



**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:	0768035 BC Ltd. dba Baselines Pub 1938 152 nd Street Surrey, BC V4A 4N6
Case:	EH07-175
For the Licensee:	Craig Johnson & Alex White
For the Branch:	Bode Fagbamiye, Advocate
Enforcement Hearing Adjudicator:	Edward Owsianski
Date of Hearing:	February 21, 2008
Place of Hearing:	Surrey, BC
Date of Decision:	March 4, 2008

**Ministry of Public
Safety and Solicitor
General**

Liquor Control and
Licensing Branch

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INTRODUCTION

0768035 BC Ltd. dba Baselines Pub holds Liquor Primary Licence No. 033392. The hours of sale are 11:30 a.m. to 1:30 a.m. Monday to Saturday; and 11:00 a.m. to Midnight on Sunday. The patron capacity is 80 distributed within 3 separate areas. The establishment is located in Surrey, 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.'

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 December 14, 2007. The branch alleges that on November 15, 2007, the licensee contravened section 35 of the *Liquor Control & 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 (4) 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 - \$7500.

The licensee does not dispute that the contravention took place as alleged. However, it does dispute that a four day suspension is warranted in the circumstances.

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 – 9

EVIDENCE - THE LIQUOR CONTROL AND LICENSING BRANCH

A branch liquor inspector testified that she has been employed as a liquor inspector for approximately six years and is responsible for the geographical area in which the Baselines Pub is located. She is familiar with the pub and on November 15, 2007, she made a routine inspection there at approximately 11:40 p.m. The establishment was not very busy. There was a bartender and a server on duty. There were approximately 12 patrons present of which three, two females and one male, were playing pool on an

upper mezzanine level. As this group appeared to be quite young, she advised the server that she wished to check their identification. The two female patrons were determined to be of legal age, the male, who appeared to be 16 to 17 years was determined to be 18 years of age. He told the inspector that he had been in the pub for approximately 30 minutes. The server told the inspector that she had checked the identification of the two females prior to serving them liquor, but had not checked the male as he had not ordered any liquor.

The inspector issued a Contravention Notice (CN) to the server (Exhibit 1, tab 2) and left shortly thereafter. She made notes of the incident at the time (Exhibit 1, tab 3).

She reviewed the branch file for the establishment and in her testimony referred to copies of documents from Branch files:

- Exhibit 1, tab 4; 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 5; a copy of the "Guide" in effect at the time of the alleged contravention. She referred to excerpts from the Guide dealing with a licensee's responsibility to operate in compliance with the law and the terms and conditions of the liquor licence (p. 3); and "Minors" (p. 11).
- Exhibit 1, tab 6; On January 24, 2006, the licensee representatives met with the area liquor inspector and signed the branch Interview Sheet. During this meeting, the representatives participated in an educational session regarding the requirements of operating a liquor licensed establishment including those requirements related to minors.
- Exhibit 1, tab 9; Official floor plan for the establishment.

The inspector subsequently prepared a Notice of Enforcement Action (NOEA) (Exhibit 1, tab 1) wherein she alleged the contravention and recommended a penalty. She testified that a minor being permitted into a licensed establishment is considered a public safety issue.

The inspector agreed that there had been no problems noted in this establishment since the current licensees have assumed operation.

EVIDENCE - THE LICENSEE

No witnesses or evidence were presented on behalf of the licensee.

SUBMISSIONS - LICENSEE

The licensee representative submitted that they are good licensees and do not permit minors into the establishment. The two young appearing females were checked for identification prior to being served liquor however the server did not check the male minor. She was subsequently dismissed. When they took over the operation of the establishment problems existed under the previous licensees, which they dealt with through strict enforcement of the requirements. The pub is connected to a bowling alley with which the pub shares washroom facilities. This presents a challenge as minors will try and enter the pub through the bowling alley access. A doorman is on duty during the weekends and checks the identification of patrons entering into the pub.

They operate two other similar establishments and have not had any enforcement problems. They do not believe that a penalty is appropriate given their good record and that this is the first instance of a contravention. If a penalty is necessary, they would prefer a monetary penalty. Closing down for a four day suspension will adversely affect their business and the community.

REASONS AND DECISION

The licensee has admitted the contravention.

On the evidence I find that on November 15, 2007, the licensee contravened section 35 of the *Liquor Control & 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 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. 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 - \$7,500.

A minor being permitted to enter and remain in a liquor primary licensed establishment is a serious matter that can lead to the minor obtaining and consuming liquor resulting in dire consequences. Here the evidence is that a young appearing minor was permitted to enter and remain in the establishment for approximately one-half hour. He was not checked for identification to determine his age until requested by the liquor inspector. It would appear that the server on duty did not feel that it was necessary to check identification, unless liquor was being ordered. That does not meet the requirements of the law and it is incumbent on all licensees to ensure that their employees know and observe the legal requirements.

I find that a penalty is necessary. In the circumstances, the minimum four day suspension penalty is warranted and appropriate to encourage future voluntary compliance and the implementation of appropriate policies and staff training to prevent future contraventions of this type.

ORDER

Pursuant to Section 20(2) of the *Act*, I order a suspension of Liquor Primary Licence No. 033392 for a period of four (4) days, to commence as of the close of business on Wednesday, April 16, 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 Surrey Detachment from the close of business on Wednesday, April 16, 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: March 4, 2008

cc: RCMP Surrey Detachment

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

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