



**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:	VCR Holdings Ltd. dba Rock Pit 312 W. 1 st Street PO Box 780 Revelstoke BC
Case:	EH07-037
For the Licensee:	Claudio Brunetti
For the Branch:	Shahid Noorani
Enforcement Hearing Adjudicator:	Edward Owsianski
Date of Hearing:	June 19, 2007
Place of Hearing:	Revelstoke BC
Date of Decision:	July 16, 2007

INTRODUCTION

VCR Holdings Ltd. (dba Rock Pit) holds Liquor Primary Licence No. 168998. The hours of sale are 7:00 p.m. to 2:00 a.m., seven days a week. The patron capacity is 250. The establishment is located in the downtown area of Revelstoke, BC. The licence is, as are all liquor licences issued in the province, subject to the terms and conditions contained in the publication "Guide for Liquor Licensees in British Columbia".

Alleged Contravention and Recommended Enforcement Action

The branch's allegations and proposed penalty are set out in the Notice of Enforcement Action (NOEA) dated March 13, 2007. The branch alleges that on January 28, 2007, the licensee contravened Section 33 of the *Liquor Control and Licensing Act* by selling, giving, supplying liquor to a minor or permitting a minor to consume liquor. The proposed penalty is a seven (7) day suspension of the liquor licence (item 2, Schedule 4 of the *Regulation*).

At the time of the alleged contravention Item 2 of Schedule 4 of *the Regulation* provided a range of penalties for a first contravention of this type of a licence suspension for 4 - 7 days and/or a monetary penalty of \$5000 - \$7000. In February 2007 the Schedule was amended to increase the range of penalties for a first contravention of this type to a licence suspension for 10 – 15 days and/or a monetary penalty of \$7,500 - \$10,000.

In the alternative, if the general manager does not make a finding on the above contravention, the branch will ask the general manager to find that on January 28, 2007, the licensee contravened section 35 of the *Liquor Control and Licensing Act* by permitting a minor to enter on, or to be on premises where liquor is sold or kept for sale. The proposed penalty is a three (3) day suspension of the liquor licence (item 3 of Schedule 4, *Liquor Control and Licensing Regulation*).

At the time of the alleged contravention Item 3 of Schedule 4 of *the Regulation* provided a range of penalties for a first contravention of this type of a licence suspension for 1 - 3 days and/or a monetary penalty of \$1000 - \$3000. In February 2007 the Schedule was amended to increase the range of penalties for a first contravention of this type to a licence suspension for 4 – 7 days and/or a monetary penalty of \$5,000 - \$7,500.

The licensee disputes the contraventions.

RELEVANT STATUTORY PROVISIONS

Liquor Control and Licensing Act, [RSBC 1996] Chapter 267

Supplying liquor to minors

33 (1) A person must not

- (a) sell, give or otherwise supply liquor to a minor,
- (b) have liquor in his or her possession for the purpose of selling, giving or otherwise supplying it to a minor, or
- (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.

Liquor Control and Licensing Regulations, B.C. Reg. 244/2002**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.

ISSUES

1. Did the contraventions occur as alleged?
2. If so, is a penalty appropriate and what is a reasonable penalty?

EXHIBITS

The following exhibits were presented:

- Exhibit No.1** Branch Book of Documents #1, tabs 1 – 18
- Exhibit No.2** Copy of a British Columbia Offence Act Violation Ticket

EVIDENCE - THE LIQUOR CONTROL AND LICENSING BRANCH

A **police officer** testified that he has been a member of the RCMP for approximately three and one-half years and is currently stationed at the Revelstoke detachment. On January 27/28, 2007, he was working the evening/early morning shift in uniform performing general duties. Prior to 1 a.m. he was responding to a call when he noted a youth (witness A) whom he knew to be under 19 years of age walking in the downtown area with several friends in the proximity of the Rock Pit. He had dealt with this youth on previous occasions for being in licensed establishments while underage.

Upon completing his call approximately one-half hour later he returned to the downtown area and conducted a walk-thru of the Rock Pit. He spoke briefly with the doorman on duty and then proceeded to walk through the establishment. It was less than one-half full with approximately 50 patrons inside. He noted the youth standing near the far wall with a group of friends; he was holding a bottle of beer and drinking from it. He escorted the youth outside. On the way out he pointed the youth out to the doorman who asked, "Is he underage?"

Outside he noted that the youth had obviously been consuming liquor and appeared to be intoxicated. His speech was slurred, his face flushed, his eyes glassy and bloodshot. The youth told him that he had consumed approximately seven beers that night but didn't say whether that had occurred in the establishment or elsewhere. The officer assessed the youth's level of intoxication as being such that he was incarcerated overnight for his own safety

and released in the morning. The youth was given a Violation Ticket for being a minor in a licensed establishment.

The following week the officer prepared a Licensed Premises Check (LPC) form (exhibit 1, tab 2) and issued it to the manager of the establishment (licensee witness B) explaining the circumstances of the incident. He forwarded a copy of the LPC to the liquor inspector and provided details of his observations (exhibit 1, tabs 3 & 4). He advised the inspector that while in the past the practice had not been to issue LPCs for incidents occurring in licensed establishments, the current practice is to do so.

Branch witness A testified that in January 2007 he was 18 years old and would not turn 19 until July of this year. On January 28, 2007, at approximately 1 a.m. he entered the Rock Pit with a group of friends, who were of legal drinking age. He was not asked for identification. He proceeded to the area near the pool tables, standing with his friends.

He had been inside for approximately five minutes when he was apprehended by an RCMP constable and taken outside where he was given a Violation Ticket and arrested for public intoxication. He testified that he was not holding a beer when apprehended by the officer, had not been consuming liquor that night and was not intoxicated. He denied telling the officer that he had consumed seven beers earlier in the night. He agreed that he had been in the establishment and another establishment on previous occasions while underage. He did not obtain liquor by himself on those occasions, but had friends purchase it for him.

A branch liquor inspector testified that he is responsible for the geographical area in which the Rock Pit is located and is responsible for maintaining the branch files for the establishment. He is familiar with the Rock Pit. The liquor primary licence (exhibit 1, tab 5) allows the sale of liquor between 7 p.m. and 2 a.m., seven days per week. It is subject to the terms and conditions contained in

the branch publication "Guide for Liquor Licensees". A copy of the Guide is provided to all licensees. The Guide in effect at the time of the alleged contraventions is found at exhibit 1, tab 6. He referred to excerpts from the Guide dealing with: "Minors" (p.11).

He received a copy of the LPC (exhibit 1, tab 2) issued to the establishment from the RCMP constable and received further information regarding the incident via emails (exhibit 1, tabs 3 & 4). He drew-up a Contravention Notice (CN) (exhibit 1, tab 2) outlining the alleged contraventions and sent them to the licensee. He subsequently prepared a Notice of Enforcement Action (NOEA) (exhibit 1, tab 1) wherein he recommended the contravention, alternative contravention and penalties.

The inspector testified that in making the recommendations for the penalty for each contravention he reviewed the branch file for the establishment. He referred to copies of documents from Branch files:

- February 17, 1998 - the licensee representatives met with the area liquor inspector and signed the branch Inspection Interview Sheet acknowledging the terms and conditions of the licence and that he agreed to abide by them (exhibit 1, tab 8).
- August 2001 - CN and LPC issued for supplying liquor to a minor and permitting a minor on the premises (exhibit 1, tab 9). No enforcement action taken.
- October 25, 2001 - Compliance meeting held with the licensee representative during which time the above-noted contraventions were discussed and a commitment for compliance obtained (exhibit 1, tab 10).

- November 2002 - CN and LPC issued for failing to clear liquor and allowing consumption beyond ½ hour after liquor service hours (exhibit 1, tab 11). No enforcement action taken.
- March 30, 2003 - CN issued for employee consuming while on duty (exhibit 1, tab 12). This lead to an enforcement hearing resulting in a two- day licence suspension being imposed (exhibit 1, tab 13).
- June 19, 2003 - Compliance meeting held with the licensee representative regarding failing to clear liquor and permitting consumption ½ hour after liquor service hours (exhibit 1, tab 14).
- June 12, 2004 - LPC and CN issued for permitting three minors on the premises (exhibit 1, tab 15). No enforcement action taken.
- June 16, 2004 - Compliance meeting held with the licensee representative during which time the above-noted contraventions were discussed and a commitment for compliance obtained (exhibit 1, tab 16).
- July 2, 2004 - CN issued for failing to clear liquor ½ hour after liquor service hours (exhibit 1, tab 17). No enforcement action taken.
- August 20, 2004 - Compliance meeting held with the licensee representative regarding patrons failing to leave the establishment (exhibit 1, tab 18).

The inspector testified that after reviewing the branch file he recommended the maximum penalty for the contravention and alternate contravention. The record reflected a substantial history of contraventions with several compliance meetings held. It appeared that the licensee was not willing to comply. In the

circumstances giving rise to this hearing an intoxicated minor was found on the premises in possession of liquor.

The inspector agreed that there had been no problems noted in the operation of this establishment, or three other establishments operated by the licensee in the past three years. He agreed that minors are attracted to attempt entry of night-club type establishments. He was unaware of the history of this minor having been found in this and other establishments in the past and having been dealt with by the RCMP constable on those previous occasions.

EVIDENCE - THE LICENSEE

Licensee witness B testified that he has been the general manager of the Rock Pit for the past two years and is familiar with the requirements of operating a licensed establishment. He was working behind the bar on January 27/28, 2007. He was unaware that the night in question was a Saturday business night and believed the incident to have occurred during a week-night. There was a doorman on duty at the front door and there may have been an additional bouncer/doorman on duty but he was not certain. The doorman on duty was also required to walk through the premises from time to time checking for problems and to check the bathrooms for illegal drug use. He surmised that the youth might have entered the premises undetected with a group of friends during one of the doorman's absences.

He testified that he is familiar with the youth, knows him to be underage and has ejected him from the establishment on past occasions. Revelstoke being a relatively small city, staff knows who is of age. He did not serve the youth any liquor and believed it possible that the he may have brought the beer in with him when he entered. He did not see the youth escorted out by the police officer. The establishment tends to be busy around 1 a.m. with patrons coming in from

other establishments. He is usually busy with and concentrates on his bartending duties during that time.

As manager he reminds staff of their duties from time to time. There is no formal training process for staff, nor policy manuals or an incident log maintained at the establishment. Staff meetings are infrequently held. The doorman on duty on the night in question has subsequently been fired as a result of another incident involving a minor. The establishment has video surveillance but it is aimed at the bar area to protect against internal theft and does not cover the door or floor areas. If a busy night is anticipated additional doormen/bouncers may be hired if available. Other establishments in the city are known to hire doormen only if a cover charge is in effect.

SUBMISSIONS - LICENSEE

The licensee representative submitted that the establishment was not negligent. There was a doorman on duty and the youth snuck in with a crowd at a busy time, hid in a back corner and had a friend buy him a beer. It was a busy time and staff was busy with other duties. He was discovered by the police officer within a short period of time, which is why staff did not notice him.

He submitted that the recommended penalties were too high. At the time of this incident the establishment has operated without problems for approximately two and one-half years. The youth in question is a problem within the community and should have been dealt with earlier by the police. Other establishments have had the same problem with this youth.

REASONS AND DECISION

The evidence of the police officer is that on January 28, 2007 a minor, witness A was found in the Rock Pit, in possession of and consuming liquor. The minor's

condition was assessed by the police officer as intoxicated to a level that he was taken into custody for his own safety. The only evidence to the contrary is that of the minor that I find not to be credible. That is a contravention of section 33(1)(c) of the *Act*.

There is a defence to this contravention in section 33(5) if it can be shown that the licensee or its employee required the minor to produce identification, examined and acted on the authenticity of the identification. There is no evidence that this minor was required to produce identification prior to entering the establishment.

The licensee is entitled to a defence to the finding 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 not established a training program for employees nor does it have policy and procedures in place instructing employees on their duties. While a doorman was on duty, the practice of having him leave his post to make other security checks thus leaving the door insecure contributed to the contravention. That was easily foreseeable. From the testimony of the general manager his emphasis appears to be on liquor sales and service and revenue protection, over control and security.

I find that the licensee has not been duly diligent and thus may be said to have "permitted" the contravention.

In conclusion, on the evidence, I find on a balance of probabilities, that on January 28, 2007, the licensee contravened section 33(1)(c) of the *Liquor Control and Licensing Act* by permitting a minor to consume liquor.

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 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 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 *Regulations*. I am not bound by the maximums and may impose higher penalties when it is in the public interest to do so, and I am not bound to order the penalty proposed in the NOEA.

The branch's primary goal in bringing enforcement action and imposing penalties is achieving voluntary compliance. Among the factors that are considered in determining the appropriate penalty is: whether there is a past history of warnings by the branch and/or the police, the seriousness of the contravention, the threat to the public safety and the well being of the community.

There is no record of prior proven contraventions, offences or enforcement actions of the same type for this licensee, or this establishment within the year preceding this incident. At the time of the contravention the range of penalties for a first contravention of section 33 of the *Act* pursuant to the *Regulation*, Schedule

4, section 2(2), was four (4) to seven (7) days suspension and/or a monetary penalty of \$5,000-\$7,000.

I acknowledge that youths are drawn to late-night establishments and that this youth in particular has been a problem. However, voluntary compliance requires that a licensee review the circumstances and take steps to ensure that it does not reoccur. Here there is no evidence that the incident resulted in any procedural changes in the operation of the establishment. This was an opportunity to review operating procedures to ensure that there was no gap in the control of patrons entering the establishment when the doorman was required for other duties, and to ensure that all staff are vigilant to the possibility of minors entering the premises, obtaining and consuming liquor. The emphasis on the management of the establishment must always be on operating within the requirements of the *Act, Regulations* and the terms and conditions of the liquor licence.

A minor obtaining and consuming liquor is a serious matter that can lead to dire consequences. The seriousness of this type of contravention is recognized with the February 2007 changes to the penalty Schedule that significantly increased the range of penalties for contraventions occurring after that date.

I find that a penalty is necessary to ensure future compliance. In the circumstances a significant penalty is warranted and appropriate. I find that the maximum penalty at the time of the contravention, for a first contravention of this type, a seven day suspension penalty is appropriate in the circumstances.

ORDER

Pursuant to Section 20(2) of the *Act*, I order a suspension of Liquor Primary Licence No. 168998 for a period of seven (7) days, to commence as of the close of business on Friday, August 17, 2007, 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 be held by the branch or the RCMP Revelstoke Detachment from the close of business on Friday, August 17, 2007, until the licensee has demonstrated to the branch's satisfaction that the suspension has been served.

[ORIGINAL SIGNED]

Edward W. Owsianski
Enforcement Hearing Adjudicator

Date: July 16, 2007

cc: RCMP Revelstoke Detachment

Liquor Control and Licensing Branch, Victoria Office
Attention: Gary Barker, Regional Manager

Liquor Control and Licensing Branch, Surrey Office
Attention: Shahid Noorani, Branch Advocate