



**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: 0708901 B.C. Ltd.
dba Beaufort Hotel (Jaguar's Nite Club)
3009 3rd Avenue
Port Alberni, BC V9Y 2A4

Case: EH07-131

For the Licensee: Hank Bramwell

For the Branch: Olubode Fagbamiye

Enforcement Hearing Adjudicator: Edward Owsianski

Date of Hearing: March 11 & 12, 2008

Place of Hearing: Port Alberni, BC

Date of Decision: April 3, 2008

**Ministry of Public
Safety and Solicitor
General**

Liquor Control and
Licensing Branch

Mailing Address:
PO Box 9292 Stn Prov Govt
Victoria BC V8W 9J8

Telephone: 250 387-1254
Facsimile: 250 387-9184

Location:
Second Floor, 1019 Wharf Street
Victoria BC

<http://www.pssg.gov.bc.ca/lclb/>

INTRODUCTION

Corporate licensee 0708901 B.C. Ltd. dba the Beaufort Hotel holds Liquor Primary Licence No. 139354 for the operation of Jaguar's Nite Club at the hotel. It offers adult oriented exotic dancing as entertainment. The hours of sale are 7:00 p.m. to 2:00 a.m. Monday to Saturday, and 7:00 p.m. to Midnight on Sunday. The patron capacity is 225. The hotel is located in Port Alberni, BC. The licence is, as are all liquor licenses issued in the province, subject to the terms and conditions contained in the publication 'Guide for Liquor Licensees in British Columbia.' The Beaufort Hotel also holds liquor primary licenses for a pub and a lounge.

Alleged Contravention and Recommended Enforcement Action

The branch's allegations and proposed penalty are set out in the Notice of Enforcement Action (the "NOEA") dated November 13, 2007. The branch alleges that on June 22, 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 four day suspension of the liquor licence (item 3 of Schedule 4, *Liquor Control and Licensing Regulation*).

Item 3 of Schedule 4 of *the Regulation* provides 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.

The licensee disputes the contravention.

RELEVANT STATUTORY PROVISIONS

Liquor Control and Licensing Act, R.S.B.C. 1996, c. 267 (the Act)

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.

ISSUES

1. Did the contravention occur?
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 – 15

Exhibit No. 2: Enlarged photocopy of a British Columbia Driver's Licence.

EVIDENCE - THE LIQUOR CONTROL AND LICENSING BRANCH

Two RCM Police officers, A and B testified that they were in uniform working the late night/early morning shift of June 21/22, 2007, in the City of Port Alberni. Responding to previous complaints that minors were gaining entrance to the Beaufort Hotel, they made a routine inspection of Jaguar's Nite Club at the hotel at approximately 1:10 a.m. of June 22nd. Constable A entered through an unlocked service entrance, while Constable B and an auxiliary officer (did not appear as a witness) entered through the main entrance. They did not observe any staff members at the entrances checking for identification. Inside the officers observed several young appearing patrons, the majority of whom scattered upon seeing the officers. Three obviously young males were observed consuming from bottles of beer. Upon being requested for identification they produced B.C. Drivers Licences, one of which had obviously been tampered with (exhibit 2). They were all determined to be less than 19 years of age and were escorted outside and each issued a provincial offence violation ticket for consumption of liquor by a minor (exhibit 1, tab 7). The manager of the licensed area was issued a violation ticket (exhibit 1, tab 7) and a licensed premises check form (exhibit 1, tab 3) for permitting minors on the premises. An occurrence report was completed prior to going off shift (exhibit 1, tab 5).

Branch witnesses C and D testified that on June 22, 2007, they were both 17 years old. They were in Port Alberni that night and had approximately one hour to wait for a taxi ride home, so decided to go to Jaguar's Nite Club at the Beaufort Hotel to kill some time. They entered through the main door. A doorman was present, but did not ask their age, nor request to see any identification. Inside they each purchased a bottle of beer from a staff bartender. She did not ask their age, nor request to see their identification. They had been inside for approximately 10 to 15 minutes when the police officers arrived, escorted them outside and issued them violation tickets. Witness C had been in the licensed establishment on a previous occasion and had not been requested to produce identification.

A branch liquor inspector testified that he has been employed as a liquor inspector for approximately six years and is responsible for the geographical area in which the Beaufort Hotel is located. He received a licensed premises check form (exhibit 1, tab 3) from the RCMP detachment advising that three minors had been found in Jaguar's Nite Club at the Beaufort Hotel the night of June 22, 2007. He contacted the officers involved and received further information about the occurrence and a police report (exhibit 1, tab 5). He attended at the hotel and obtained information concerning the staff on duty and their observations of the occurrence. He was told that at the time of the occurrence there was a manager, doorman, disc jockey and bartender on duty. None of them recalled seeing the minors enter the premise, or being served liquor at the bar. He was told that the hotel did not have written policies, but used the branch "Guide for Licensees" as instructions for staff. All staff were experienced prior to being hired by the hotel and didn't need further training. The inspector met with the operations manager for the hotel who had not been present the night of the occurrence. The inspector requested the sales receipts for the day and statements of the staff members on duty at the time. The sales receipts were subsequently received (exhibit 1, tab 9), staff statements were not. A contravention notice (exhibit 1, tab 2) was prepared and delivered to the establishment.

He reviewed the branch file for the establishment. In his testimony he referred to copies of documents from branch files:

- Exhibit 1, tab 10; the liquor primary licence in effect at the time of the alleged contravention. It is subject to the terms and conditions contained in the branch publication "Guide for Liquor Licensees."
- Exhibit 1, tab 13; a copy of the "Guide" in effect at the time of the alleged contravention. He referred to excerpts from the Guide dealing with: "Your Role as a Licensee" (p. 3); "The Role of Police" (p. 4); "Minors" (p. 11); and "ID Requirements" (p. 11).
- Exhibit 1, tab 14; on June 23, 2006, the principal of the corporate licensee met with the liquor inspector and signed the branch Interview Sheet. He committed to operating the establishment in compliance with liquor licence requirements.

- Exhibit 1, tab 12; on December 18, 2006, a compliance meeting was held with the principal of the corporate licensee and the operations manager of the hotel by the liquor inspector. Occurrences involving unauthorized structural alterations and intoxicated patrons were discussed and a commitment for compliance obtained.

The inspector subsequently prepared a Notice of Enforcement Action (NOEA) (exhibit 1, tab 1) wherein he alleged the contravention and recommended a penalty. He testified that a minor being permitted into a licensed establishment is considered a public safety issue. Also, exotic dancer entertainment is meant for adult audiences only. He was concerned that this incident occurred as a result of minors not being checked for identification when they entered the establishment, or when purchasing beer at the bar. In the circumstances he recommended the minimum penalty, a four day licence suspension to ensure voluntary compliance.

EVIDENCE - THE LICENSEE

Licensee witness E testified that he is the principal and sole shareholder of the corporate licensee, which holds three liquor primary licenses at the Beaufort Hotel. He has been associated with the hotel since October 1999 with responsibility for maintenance. He works as a bartender in the pub. When he took over the licensing responsibilities he worked with the branch to solve problems with the application process for structural changes for designated smoking area. He agreed to serve a 21 day liquor licence suspension for contraventions involving drunkenness, although they had occurred during the operation of the previous licensee.

He knows the patrons and staff well. He has changed the operation of the licensed areas to deal with previous problems of intoxication, minors and failing to request identification with the result that the hotel does not have the same problems as previously found in its operation. Staff is required to check two pieces of identification. Employees not doing so are reminded and fired if it occurs again. The doorman on duty the night of June 22, 2007, was fired as a result of incidents involving intoxicated

patrons, fights and not checking identification. Staff meetings are held on a monthly basis and incidents recorded in the logbook are discussed. Staff is provided training in checking identification and dealing with intoxication. The hotel uses the branch "Guide for Licensees" to instruct staff on the requirements.

SUBMISSIONS – LICENSEE

The licensee representative submitted that it was agreed that the minors had been in the establishment for approximately 10 minutes, although there was some discrepancies in the evidence of the police officers as to where the minors were located in the establishment. He questioned whether the minors purchased beer from the bartender, as there was very little bottled beer sold that night.

There were two doormen on duty at the time, one that was present at the main door, the other had left to get ice for the bar and had left the service door open. The disc jockey booth overlooks the main door and the disc jockey is instructed to assist the doorman if necessary. The doorman at the main door was subsequently dismissed. Monthly staff meetings are held and any problems occurring discussed. Many persons have been barred from the premise. Staff is instructed on properly checking identification and the branch "Guide" is used for staff training. All staff is knowledgeable in their jobs and all have many years of experience. A four day licence suspension will adversely affect business and will create unemployment for the staff.

REASONS AND DECISION

The uncontroverted evidence is that on June, 22, 2007, three minors were found in the licensed premises. They had not been checked for identification either upon entering or whilst inside the establishment. That is a contravention of section 35 of the *Act*.

The licensee is entitled to a defence to the finding of the contravention, 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 prospective contraventions, it must ensure that those procedures are consistently acted upon.

Here the licensee has instructed its employees on their duties. The licensee employs an operations manager who is responsible for the overall operation of the hotel. It also employs a manager who has the responsibility for the licensed area known as Jaguar's Nite Club, which is the subject of this hearing. The principal of the licensee and the operations manager were absent from the licensed area at the time of the occurrence. The manager of the nite club was on site. I find that he is the directing mind of the licensee at the time of the occurrence. There is no evidence that he was checking to ensure that the doormen or the bartender were carrying out their responsibilities. The establishment does not have a means of checking to see if its employees are carrying out their duties, until such time as a problem is brought to their attention. The three young appearing patrons were immediately obvious to the police officers when they arrived. They should have been equally obvious to the manager and staff on duty at the time. At the very least the manager should have asked staff whether they checked the minors for identification, or he could have checked their identification himself.

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 June 22, 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.

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 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 *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. The range of penalties for a first contravention of section 35 of the *Act* pursuant to the *Regulation*, Schedule 4, item 3 is a 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, particularly where exotic dancer entertainment is offered. However, voluntary compliance requires that a licensee ensure that there are reasonable safeguards in place to prevent minors from entering or remaining in the establishment. There was no system in place to determine whether staff were checking for identification as the licensee's policy required. The emphasis on the management of the establishment must always be on operating within the requirements the *Act*, *Regulations* and the terms and conditions of the liquor licence.

A minor entering a liquor primary licensed establishment is a serious matter that can lead to the minor obtaining and consuming liquor resulting in dire consequences to the minor, friends, family and the community.

I find that a penalty is necessary to ensure future compliance. In the circumstances here, a penalty beyond the minimum four day suspension penalty is warranted and reasonable. The police officers in attending the establishment were responding to complaints that minors were being permitted on the premises. On their attendance several young appearing persons were observed, some of whom left prior to being checked by the officers. Three young appearing patrons were checked by the officers and found to be underage. They had been permitted to enter the establishment and to obtain and consume liquor (beer). In the circumstances, a mid-range penalty of a six day liquor licence suspension is warranted and reasonable to encourage future voluntary compliance.

ORDER

Pursuant to Section 20(2) of the *Act*, I order a suspension of Liquor Primary Licence No. 139354 for a period of six (6) days, to commence as of the close of business on Wednesday, April 30, 2008, 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 Port Alberni Detachment from the close of business on Wednesday, April 30, 2008, until the licensee has demonstrated to the branch's satisfaction that the suspension has been served.

Original signed by

Edward W. Owsianski
Enforcement Hearing Adjudicator

Date: April 3, 2008

cc: RCMP Port Alberni Detachment

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

Liquor Control and Licensing Branch, Surrey Office
Attention: Olubode Fagbamiye, Branch Advocate