



**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: 685946 B.C. Ltd
dba Chieftain Hotel
38005 Cleveland Avenue
Squamish, BC V0N 3G0

Case: EH08-049

For the Licensee: Bob and Rajinder Nijjar

For the Branch: Tania Cogan

Enforcement Hearing Adjudicator: Edward Owsianski

Date of Hearing: August 26, 2008

Place of Hearing: Squamish, BC

Date of Decision: September 16, 2008

**Ministry of Housing
and Social
Development**

Liquor Control and
Licensing Branch

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INTRODUCTION

Corporate licensee 685946 B.C. Ltd. dba the Chieftain Hotel in Squamish, BC, holds Liquor Primary Licence No. 139161 for the operation of a pub at the hotel. The hours of sale are 11 a.m. to 1 a.m. Monday to Saturday and to Midnight on Sunday. The patron capacity is 106 in area 1 and 44 in area 2. 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 licensee also holds liquor licenses for a lounge, a nightclub and a licensee retail store located at the hotel.

Alleged Contravention and Proposed Penalty

The branch's allegations and proposed penalty are set out in the amended Notice of Enforcement Action (the "NOEA") dated May 28, 2008.

The branch alleges that on April 3, 2008, the licensee contravened section 33 of the *Act* by selling, giving or otherwise supplying liquor to a minor. The proposed penalty is a twenty (20) day suspension of the licence (item 2, Schedule 4 of the *Regulation*).

A hearing decision was issued regarding a March 18, 2008, contravention of section 33 of the *Act*. The general manager's delegate made a finding and ordered a ten (10) day suspension of the liquor licence. In light of that decision, the branch is treating this April 3, 2008, allegation as a second contravention for the purposes of the penalty schedule. The penalty range for a second contravention of s. 33 of the *Act* is a 20-30 suspension of the liquor licence (see item 2, Schedule 4 of the *Regulation*).

If the general manager's delegate does not find that a contravention of s. 33 of the *Act* occurred, he or she will be asked to consider the alternative contravention of whether on April 3, 2008, the licensee contravened section 35 of the *Act* by permitting a minor to enter on or to be on premises where liquor is sold or kept for sale. The proposed

penalty for a first contravention of that type is a seven (7) day suspension of the liquor licence (item 3, Schedule 4 of the *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 alleged contraventions.

RELEVANT STATUTORY PROVISIONS

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

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.

ISSUES

1. Did either the contravention or the alternative 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 – 19

EVIDENCE - THE LIQUOR CONTROL AND LICENSING BRANCH

An RCMP Police Constable testified that on April 3, 2008, she was in uniform working the evening shift in Squamish, BC. She and another constable were making routine inspections of licensed establishments. They entered the Chieftain Hotel pub at approximately 11 p.m. There were approximately 20 patrons inside including several young appearing patrons. Two young males left hurriedly thru another exit upon the officers arrival. The officers checked the identification of three young females; two produced valid BC driver's licenses showing them to be of age. The third was unable to produce any identification. She was standing in front of the bar in clear view of the bartender. She did not have any liquor in her possession at the time; however, she told the officer that she had been drinking vodka and orange juice and tequila shots ordered by her from the bartender. She was escorted outside. She told the officer that she was 18 years old. The constable using the police data access system determined that she was in fact only 17 years old and held a valid driver's licence with her correct date of birth on it. She was issued a provincial Violation Ticket (exhibit 1, tab 3) for being a minor in a licensed establishment.

The constable spoke with the bartender advising him that the female patron was a minor. The bartender said that he had checked her identification. The constable issued a Licensed Premises Check (LPC) (exhibit 1, tab 4) form to a person she believed to be the pub manager who was off duty and seated at the bar. She prepared a report prior to completing her shift (exhibit 1, tab 5).

A branch liquor inspector testified that she has been employed as a liquor inspector for approximately four years and is responsible for the geographical area in which the Chieftain Hotel is located. She received a licensed premises check form (exhibit 1, tab 4) from the Squamish RCMP detachment advising that a female minor had been found in the pub at the Chieftain Hotel the night of April 3, 2008. The inspector met with the general manager of the hotel and the bartender who had been on duty at the time of the incident. The bartender told her that he was the only employee working that night and the pub was quite busy. The female minor came into the hotel and took a seat with other patrons. The female patron had been there for approximately 10 minutes when the police officers arrived. He didn't have an opportunity to check her identification. She did not purchase any liquor. The inspector issued a Contravention Notice (CN) to the general manager of the hotel (exhibit 1, tab 6).

The inspector testified that she had considerable difficulty contacting the minor. Speaking to her only briefly on the telephone, she told the inspector that she had been drinking at the hotel pub and had not been asked for identification. The minor sent an email message to the branch advocate in which she provided a statement regarding the incident (exhibit 1, tab 7).

The inspector reviewed the branch file for the establishment. In her testimony she referred to copies of documents from the branch file:

- Exhibit 1, tab 16; 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 18; a copy of the “Guide” in effect at the time of the alleged contravention. She referred to excerpts from the Guide dealing with: “Minors” (p11); and “ID Requirements” (p11).
- Exhibit 1, tab 14; On January 25, 2006, the principal of the corporate licensee and two managers met with the liquor inspector and signed the branch Interview Sheet. They committed to operating the establishment in compliance with liquor licence requirements.
- Exhibit 1, tab 13; General Manager’s decision of November 10, 2006. A one day suspension of the licensee’s Licensee Retail Store (LRS) licence was imposed after a finding that the licensee had permitted a minor to work in the LRS and the pub.
- Exhibit 1, tab 11; CN dated February 8, 2007, for failure to request identification of a pub patron. No enforcement action taken.
- Exhibit 1, tab 12; CN dated February 8, 2007, for permitting an intoxicated person to remain in the licensed pub area. No enforcement action taken.
- Exhibit 1, tab 8; General Manager’s decision of July 4, 2008. A 10 day suspension of the pub liquor licence for supplying liquor to minors on March 18, 2008.
- Exhibit 1, tab 15; On March 20, 2008, a compliance meeting was held with the general manager of the hotel by the liquor inspector. The aforementioned incident of March 18, 2008, wherein minors were found in the pub was discussed. A staff meeting to address the issue was to be undertaken with the liquor inspector invited to attend. The inspector testified that the meeting was held; however, she did not attend owing to some confusion with the proposed date.

The inspector subsequently prepared a Notice of Enforcement Action (NOEA) (exhibit 1, tab 2) wherein she alleged the contravention, alternative contravention and recommended penalties. She testified that she was concerned that the latest incident of April 3, 2008, had occurred just 16 days after the incident of March 18th and both involved minors being permitted into a licensed establishment and consuming liquor.

EVIDENCE - THE LICENSEE

Licensee witness A testified that he was the bartender on duty the night of April 3, 2008. He had only been working at the hotel pub for two days but had previous experience as a bartender in Ontario. It was quite a busy night with quite a few younger patrons. He vaguely recalled the minor. She came into the pub with a group of other young patrons. They came up to the bar with their identification and then sat at a table. She did not purchase any liquor, but one of her friends purchased a vodka and orange juice and took it over to her. The patron purchasing the drinks was a male and he, the bartender, assumed that the purchased drinks were for other males at the table. He recalls that he checked her identification. He believes that it was a driver's licence, but it could have been a BC Identification card. He checked the date of birth and the photo. The identification indicated that she was 19 years old. She appeared to be of age. The identification didn't appear to be a fake but he "didn't take an extensive look" at it. She showed him a bankcard as a second piece of identification. He testified that when he spoke with the liquor inspector he told her that he didn't have time to check "all persons" identification. The inspector didn't ask about a specific person.

Her testified that when he started work at the hotel he received training by working with the day shift bartender. He holds a "Serving It Right" certificate. He knows that he is required to check identification of persons appearing to be under 25 years old and not to serve minors. The licensee reminds staff all of the time to check identification. Signs are posted in the pub. A copy of the "Guide" is on the bar.

Licensee witness B testified that she is the principal of the corporate licensee, which holds the liquor licenses at the Chieftain Hotel. She clearly understands her responsibilities as a licensee. They have taken every step to follow thru on the compliance meeting held on March 20, 2008, with the liquor inspector. A staff meeting was held. The liquor inspector was to attend but didn't show up. Hiring good staff is difficult because of the many other employment opportunities available in the area. The

establishment has policy and procedure manuals and the bartender went over the manuals as well as the "Guide".

There are problems with persons having false identification. Persons have attempted to present false credit cards. It is difficult for a bartender to recognize false identification as it looks close to the real ones. Young persons will show identification to the bartender but not to the police officer. Police officers should search minors for identification.

The husband of the licensee testified that the hotel had a good history until March 2008. Then within a two week period minors entered the premises followed within 10 minutes by the police. In each instance the matter proceeded to an enforcement hearing. He checked with managers of licensed establishments located in Vancouver. They receive tickets however are not subject to enforcement proceedings.

Persons will use fake identification or use each other's identification. False identification is a problem and is difficult to detect. Bar staff is not qualified to do so. The pub cannot afford to have a doorman every day during the 14 hours of operation. The bartender is busy and can not immediately check persons entering the establishment.

The minor in this instance should not be believed. It is unusual that she would voluntarily admit to being underage and having consumed liquor. He attempted to contact her but she wouldn't talk to him yet, she sent an email to the branch advocate. She didn't purchase liquor at the establishment and there was no evidence that she had been drinking at the establishment.

SUBMISSIONS – LICENSEE

The establishment has policies and procedures in place. Staff is reminded of them all of the time. The bartenders do check identification, but detecting false identification is difficult. They are doing their very best. The motivation of the minor is very suspect. She told the police officer that her friends seen leaving the establishment were minors. She was never served liquor, nor did she purchase liquor. The bartender did check her identification. If a suspension is to be imposed it should be recognized that it is more onerous if it occurs during a long weekend.

REASONS AND DECISION

The evidence is that on April 3, 2008, a minor was found in the licensed premises by a police officer during a routine inspection. The minor was not in possession of liquor at the time; however, there is evidence that she had obtained liquor whilst in the licensed premises. The minor, in conversation with the police officer at the time of the incident and later in an email, states that she purchased it at the bar from the bartender. The bartender testified that she was not served any liquor but had been given liquor by one of her friends who had purchased it at the bar. I am satisfied that regardless of which version is accepted, the liquor was obtained from the bar of the establishment and it constitutes a contravention of section 33(1(a) of the *Act*, “otherwise supply liquor to a minor”.

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 a bartender with previous experience in the industry and has provided some training and instructions on how to perform his duties including the necessity of checking identification of young patrons. He was the only staff member working at the time of the alleged contravention. I find that he is the directing mind of the licensee at the time of the occurrence.

The evidence varies whether the minor had been checked for identification or not. The minor did not testify but was consistent in the information that she provided to the police officer, the liquor inspector and her emailed statements that she was not checked for identification. The bartender was inconsistent. He told the police officer at the time of the incident and he testified during the course of the hearing that he had checked the minor's identification when she first entered the premises. He told the liquor inspector that he hadn't had time to check identification prior to the police arrival, but in his testimony said that he misunderstood her question.

On the issue of whether the minor did produce identification to the bartender or not there is difficulty in preferring the evidence of one witness to the other. There are inconsistencies in the information provided by the minor. In her email she states that she went to the pub at "about 11 p.m." and was there for about an hour before the police officer arrived. This differs from the officer's testimony that she checked the pub at approximately 11 p.m. The evidence of the bartender is also subject to question. It may be seen as self-serving given that it was his responsibility to check identification. Further it was inconsistent. In the end result, I am satisfied that the bartender did not satisfactorily check the identification of the minor. At best he viewed a driver's licence that had been altered, or one which did not belong to the minor. It is also possible that he viewed a BC identification card that was either a fake or had been falsified. By his own admission, he "didn't take an extensive look" at it. I am satisfied that he did not closely examine the identification for its authenticity. I find that the licensee has not been duly diligent.

In conclusion, on the evidence, I find on a balance of probabilities, that on April 3, 2008, liquor was, "otherwise supplied" within the meaning of section 33 of the *Act* and in contravention of those provisions.

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 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. This contravention occurred 16 days following a previous contravention wherein minors had obtained liquor at the establishment. A minor entering a liquor primary licensed establishment and obtaining liquor is a serious matter that can lead to dire consequences to the minor, friends, family and the community.

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 twenty (20) day suspension is necessary, appropriate and reasonable.

ORDER

Pursuant to Section 20(2) of the *Act*, I order a suspension of Liquor Primary Licence No. 139161 for a period of twenty (20) days, to commence as of the close of business on Wednesday, October 15, 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 Squamish Detachment from the close of business on Wednesday, October 15, 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: September 16, 2008

cc: RCMP Squamish Detachment

Liquor Control and Licensing Branch, Vancouver Regional Office
Attention: Donna Lister, Regional Manager

Liquor Control and Licensing Branch, Vancouver Regional Office
Attention: Tania Cogan, Branch Advocate