



**DECISION OF THE
GENERAL MANAGER
LIQUOR CONTROL AND LICENCING 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:	Bear Creek Pub and Grill
Case:	EH08-114
Appearances:	
For the Licensee	Jay Redmond
For the Branch	Olubode Fagbamiye
Enforcement Hearing Adjudicator	Sheldon M. Seigel
Date of Hearing	December 16, 2008, and by teleconference January 28, 2009
Place of Hearing	Surrey, B.C.
Date of Decision	February 13, 2009

INTRODUCTION

The Licensee holds a liquor license for the sale and distribution of liquor at an establishment known as the Bear Creek Pub, in Surrey B.C.

The Licensee is a British Columbia corporation. Anter Pamma, a corporate director and shareholder of the Licensee, appeared at the hearing on behalf of the corporation with counsel. Anter Pamma manages the establishment.

The liquor primary license #302307 indicates that the hours of operation are 10:00 am until 1:00 am seven days per week.

ALLEGED CONTRAVENTIONS

By the Notice of Enforcement Action (NOEA) dated October 6, 2008, the Branch alleged that on September 5, 2008 the Licensee contravened s.33 of the *Liquor Control and Licensing Act* (the "Act"), by supplying liquor to minors.

Schedule 4 of the *Liquor Control and Licensing Regulation* (the "Regulation") establishes prescribed penalties for contravention of the *Act* or *Regulation*. For a first contravention of this section, the range of penalty is ten (10) to fifteen (15) days license suspension and/or \$7,500 to \$10,000 monetary penalty.

In the alternative, by the aforesaid NOEA the Branch alleges that on the same occasion, the Licensee contravened s.35 of the *Act* by permitting minors in the premises.

Schedule 4 of the *Regulation* establishes prescribed penalties for contravention of the *Act* or *Regulation*. For a first contravention of s.35 of the *Act*, the range of penalty is four (4) to seven (7) days license suspension and/or \$5,000 to \$7,500 monetary penalty.

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.

(3) A person has liquor in his or her possession when the person has it in his or her personal possession or knowingly

- (a) has it in the actual possession or custody of another person, or
- (b) has it in or at a place, whether or not that place belongs to or is occupied by the person, for the use or benefit of the person or another person.

(4) If one of 2 or more persons, with the knowledge and consent of the rest, has liquor in his or her possession, it is deemed to be in the possession of each of them.

(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.

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

- Did the Licensee contravene any of the provisions of s. 33 of the *Act*?
- If the Licensee did not contravene any of the provisions of s.33 of the *Act*, did the Licensee contravene s.35 of the *Act*?
- If it is found that the Licensee did contravene the *Act* as alleged, is a penalty warranted, and what is the appropriate penalty?

EXHIBITS

Exhibit #1: Branch's Book of Documents.

EVIDENCE

The Branch called Minor #1 and Minor #2 and a liquor inspector. The Licensee called a Server, Patron #1 (who is Minor #1's father), an Off-Duty Employee, and Anter Pamma.

Minor# 1

Minor #1 testified that she was born on December 9, 1991. On the date of the allegation she was 16 years old. She did not have a driver's license. On September 5, 2008 she wanted to get money from her father (Patron #1). She

knew that he would be at the Bear Creek Pub because it is his favourite bar. She went there with her boyfriend and her boyfriend's two cousins.

On arriving, she saw her father on the patio of the pub. She approached and her father opened the patio door. She and her friends walked in. It was bright and there were no signs on the door. She and her friends sat at the table with her father, near the patio door. Her father was sitting with one of the waitresses and others. She was not asked for identification.

She sat for 10-15 minutes before a server approached her. Minor #1 was offered drinks. She first declined but then accepted one of the server's suggestions, a strawberry daiquiri. The server told her, her name.

The woman seated at the table identified herself as a waitress and then told the server that Minor #1 was 16 years old. The server did not ask for ID or respond to the comment by the waitress and did return with a strawberry daiquiri. Minor #1 consumed the drink. The server later delivered a second daiquiri, but Minor #1 did not drink it. Later, the seated waitress brought Minor #1 two shooters. In total Minor #1 consumed the daiquiri and two shooters while at the pub. One of the shooters was called a "Soho, or something." She did not pay for the drinks.

Her father was intoxicated. The two cousins were "power drinking" from beer jugs. Minor #1's boyfriend was sitting at another table drinking "Jaegerbombs", and then he was vomiting in the pub bathroom.

She and her friends left the pub because her boyfriend was sick and her other friends were arguing with one another. She got in the back seat of the car that they arrived in. Soon, the cousins in the front seat began to fight and the driver pulled over. As the driver walked around the car toward the passenger door, the front seat passenger slid over to the driver's seat. Minor #1 began to get out of

the car when the new driver accelerated and Minor #1 fell out. The car ran over her leg.

The police attended the scene and took her boyfriend and the cousins into custody because they were drunk. The liquor inspector interviewed Minor #1 some days later. Minor #1 said she knew her boyfriend had been drinking before they all went to the pub, but she believed he was still sober when they arrived.

Minor #2

Minor #2 testified that he was born on January 31, 1992. On the date of the allegation he was 16 years old. He was Minor #1's boyfriend. His cousins were 19 and 17 years old on the day they all went to the Bear Creek Pub. They arrived at about 10:00 pm. They opened the patio door and went in. He saw Minor #1's father at a nearby table. He and Minor #1 sat with him. The others sat at another table. Minor #2 did not see any signs on the patio door. There were no doormen on duty. He was not asked for ID when he entered or at any time while at the pub on that day.

At the table, a female server asked Minor #2 if he wanted a drink. He ordered three Jaegerbombs for him and two friends he recognized in the bar. The other friends were both adults. Minor #2 and his friends drank the Jaegerbombs together and he ordered three more. He and his friends drank those as well. He paid for the drinks with cash. He went to the bathroom and then walked through the bar and out of the front door to make a cell-phone call. No staff members saw him walk through the bar, leave, or return through the main door.

His two cousins were arguing so they all decided to leave. He did not remember what happened next, but indicated that he understands that he was in some kind of car accident where his girlfriend was run over and he was taken into custody

for intoxication. He had two beers before going out that night at approximately 6:00 pm. He doesn't remember anything after the accident.

He could not describe the server or how much the drinks cost. He did not get a bill for the drinks, he just gave the server money. He indicated that his memory of the events is "pretty fuzzy" and that it was the first bar he had ever been in. He ordered Jaegerbombs because he heard they were good. He was at his girlfriend's table when he heard the server ask Minor #1 if she wanted a drink. Minor #1 said no first, but then the server said: "just try it." He saw Minor #1 drink the daiquiri. He did not see her drink any shooters. When he sat at the other table with his friends, his back was to the table at which his girlfriend and her father sat.

Liquor inspector

The inspector identified the contents of Exhibit #1, and the circumstances of her investigation. She said that she was contacted by Minor #1's mother who complained that her daughter and three of her daughter's friends were served liquor in a pub prior to being involved in a single vehicle motor accident in which her daughter was injured. The inspector met with Minor #1 and Minor #2 and conducted interviews.

She testified that Minor #1 told her that the four friends went to the pub to see Minor #1's father, Patron #1. He opened the patio door for her and she joined him at his table. After five minutes she was approached by a server (identified by name), who asked Minor #1 if she wanted a drink. Minor #1 refused but the server continued to offer options until Minor #1 accepted the offer of a strawberry daiquiri. Minor #1 told the inspector that an off-duty employee drinking with her father told the server that Minor #1 was sixteen years old but the server did not respond. The server brought two daiquiris and two shooters over the next 45 minutes. Minor #1 did not drink the second daiquiri. Minor #1 told the inspector

that the group left the pub when Minor #2 started feeling ill, and she described the motor vehicle accident. Minor #1 said that none of the four friends was asked for ID in the pub.

The inspector interviewed Minor #2 on the telephone. Minor #2 said he was 16 when he went to the pub with Minor #1 and the others. He followed Minor #1 into the pub through the patio door that Minor #1's father opened for them. A server asked if he wanted a drink, and he ordered three Jaegerbombs. Later he ordered another three. He drank two and shared the rest with some friends, felt ill, and brought-up in the washroom. At 10:45 pm the four friends left the pub and shortly afterward were involved in the accident. After the accident, Minor #1 went to the hospital and the police took the others away to the "drunk tank."

The inspector talked to the Licensee's manager, Anter Pamma on September 19, 2008. The inspector told Anter Pamma on that occasion that she would be recommending enforcement action. Anter Pamma indicated that he had been working at the establishment on the night of the allegation. Anter Pamma told the inspector that Minor #1 got her drinks from Patron #1, who had ordered them from the bar, and that the minors got in to the pub by jumping over the patio's glass barricade.

The inspector estimated that the barricade is a plexiglas wall approximately six feet high and would in her opinion be extremely difficult to climb over. The inspector also confirmed that Anter Pamma advised her that there were signs prohibiting minors from the premises and entry through the patio door in place on the patio door at all relevant times, and that the electronic billing and tracking system in place at the establishment does not support the stories told by the minors.

The Server

The Server said she is often identified by name by patrons who know her. Only she and the bartender were working at 10:00 pm on September 5, 2008. She had been working there for approximately six months. She described the patio door as having signs on it, and the patio enclosure as being made of glass about five feet high. She described the electronic billing system and indicated that the server or the bartender must identify the ordering patron when preparing a drink. They can name the patron anything they want on the bill, however. She gave examples of using a patron's name or calling them "elderly" or "by the door". She indicated that Patron #1 is a regular patron.

She said that Patron #1 went up to the bar to ask for two margaritas or daiquiris one after another. He took the first daiquiri with him and the server brought out the second some time later. She said that Patron #1 bought some shooters for his friends, and that was not unusual for him. She indicated that Patron #1 bought \$100 worth of liquor that night but only \$27.90 spent on pitchers of Budweiser was actually for him.

She said that as she carried out the second margarita, she saw what were obviously two minors and they were both very drunk. She knew they were minors because she is the mother of six boys between 12 and 20 yrs of age and "it is easy to tell." Patron #1 was talking to his daughter and trying to usher the minor boys out. She had no idea what the ruckus was about and "at that stage I had no idea that they were minors nobody had told me. The next day I was actually informed that they were minors." She tipped out the second margarita because she did not know for whom it was intended. She said she did not ID the boys because they were being ushered out by Patron #1, and they were drunk but already outside and therefore not in her control.

The Server also testified that there were no Jaegerbombs served on September 5, 2008, on her shift. She also confirmed that the electronic billing system shows that she served Jaegerbombs to an unidentified patron at table 13, and that the patron was old enough to be served liquor. She confirmed that neither she nor other staff helped Patron #1 “usher the boys” out of the pub.

With respect to training, she said she was shown the “guide” and the employer went through it with her. She did not sign an acknowledgement that she read the guide or understood the contents. She did about two weeks of one-on-one training with someone in the bar. There was no testing at the end of training. There is a manual behind the bar and “we are all supposed to read it.” She said there is an incident logbook behind the bar but she did not fill it in because she did not know how serious the incident was until Patron #1 told her the next day, or four days later on her next shift. When she did find out, she went to tell her boss and was surprised to find out that he already knew “all about it.”

Patron #1

Patron #1 testified that he is Minor #1’s father, was present at the time and place of the allegation, and is a regular patron of the establishment. He said he knows the Server well, and he drinks Molson Canadian beer in pitchers and regularly buys drinks for other people.

He was at his regular table in the patio and saw his daughter on the other side of the glass barricade. He opened the door and invited her in to the pub. Then he went to the washroom. He said he had been there drinking for a while already and he did not notice if others came in with Minor #1. He asked his daughter if she wanted a drink and he went to the bar and ordered a strawberry margarita for her. He also ordered a second one at the same time. He carried one drink back for Minor #1. His beer jug was on the table so he invited Minor #1’s friends to have a drink. He said one of Minor #1’s friends at his table seemed “as though

he was going to toss his cookies” and was drinking out of the jug of beer. Patron #1 said it was time to go and chased everyone out of the door while the Server was bringing over the second margarita. He also said that he introduced his daughter to the Server.

He testified that the two boys and Minor #1's boyfriend were drunk when he put the three of them in the car, with his daughter in the back seat. He said of his daughter: “she is the only one in the car who is actually sober.” On further questioning, he said that the driver “was not actually drunk.” He also added that he was embarrassed because he had let the boys into the bar.

Off-Duty Employee

The Off-Duty Employee indicated that though an employee of the Licensee, she was off-shift at all relevant times. She was sitting at the table with Patron #1. By 10:00 pm she had 4 or 5 vodka drinks. She understands now that there were underage people in the bar but does not know how they got in. She said she was in the washroom when they entered. When she returned to the table, a young boy grabbed a jug of beer and started to drink from it. “He seemed like he was going to puke.” Patron #1 helped the boy out the exit. She did not see the Server serve any drinks to Minor #1.

The Off-Duty Employee said that if she was working, she “would have asked those boys for ID.” She said they looked young. She did not tell anyone Minor #1 was under age. She did not bring the young boys to anyone's attention. She thought Minor #1 must have been “barely 19...and that someone must have already ID'd her if she had a drink.” She did not notice anyone jumping over the glass into the patio area, and she did not know Minor #1 was Patron #1's daughter until after the fact. She recognized that the two boys were drunk; “swerving and stumbling and drinking from a jug standing up.”

As for training, she said she had two opening shifts and two closing shifts and shadowed a server for a while. There were no tests or manuals. She attends staff meetings once per month. There are no minutes of the meetings but the employees have access to the manager's notes if they want to read them. She also said there are no written policies, but "suggested policies" at the pub. Finally, she said there are three video surveillance cameras on the patio but she does not know where they face because "they are in a bubble."

Anter Pamma

Anter Pamma testified that he is the manager of the Bear Creek Pub and Grill. He is on site every day and was present at the relevant times to this allegation. In fact, between 10:00 -11:00 pm on September 5, 2008 he would have been working on the patio.

The patio door can only be opened from the inside. The signs were on the doors as shown in Exhibit 1 at all times. He doubts that patrons could climb over the patio glass enclosure without the staff noticing.

The mirco-system for billing and tracking liquor is sophisticated and requires staff to ring everything in. At the end of each shift the bartender prints out a report. He correlates that to the liquor guardian system that calculates how much liquor is poured. He has not noticed any discrepancies in the system. He said the printout shows no Jaegerbombs purchased by Patron #1, "but intoxicated persons might be getting drinks that have different names." He said, "there were no Soho Shooters purchased between 10:00 pm and 10:40 pm... they had to be something else." He also confirmed that the computer printout has some entries with no patron names with them.

He said he hires carefully based on the experience of the candidate. All of the staff have Serving it Right certification. He personally trains all staff employees.

There is a manual and an incident logbook. There is no entry for September 5, 2008 in the logbook. He said there are written policies that "are updated every four months and when the employees are hired they read that."

He confirmed the liquor inspector interviewed him on September 19, 2008. He did not know about the incident of September 5, 2008 before that. No staff member had mentioned it to him.

SUBMISSIONS

The Branch submitted that the contravention occurred when the Licensee served liquor to Minor #1, a minor. Minor #1 was in the establishment for 45 minutes and was not asked for identification. She did not want a drink, but the server insisted. Minor #1 then ordered and consumed liquor. She drank in the pub with her intoxicated father and intoxicated boyfriend. Minor #2 was also a minor and was served multiple drinks while in the pub. He was also not asked for identification. He also remained in the establishment for 45 minutes before leaving with no help from the staff. The Branch submitted that the evidence is highly controversial but any reasonable interpretation of it will conclude that the allegation has been proved. The Licensee is obligated to be in control of the establishment. It is not a defence to say that a minor's father was there and had responsibility for the minor. It is not a defence to say that one patron served liquor to another patron. The Licensee failed to monitor the patio door entry to the establishment.

The Branch also submitted that the evidence discloses a lack of effective procedures in place at the establishment to monitor the service of liquor and in particular to prevent service to minors.

Finally the Branch submitted that the evidence disclosed a pattern of disinterest or ineffectiveness on the part of the Licensee and its management and employees relating to the prevention of minors accessing liquor in the establishment.

The Licensee submitted that the evidence establishes that the Licensee neither supplied liquor to a minor nor permitted a minor on the premises. The minors knew they should not have been in the pub. A patron let them in without the staff knowing. The evidence discloses no staff knowledge of the minor's presence in the establishment. The server did not provide any drinks to the minors. The electronic monitoring system confirms that the minors were not served the drinks that they claim to have been served. The minors were in the pub for closer to 15 minutes than the claimed 45. The printout and the oral testimony establish this.

The Licensee submits that Patron #1's evidence confirms a 15-minute time-line. Section 33 does not allow turning a blind eye. That is not the same as the Licensee reasonably knowing. Patron #1 "embarked on a procedure to thwart any policies that were in place - he purposely set about to get around that." Due diligence does not require the minors to be found immediately. The minors were out of the establishment in a timely fashion.

ANALYSIS AND DECISION

Contraventions and related findings

I accept the evidence of Minor #1 to be credible. She described the events in a logical manner and supported her description with information added out of sequence on cross-examination. She did not appear to favour her father or her boyfriend. I find this notwithstanding that there were some inconsistencies in her testimony (she said the off-duty employee brought her the shooters, but the inspector testified that Minor #1 told her that the Server brought them). I find that

she was a minor on the date in question and that an employee of the Licensee served her liquor (at least the first strawberry daiquiri). Minor #2's evidence supported that Minor #1 was served a drink and that the server offered it to Minor #1 even after Minor #1 first refused. I accept the evidence of Minor #1 that she was permitted to enter the establishment on the date of the allegation and that she was supplied with liquor and allowed to consume liquor contrary to s.33(1)(a) and s. 33(1)(c) of the *Regulation*.

I find that the Server was not credible as to the events of the night in issue. She said she didn't know Minor #1 was Patron #1's daughter, but Patron #1 testified that he introduced Minor #1 as such. She said that the two boys were "obviously" minors, and supported her conclusions with evidence of familiarity with teenagers of her own, and then went to considerable lengths to explain that she didn't know the boys were minors until a later date. We also have testimony from Minor #2 that one of his two cousins - the boys - was of age. The Server also said that she carried the margarita that Patron #1 ordered to Patron #1, but that when she saw Patron #1 ushering the boys out, she tipped out the drink because she didn't know whom the drink was for. Her evidence was inconsistent and appeared to change to suit the questions put to her. She also indicated that she did not ask the minors for ID because Patron #1 was ushering them out, but the evidence supports the fact that the minors had been in the pub for approximately 45 minutes before that event.

I find that Patron #1's testimony was not reliable. He said that he did not notice if his daughter was with anyone or if they came in with her, but later he said he had let them in and he indicated that he offered Minor #1's friends some of his beer. In the first instance, his testimony seemed consistent with that of the Server and supported the Licensee's defence, but his facts got more confused on cross-examination. I note the possibility that as a regular patron, Patron #1 might have an interest in supporting the Licensee's defence, however I make no findings based on that observation. I note also that he said the boy driving the car

involved in his daughter's injury was both "drunk" and "not actually drunk," depending on whether the line of questioning seemed to be about the culpability of the pub or his parenting skills.

I accept the evidence that Minor #2 was also a minor at the time of the alleged contravention. I find that Minor #1 and Minor #2 should each have been checked for identification upon being discovered in the establishment. Minor #2 was intoxicated at the relevant time and his memory of the events is not complete. I find, however that the things he does remember with respect to ordering and drinking liquor in the pub are credible and corroborated by other evidence. I find that Minor #2 was served and did drink liquor in the establishment on the night in question contrary to s.33(1)(a) and s. 33(1)(c) of the *Regulation*.

I note that the inspector notified the pub manager of her understanding of the circumstances of September 5, 2008, 14 days after the event, and although the pub has video surveillance tapes, they were not retained or provided to support the Licensee's defence of the allegations. Further, the Server testified that she knew about the event within four days and her manager already knew when she found out. This would support the Licensee's ability to save the tapes for its defence of this allegation. I find the absence of the surveillance data worthy of an adverse inference, and I so find.

The Licensee made much of the billing and tracking system and in particular its ability to comprehensively describe the sales of liquor for the relevant time frame. I find that the system allows for employees to attribute drinks to particular tables and patrons and use multiple identities for patrons, and does not take into account that a patron might give a shot drink one name and the staff refer to that same drink as something else. Accordingly, I do not find the electronic record of sales alone to be determinative of what an individual was served or drank on a particular day.

I find the Off-Duty Employee's evidence far from useful from the standpoint of the events of September 5, 2008. She indicated that the minors entered or were let in while she was in the bathroom and that on her return to the table, Patron #1 was helping them out. Yet she had recollection of one of them drinking beer from a mug, did not believe that the Server had served them, and remembers Minor #1 drinking a margarita.

I find that the contravention of s.33 occurred as alleged.

Due Diligence

If the Licensee could have avoided the contravention through the exercise of reasonable care, or *due diligence*, and can establish that it did in fact exercise such care, this is a complete defence to the allegation.

The onus is on the Licensee to demonstrate on a balance of probabilities that it took all reasonable steps to prevent the contravention.

The evidence demonstrates that the conduct of the Licensee's employees on the night in question was far short of due diligence.

Anter Pamma testified that at the time of the allegation he was on site and managing the establishment. He had the ability to instruct and control the staff. He also testified as to having trained all of the staff. He delivered the monthly staff meetings and held the informal daily meetings. I find that at the time of the allegation he was the operating mind of the Licensee.

The question, therefore, is whether Anter Pamma had available to him, a system of adequate training and programs designed to instruct his staff on how to prevent service to minors and other contraventions, and whether he took reasonable steps to ensure the effective operation of those systems.

I find it impossible to conclude from the evidence of the Server or the Off-Duty Employee, that the Server was properly trained for her duties with respect to checking ID of patrons in the bar or ordering liquor.

Further, based on the testimony of the two employees and indeed the manager, I find that the Licensee and its management failed to develop an effective system for the prevention of contraventions of this type.

I find that the Licensee, and its management in the person of Anter Pamma, did not have effective control of the establishment as staff failed to check the identification of minor patrons before serving them liquor, and the staff cannot be said to have acted contrary to an established and effective system of direction and operation.

I find there were inadequate systems in place to prevent the contravention from occurring.

The defence of due diligence fails.

PENALTY

Pursuant to section 20(2) of the *Act*, having found that the licensee has contravened the *Act*, the *Regulation* 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 license

Imposing any penalty is discretionary. However, if I find that either a licence suspension or monetary penalty is warranted, I am bound by the minimums set out in Schedule 4 of the *Regulation*. However, I am not bound by the maximums and may impose higher penalties when it is in the public interest to do so. 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.

The Branch recommended a \$7,500 monetary penalty in the NOEA and submitted the following reasons for the recommended penalty:

The issue of supplying alcohol to minors is considered a significant threat to the health and safety of not only the minor but also to the public. Youth are more vulnerable to the negative affects of alcohol consumption such as ability to make sound decisions. Alcohol consumption plays a role in youth crime and in motor vehicle accidents among those under the age of 19. In this instance, there were two minors involved and the server made no attempt to ascertain their age before they were supplied with alcohol.

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 these incidents ("compliance history"). Accordingly, pursuant to the *Regulation*, Schedule 4, this is a first contravention. Pursuant to Schedule 4,

item 2, the range of penalties for first contraventions is ten (10) to fifteen (15) days suspension and/or a monetary penalty of \$7,500- \$10,000.

I have found that the contravention was proven. It only takes one minor to be supplied liquor on the relevant date to establish the contravention. Minor #1 was supplied liquor in a licensed establishment. She was not asked for identification and there is no evidence that would suggest that she was known to be or appeared to be of age. She was provided liquor despite her initial refusal, and someone else paid for the liquor. At least one other minor was allowed entry to the licensed establishment and supplied liquor on the same date (Minor #2). This speaks to penalty. Two minors, each sixteen years, gained access to the establishment and were served liquor. Neither was asked to prove their age. One of the minors only accepted liquor after the insistence of a server. At least one of the minors left the pub intoxicated. I will not speculate as to whether the motor vehicle accident and the resulting injuries was caused or contributed to by the intoxication, but I do note that at least one of the minors (Minor #2), was taken into custody by police for being drunk. I am satisfied that the social values relating to these contraventions as demonstrated by the legislative and regulatory regime indicate the need for a penalty. I am further satisfied that only a significant penalty will get the attention of the Licensee and indicate its need to take immediate action to establish new policies to prevent such contraventions from occurring in the future.

I find that a penalty is warranted.

I find that a monetary penalty of eight thousand five hundred dollars (\$8,500) is reasonable and required to bring about voluntary compliance in the future.

ORDER

Pursuant to section 20(2) of the Act, I order the Licensee to pay a monetary penalty of eight thousand five hundred dollars (\$8,500) relating to Liquor Primary License #302307 in respect of action #EH08-114. The monetary penalty must be paid no later than the close of business on March 13, 2009.

Original signed by

Sheldon M. Seigel
Enforcement Hearing Adjudicator

Date: February 13, 2009

cc: Surrey R.C.M.P

Liquor Control Licensing Branch, Victoria Regional office
Attn: Gary Barker, A/Regional Manager

Liquor Control and Licensing Branch, Surrey Regional office
Attn: Olubode Fagbamiye, Branch Advocate