to screen those who enter.
> - To prohibit entry of minors, to check 2 pieces of valid ID also prohibit entry to intoxicated persons, or undesirables.
>
> *Patron Entry*: Employees will permit entry of legally allowed patrons to the licensed limit of 331 persons (pub) …
>
> *Minors:* Employees will require persons, appearing to be under 25 years of age, to produce a valid drivers' license or B.C. I.D. card *with supporting document*. Verification techniques should be used when in doubt, such as obtaining a signature sample for comparison. If suspicions are aroused, the

> person *must be refused* entry, even if the I.D. appears legitimate. Fake/adulterated I.D. cards are to be collected and submitted to the local police or management.
>
> …
>
> [Underling and italics in the original]

[27] The policy appears to reflect s. 45 of the ***Liquor Control and Licensing Regulation***, B.C. Reg. 244/2002 ("***Regulation***") which provides:

> **Minors**
>
> **45** (1) For the purposes of section 33 (5) of the Act, identification means both of the following:
>
> (a) one of the following:
>
> (i) a passport;
>
> (ii) a driver's licence that displays a photograph and the date of birth of the holder;
>
> (iii) an identification card, issued by a government agency, that displays a photograph and the date of birth of the holder;
>
> (b) one other piece of identification that displays
>
> (i) the person's name, and
>
> (ii) one or both of the person's signature and picture.

[28] There was no evidence that the doorman examined or acted on the authenticity of the identification by requiring Ms. Grossman to produce a passport or identification card issued by a government agency, or a sample of her signature for comparison.

[29] There was evidence that the bartender knew or ought to have known that the liquor was being purchased for a person appearing under the age of 25. The adjudicator's finding that the bartender ought to have required Ms. Grossman to

produce identification, examined it, and acted on the authenticity of the identification cannot be said to be unreasonable.

[30] The arguments raised by the petitioner are similar if not identical to the arguments raised before Madam Justice MacKenzie relating to the January 27, 2006 incident where she stated at ¶ 27 to 29, 36 and 37:

> [27] The petitioner referred to evidence regarding its alleged due diligence. It argues that the training of the staff was adequate in the circumstances. It submits that the problem of underaged people trying to obtain entry into licensed premises by using false identification is enormous because "fake ID" is extremely difficult to recognize. It emphasizes that in this case, the two underage boys obtained entry by using the "L" drivers licence and the "N" licence of the older brother of one of the two minors. The licences looked legitimate, and according to the petitioner, most 19 year olds look as if they are 16 or 17. Also, the petitioner argues there are numerous schemes available for the obtaining of false identification.
>
> [28] The petitioner further submits that due diligence does not require perfection, but only consists of what is reasonable in the circumstances and within the capacity of the licencee to carry out. The petitioner complains that the adjudicator apparently required perfection and treated this allegation as if it were an absolute liability offence.
>
> [29] The petitioner argues there was nothing more the licensee could have done because its system of having the doorman require identification was reasonable in the circumstances. In this regard, it submits the bartender does not have time to check the identification of those to whom he serves liquor. Instead, he relies on the doorman. Furthermore, the bartender is able to see the doorman as he is checking identification. The petitioner says the fact both minors had been checked for photo identification by door staff on behalf of the licensee and had produced the real identification of the older brother of one of the minors was adequate to establish due diligence in the circumstances.
>
> …
>
> [36] The licensee acknowledged that it did not require its bartender to ask for identification from persons appearing under the age of 25 before serving liquor. The only system was to check "ID" at the door. The hotel manager confirmed that the bar staff relied on the door staff to check "ID". The adjudicator found this policy insufficient because the obligation continues beyond the door staff to the employees within. As a result, he found that the licensee failed to establish that it was duly diligent in checking identification and preventing minors from being served alcohol in its establishment.

> [37] There is no basis to interfere with the adjudicator's decision that the petitioner failed to establish the defence of due diligence. The adjudicator's decision in this regard was not unreasonable as it was supported by ample evidence.

[31] In ***R. v. Sault Ste. Marie (City)***, [1978] 2 S.C.R. 1299, Dickson J. stated at p. 1331:

> … The due diligence which must be established is that of the accused alone. Where an employer is charged in respect of an act committed by an employee acting in the course of employment, the question will be whether the act took place without the accused's direction or approval, thus negating wilful involvement of the accused, and whether the accused exercised all reasonable care by establishing a proper system to prevent commission of the offence and by taking reasonable steps to ensure the effective operation of the system. The availability of the defence to a corporation will depend on whether such due diligence was taken by those who are the directing mind and will of the corporation, whose acts are therefore in law the acts of the corporation itself. …

[32] I do not find the arbitrator's decision on the defence of due diligence to be unreasonable.

G. Did the adjudicator err in failing to consider the petitioner's lack of enforcement history and impose an unreasonable penalty?

[33] On the issue of the penalty for the March 2006 incident, the adjudicator stated:

> 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 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

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 *Regulations*.

There is *a previous proven contravention of the same type for this licensee within the year preceding this incident*. Pursuant to *Liquor Control and Licensing Regulation*, Schedule 4, Section 1(1)(b), the branch has treated the allegation as a second contravention. The range for second contraventions of this type is a licence suspension for 10-14 days.

The branch's primary goal in bringing enforcement action is to achieve voluntary compliance. In the circumstances of this case, I am satisfied that the licensee has not successfully or sufficiently stressed upon its employees the need to fully and conscientiously carry out their duties and a penalty is necessary to ensure future compliance.

Any penalty imposed must be sufficient to ensure compliance in the future. In the circumstances I find that the minimum ten (10) day suspension is necessary and sufficient.

[Emphasis added]

[34] On the issue of the penalty for the April 2006 contravention, the adjudicator stated:

There is no previous proven contravention of the same type for this licensee within the year preceding this incident. Pursuant to *Liquor Control and Licensing Regulation*, Schedule 4, Section 1(1)(b), the branch has treated the allegation as a first contravention. The range for a first contravention of this type is a license suspension for 1-3 days and/or a monetary penalty of $1000 to $3000.

The branch's primary goal in bringing enforcement action is to achieve voluntary compliance. In the circumstances of this case, I am satisfied that the licensee has not successfully or sufficiently stressed upon its employees the need to fully and conscientiously carry out their duties and a penalty is necessary to ensure future compliance.

Any penalty imposed must be sufficient to ensure compliance in the future. In the circumstances that this is the third contravention involving minors within a

> short period of time (Jan - April 2006) I find that the maximum three (3) day suspension is necessary.

[35] The petitioner contends that the adjudicator ought to have imposed no penalty or, at most, the monetary penalty provided for by the ***Regulation***: namely $5,000 to $7,000 for the breach of s. 33, and $1,000 to $3,000 for the breach of s. 35.

[36] I will consider this ground of appeal together with the last ground of appeal.

H. Did the adjudicator err in considering he was bound to impose a suspension penalty and not considering a monetary penalty?

[37] Schedule 4 to the ***Regulation***, reads:

> Schedule 4
>
> [am. B.C. Regs. 437/2003, s. 3; 205/2005, s. 13.]
>
> **Enforcement Actions**
>
> **Interpretation**
>
> **1** (1) For the purposes of this Schedule,
>
> (a) a contravention is of the same type as another contravention if each contravention is described by the same Item of this Schedule, and
>
> (b) a contravention by a licensee is
>
> (i) a first contravention if the contravention was committed at or in respect of an establishment and the licensee has not committed a contravention of the same type at or in respect of that establishment within the 12 month period preceding the commission of the contravention,
>
> (ii) a second contravention if the contravention was committed at or in respect of an establishment and the licensee has committed one contravention of the same type at

> or in respect of that establishment within the 12 month period preceding the commission of the contravention, …

Item	Contravention	Period of Suspension (Days)			Monetary Penalty
		First Contravention	Second Contravention	Subsequent Contraventions	
	…				
	Minors				
2	A breach of section 33 of the Act *[Selling liquor to minors]*	4-7	10-14	18-20	$5 000 - $7 000
3	A breach of section 35 of the Act *[Minors on licensed premises]*	1-3	3-6	6-9	$1 000 - $3 000

[38] The petitioner argues that the 13 day suspension penalty is wholly out of proportion to the offence and the adjudicator ought to have either imposed no penalty or, at most, the applicable monetary penalty. The petitioner also complains that the adjudicator gave no reasons for not imposing a monetary penalty.

[39] There is no dispute that the adjudicator accurately set out the law relating to the issue of a penalty. He was aware that any penalty was discretionary. He was also aware that if he found a suspension or a monetary penalty was warranted in the circumstances, he was required to order the suspension or penalty set out in Schedule 4 to the ***Regulation***.

[40] The adjudicator's reasoning for deciding to impose the suspension rather than a monetary penalty is clear. He found that the petitioner supplied liquor to a minor,

shortly after a contravention notice for the same offence in January 2006. He found there was no evidence that the petitioner took any steps after January 2006 to improve its policies and procedures, or to emphasize to its employees the need to strictly adhere to its policies, or had a policy requiring the bartender to check for identification, particularly when the person appeared to be underage.

[41] I cannot find that the arbitrator erred in the exercise of his discretion.

[42] The application is dismissed with costs.

Loo J.