



**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: 0776075 B.C. Ltd.
dba Brown Bridge Pub
271 Vermillion Avenue
Princeton, BC V0X 1W0

Case: EH08-096

For the Licensee: David Fulks

For the Branch: Tanya Cogan, branch advocate

Enforcement Hearing Adjudicator: Sheldon M. Seigel

Place of Hearing: Written Submissions

Date of Decision: January 20, 2009

INTRODUCTION

This hearing was conducted by way of written submissions by agreement of the Licensee and the General Manager. The branch and the licensee provided evidence and submissions with respect to the contravention and recommended penalty.

The licensee is the owner of an establishment that holds Liquor Primary Licence No. 026040 in the City of Princeton, British Columbia. The pub is a new business with no history of contraventions. The liquor primary initial inspection was conducted on June 12, 2008. The licence is, as are all liquor licenses issued in the province, subject to the terms and conditions contained in the publication *Liquor Primary Licence Terms and Conditions: A Guide for Liquor Licensees in British Columbia*.

The branch alleges that on July 13, 2008, the licensee contravened section 35 of the *Liquor Control and Licensing Act (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 in accordance with item 3 of Schedule 4, *Liquor Control and Licensing Regulation (Regulation)*.

The licensee admits that a minor was in the premises as alleged, but disputes the penalty proposed.

RELEVANT STATUTORY PROVISIONS

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

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 licensee contravene section 35 of the *Act*?
2. If the licensee did contravene the *Act*, is a penalty warranted and if so, what is the appropriate penalty?

EXHIBITS

The materials provided for this determination include disclosure documents provided by the branch (Exhibit No. 1) dated November 25, 2008, and the licensee's submissions (Exhibit No. 2) dated December 8, 2008.

FACTS

In the early hours of Sunday, July 13, 2008 (the business day of Saturday, July 12, 2008), an off-duty police constable was recreating in the establishment when she found herself in conversation with the bartender. The bartender advised that the police had arrived at the establishment and a minor was hiding in the washroom. The off-duty police constable then observed the bartender asking a server what to do about the minor in the bathroom and how to get the minor out of the pub without the police seeing him. Ten minutes later, a uniformed officer entered the establishment and pursuant to an anonymous telephone call proceeded to the men's washroom to seek out the minor allegedly hiding there. The uniformed officer knocked on a closed stall door and notified the occupant that the pub was closing and that the occupant would have to leave.

Seven minutes later, a minor exited the washroom and identified himself to the police. The minor was issued a violation ticket for being inside a licensed establishment. Upon questioning, the bartender indicated that the minor and his friend had entered the bar and the minor's friend was served, though the minor was not. The bartender said the minor looked older than 25 years. The minor was 16.

The branch issued and duly served Contravention Notice (No. B006594) and a Notice of Enforcement Action (dated October 20, 2008), each of which alleged a contravention of section 35 of *Act*.

The licensee and the branch agree to the facts described above.

SUBMISSIONS

The branch submits the following:

Supplying liquor to minors or permitting minors to consume liquor are significant public safety issues because of the effects of alcohol abuse on growing bodies and developing minds. There are significant effects on individuals and society of irresponsible drinking behaviour learned at an early age. Minors may not have the same capacity to metabolize alcohol as do adults; therefore, liquor may have a more intoxicating effect on minors. Liquor is a significant factor in many crimes committed by youth, including serious driving offences, assault, and theft. The licensee did not demonstrate any effective procedures to deal with problems of underage patrons being admitted to the establishment and in fact, was aware the youth was in the premises.

The branch submits that at the time of the final inspection an education session was conducted during which issues relating to minors was discussed in detail. The branch recommends a four day suspension and describes it as the minimum licence suspension for a first contravention in accordance with Schedule 4 of the *Regulation*, Item 3.

The licensee submits that no liquor was supplied to or consumed by the minor who was in the premises for approximately 15 minutes.

The licensee also submits that the resident manager was not on duty and the on-site manager was the server during all relevant times on the business day of July 12, 2008. Although that server was responsible for checking for ID of patrons entering the premises, she did not see the minor enter. After being notified of the allegation, the resident manager interviewed the server, who took responsibility for not doing her job as trained. The server was suspended for four days and thereafter quit her job.

The licensee submits that it has pursued meetings with the branch, law enforcement, and its employees in a significant effort to acknowledge the mistake and put systems in place to ensure that such a mistake does not happen again.

Finally, the licensee submits that in light of the fact that the establishment was only open two weeks when this contravention occurred, the mistake may have been allowed to occur because of the myriad of new systems and issues being worked out at the time.

FINDINGS ON CONTRAVENTION

The licensee's submissions neither claim nor establish a defence to the contravention.

I find that the licensee contravened section 35 of the *Act* by permitting a minor to enter or be on the premises.

ANALYSIS AND DECISION ON PENALTY

The branch submits considerable argument for a penalty based on the dangers of allowing minors to consume alcohol, yet the facts are clear that the minor did not consume any alcohol in this instance. The evidence indicates that only the bartender saw the minor, and there is no indication that the minor ever attempted to gain access to liquor. In fact, the evidence is not clear as to whether the minor was hiding in the bathroom because he was a minor in a licensed establishment or because he was avoiding the police for undisclosed other reasons. The branch also submits that all issues relating to minors was discussed at the final inspection meeting prior to the Pub's opening, and accordingly a suspension is warranted to ensure voluntary compliance in the future.

The licensee submits that a local employee who might have had lost interest in her job chose to ignore her responsibilities and/or failed to notice the minor as the minor arrived in the establishment. This does not completely discharge the licensee's responsibility for what occurred in its establishment. The argument is not couched in terms of the licensee's diligence, and the licensee was free to concede the contravention, as it did. The licensee does demonstrate its remorse and recognition of the import of keeping minors out of the establishment. The licensee also acknowledges its interest in further cooperation with the branch.

The licensee also argued that in light of the newness of the operation and the impact that a suspension would have on its profile in the small town of Princeton, a monetary penalty would be more appropriate.

Pursuant to section 20(2) of the *Act*, I have the 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 *Regulation*. I am not bound to adhere to the maximums set out in that Schedule.

The range of penalty for the contravention of section 35 of the *Regulation* in accordance with Schedule 4 is four (4) to seven (7) days suspension, and/or a \$5,000-\$7,500 monetary penalty.

The first question I must consider is whether a penalty is warranted under the circumstances. I have considered the following:

- The minor was not served and did not seek liquor service.
- The minor did not drink liquor in the licensed establishment.
- The minor was in the establishment for only a short time, and much of that time seems to have been spent hiding in the washroom.
- Although the bartender appears to have known the minor was in the premises, it is not clear that the on-duty manager (server) knew of the minor's presence before being told by the bartender moments prior to police involvement.
- The server took responsibility for the event and terminated her employment shortly thereafter.

The *Act* provides separate prohibitions against permitting minors in a liquor primary establishment, and providing minors with liquor. The fact that the minor did not seek liquor service is not a defence to an allegation of section 35. This fact may be relevant, however to the licensee's level of awareness of the presence of the minor. In this case, the facts disclose that the bartender knew that the minor was hiding in the washroom, but how or when the minor came to the attention of the bartender is not clear. The facts allow the possibility that she first learned this information from the police. Also unclear is whether the presence of the minor was known to the manager/server prior to being told by the bartender, and if so for how long.

There are differing levels of culpability applicable to this contravention. This is reflected in the penalty provisions of the *Regulation* that provide not only a range of penalties for a particular contravention, but also a threshold of whether a penalty is warranted. In light of the above noted considerations, as well as short time that the establishment was operating, the low profile of the minor's presence, and the licensee's response to the contravention, I am not satisfied that the threshold has been passed.

The branch is interested in voluntary compliance with the *Act* and *Regulation*. I can see no reason in this instance why assessing a penalty will do anything more toward that goal than has already been put in motion by this process.

I find that notwithstanding the occurrence of a contravention of section 35 of the *Act*, no penalty is required.

Original signed by

Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: January 20, 2009

cc: Princeton RCMP

Liquor Control and Licensing Branch, Victoria Regional office
Attn: Dave Deimling, A/Regional Manager

Liquor Control and Licensing Branch, Vancouver Regional office
Attn: Tanya Cogan, Branch Advocate