



**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 BC Ltd. dba Chieftain Hotel 38005 Cleveland Ave. Squamish, BC V0N 3G0
Case:	EH08-116
For the Licensee:	Stephen Barron
For the Branch:	Peter Mior
Enforcement Hearing Adjudicator:	Edward Owsianski
Date of Hearing:	Written Submissions
Date of Decision:	March 30, 2009

INTRODUCTION

The licensee, 685946 BC Ltd., owns and operates the Chieftain Hotel in Squamish, B.C. The hotel holds Liquor Primary Licence No. 041288 for the operation of a nightclub at the hotel with liquor sales from 7 p.m. to 2:00 a.m., Monday to Saturday, and 7 p.m. to midnight on Sundays. The person capacity is 204. 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 hotel also has three other liquor licenses for the operation of a pub, a lounge and a licensee retail store.

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

In an amended Notice of Enforcement Action (the "NOEA") dated November 27, 2008, the branch alleges that on August 16, 2008, the licensee contravened section 35 of the *Liquor Control and Licensing Act* (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 is a seven (7) day suspension of the liquor licence (item 3 of Schedule 4, *Liquor Control and Licensing Regulation*) and the following two terms and conditions:

1. Door staff must be present at the entry at all times, and
2. An identification scanning device must be installed, maintained and used for all patrons.

Item 3 of Schedule 4 of the *Regulation* provides a range of penalties for a first contravention of this type of a license suspension for 4 - 7 days and/or a monetary penalty of \$5000 - \$7000.

The licensee does not dispute that the contravention took place, just the penalty proposed. It was agreed that this hearing would take place by way of written submissions.

RELEVANT STATUTORY PROVISIONS

LIQUOR CONTROL AND LICENSING ACT [RSBC 1996] CHAPTER 267

20 (1) In addition to any other powers the general manager has under this Act, the general manager may, on the general manager's own motion or on receiving a complaint, take action against a licensee for any of the following reasons:

(a) the licensee's contravention of this Act or the regulations or the licensee's failure to comply with a term or condition of the licence;

(2) If the general manager has the right under subsection (1) to take action against a licensee, the general manager may do any one or more of the following, with or without a hearing:

(b) impose terms and conditions on the licensee's licence or rescind or amend existing terms and conditions on the licence;

(c) impose a monetary penalty on the licensee in accordance with the prescribed schedule of penalties;

(d) suspend all or any part of the licensee's licence in accordance with the prescribed schedule of licence suspensions;

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, what penalty, if any, is warranted?

EXHIBITS

1. Registrar's December 2, 2008 letter summarizing the pre-hearing conference.
2. Registrar's January 20, 2009 letter regarding hearing procedure to be followed.
3. Branch's package of disclosure to the licensee dated January 9, 2009.
4. Branch's additional disclosure, dated January 12, 2009
5. Licensee's submission dated January 29, 2009.
6. Branch's February 5, 2009 response to licensee's submission.
7. Licensee's February 17, 2009 final reply.

EVIDENCE

The evidence is summarized as follows:

On Saturday, August 16, 2008 two uniformed police officers entered the licensed establishment at approximately 2:02 a.m. No door staff was observed at the entrance. Two young appearing females were noted walking towards the exit. They were determined to be 18 and 19 years of age. The 18 year old minor exhibited signs of intoxication: an odour of liquor, slurred speech, and she was wobbly on her feet. She stated that she had been in the establishment since sometime between 12:30 a.m. and 1:00 a.m. She had been drinking elsewhere and had not been drinking at the establishment. She was leaving because they were closing, she had not been asked to leave. A violation ticket was issued to the minor and she was sent on her way. The officers attempted to speak to the manager and staff. They denied that there had been a minor in the establishment. They were uncooperative and belligerent. A Licensed Premises Check form was issued to the establishment and a report sent to the local liquor inspector.

Upon receiving the police report, the local liquor inspector spoke with the minor about the incident. The minor advised the inspector that she had been in the establishment for approximately one hour prior to the police officers' arrival. She was not asked for identification upon entering and did not observe any door staff on duty. She had been previously drinking elsewhere and had not had anything to drink at the establishment. She told the inspector that she had been at the establishment on two previous occasions and had never been asked for identification.

The inspector issued a Contravention Notice for a second contravention of this type and prepared a Notice of Enforcement Action (NOEA). She recommended a ten-day license suspension penalty, the minimum for a second contravention. An amended NOEA was subsequently issued when the inspector became aware that this was a first contravention of this type for this license. In the amended NOEA she recommended a seven-day license suspension penalty, the maximum for a first contravention of this type.

The amended NOEA at Appendix B contains the licensee's compliance history as follows:

1. April 03, 2008; Supply to minors, s. 33 - 20 day suspension
2. March 18, 2008; Supply to minors, s. 33 - 10 day suspension
3. May 22, 2006; Minors in premises, s. 35 – Contravention found, no penalty imposed
4. May 19, 2006; Minors in premises, s. 35 - 1 day suspension

SUBMISSIONS

Branch Submissions

The branch's submissions are summarized as follows: The branch advocate submits that allowing minors into a licensed establishment is a serious matter that can result in dire consequences. A conscientious licensee would implement procedures to ensure that minors do not enter their licensed establishment. No such procedures were undertaken in this instance. While this is the first contraction for this particular license, it is not the first contravention for this licensee at this establishment. The most recent previous suspension being a 20 day

suspension for supplying liquor to a minor on April 3, 2008 at the licensed pub at the hotel. This followed a compliance meeting held by the local liquor inspector. The branch has provided education and guidance to the licensee. The contravention, subject of this hearing occurred because the licensee did not meet its obligations. The seven day suspension, the maximum for a first contravention is warranted in these circumstances.

The advocate submitted that imposing the requirements that door staff must be present at the entrance at all times, and the requirement of an identification scanning device being installed, maintained and used for all patrons is reasonable given the licensee's lack of measures taken to prevent contraventions of this type. Other establishments are using identification scanners across the province and there has been no ruling by the provincial privacy commissioner against the use of such scanners.

Licensee Submissions

The licensee's submissions are summarized as follows: The licensee representative submits that the branch has not presented reasons for recommending the maximum penalty, i.e. a seven day suspension for a first contravention of this type for this license. The branch in its first NOEA recommended the minimum penalty for a second contravention, i.e. a ten day suspension. When it was determined that this was a first contravention not a second for this licensee, the branch changed its recommendation to the maximum for a first contravention, i.e. a seven day suspension. A seven day suspension is disproportionate to the occurrence and would result in a \$15,000.00 cost to the licensee and a financial loss to the employees.

The contravention occurred because the doorman was sick and had to go home early. A bartender not familiar with the establishment replaced him. Had the regular doorman not been sick the contravention would not have occurred. The minor did not order any liquor so no other staff member had opportunity to interact with her.

The licensee representative submitted that the compliance history of other licenses issued to the hotel is not relevant to this license. There has been no previous compliance issue for this license. In the alternative, if the history is relevant the first two previous contraventions were unique in that they referred to an underage employee working in the LRS and the pub, a unique situation out of the licensee's control. The licensee representative referred to previous enforcement decisions where the maximum penalty was not recommended or imposed. He submitted that in the circumstances of this contravention a written warning to the licensee would achieve the branch's goal.

The licensee has contracted the services of a consultant to review the licensee's operation of the hotel and to provide recommendations regarding all of the licenses at the hotel. The licensee is committed to ensuring that the entrances to the nightclub are staffed on weekends and during busy times. It is not necessary when the establishment is not busy and presents an economic burden on the licensee. When not busy, bar staff and servers can perform identification checks. Further, imposing a term and condition that affects labour relations and employment may extend beyond the authority of the branch.

The licensee has committed to installing an identification scanner voluntarily but is concerned about investing in such devices that may not be legal. The representative referred to a previous decision of the general manager where a similar term and condition was not imposed. He referred to a decision from the province of Alberta ordering a nightclub to cease scanning patron's driver's licenses. He also referred to a written submission of the B.C. Civil Liberties Association arguing that the practice of scanning patron's driver's licenses violates the British Columbia *Personal Information Protection Act*, SBC 2003, c. 63.

REASONS AND DECISION

The licensee has admitted the contravention. Having considered all of the evidence, I find that on August 16, 2008, the licensee contravened section 35 of the *Liquor Control and Licensing Act* (the *Act*) by permitting a minor to enter on or to be on premises where liquor is sold or kept for sale.

DUE DILIGENCE

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, there is little evidence upon which I can find that the licensee was duly diligent. At the time of the contravention, the doorman had become sick and had to go home early. A bartender not familiar with the establishment replaced him. There is no evidence of staff training or what policies and procedures were in place to guide staff in their duties.

I find that the licensee has not been duly diligent.

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 *Regulation*. 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 Notice of Enforcement Action.

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 for this license within the year preceding this incident. I therefore find this to be a first contravention.

The licensee representative has submitted that it is not relevant to consider enforcement action taken against the licensee for other licenses located in the hotel. I do not agree. In considering what action would be appropriate in the circumstances of the contravention it is reasonable and useful to consider how the entire hotel establishment is being operated. The record for the operation of the licensed areas of the Chieftain Hotel by this licensee indicates that there is a significant problem with minors being permitted to enter into the liquor licensed areas where

they are not permitted. This resulted in three contraventions occurring within a five month period.

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. The responsibility for the proper operation of the licensed establishment is shared by each of the employees on duty. Here the minor was permitted entry without having her identification checked. Although she did not purchase liquor while inside the licensed area, there were other employees on duty who could and should have made certain that a young appearing person was of age.

Any penalty imposed must be sufficient to ensure compliance in the future. Each case is judged upon its own unique set of circumstances. Previous decisions are not binding. In the circumstances of this contravention I find that a seven day suspension is necessary, appropriate and reasonable.

In the circumstances of this contravention, I am not persuaded that it reasonable and necessary in the public interest to impose further terms and conditions to the liquor license.

ORDER

Pursuant to Section 20(2) of the *Act*, I order a suspension of Liquor Primary Licence No. 041288 for a period of seven (7) days, to commence as of the close of business on Thursday May 7, 2009, 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 license be held by the branch or the RCMP Squamish Detachment from the close of business on Thursday, May 7, 2009 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 30, 2009

cc: RCMP Squamish Detachment

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

Liquor Control and Licensing Branch, Surrey Office
Attn: Peter Mior, Branch Advocate