



**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: Gaddiel Investments Ltd.
dba Central Station Hotel
126 Fourth Avenue
Kamloops, BC V2C 3N4

Case: EH12-084

For the Licensee: Judy Hill and Craig Hill

For the Branch: Peter Mior

General Manager's Delegate: Nerys Poole

Date of Hearing: Written Submissions

Date of Decision: November 9, 2012

Liquor Control and
Licensing Branch

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INTRODUCTION

The licensee, Gaddiel Investments Ltd. dba Central Station Hotel, is located in Kamloops, B.C. Judy Hill and Craig Hill are principals of the corporate licensee and represented the licensee for the purposes of this hearing. The licensee holds a Liquor Primary Licence No. 011049. The hours of operation are Monday to Saturday, 10:00 a.m. to 1:00 a.m. and Sunday, 11:00 a.m. to midnight.

The licence is, as are all liquor licences issued in the province, subject to the terms and conditions contained in the publication Guide for Liquor Licensees in British Columbia (the "Guide")."

ALLEGED CONTRAVENTION AND PROPOSED PENALTY

The Liquor Control and Licensing Branch's (the "branch") allegation and proposed penalty are set out in the Notice of Enforcement Action (the "NOEA") dated June 7, 2012. The branch alleges that on April 21/22, 2012, the licensee contravened section 33(1)(a) of the *Liquor Control and Licensing Act* (the "Act") by selling, giving or otherwise supplying liquor to a minor. In addition, the branch alleges that on April 21/22, 2012, the licensee contravened section 43(2)(b) of the Act by permitting an intoxicated person to remain on the premises.

As an alternative, if I do not make a finding of contravention of section 33(1)(a) of the Act, the branch alleges the licensee contravened section 35 of the Act by permitting a minor to enter or be on the premises.

The proposed penalty for a contravention of section 33(1)(a) of the Act is a 10 day suspension of the liquor primary licence. The proposed penalty for the alternative contravention under section 35 is a 4 day suspension of its licence. The proposed penalty for a contravention of section 43(2)(b) of the Act is a 4 day suspension of its licence.

For a first contravention of section 33(1)(a), Item 2 of Schedule 4 of the *Liquor Control and Licensing Regulation* (the "Regulation"), provides a range of penalties: a licence suspension for ten to fifteen days and/or a monetary penalty of \$7,500 - \$10,000. For a first contravention of section 35, item 3 of Schedule 4 of the Regulation provides: a licence suspension of four to seven days and/or a monetary penalty of \$5,000 to \$7,500. For a first contravention of section 43(2)(b), Item 11 of Schedule 4 of the Regulation provides: a licence suspension of four to seven days and/or a monetary penalty of \$5,000 to \$7,000.

The licensee does not dispute that there were contraventions of the Act on the evening of April 21, 2012. The licensee however argues for a reduction in the penalties proposed by the branch.

At a prehearing conference on August 27, 2012, with the enforcement hearings registrar, the branch advocate and the principal for the licensee in attendance, the principal for the licensee stated that she did not dispute that the contraventions occurred but that she was concerned about the impact of the proposed suspensions on her staff. In a discussion with the registrar on August 29, 2012, the principal for the licensee requested a hearing by way of written submissions on the proposed penalties only. The branch registrar determined that the hearing would proceed by way of written submissions, on whether or not a penalty is warranted and if so, what the penalty should be.

RELEVANT STATUTORY PROVISIONS

The *Liquor Control and Licensing Act*, R.S.B.C. 1996, c. 267 provides:

Supplying liquor to minors

33 (1) A person must not

(a) sell, give or otherwise supply liquor to a minor,

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.

Drunkenness

43 (2) A licensee or the licensee's employee must not permit

(b) an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied.

ISSUES

1. Did the contravention occur?
2. If so, has the Licensee established a defence to the contravention?
3. If the contravention is proven, what penalty, if any, is appropriate?

EXHIBITS

Exhibit 1: Branch documents, tabs 1 to 13

Exhibit 2: Licensee's submission (8 pages)

EVIDENCE AND SUBMISSIONS

The Branch

Evidence re: Minor

On April 21, 2012 at approximately 11:40 pm, two liquor inspectors entered the Central Station Hotel in a covert capacity. The front entrance was open and there was no door control or staff monitoring the entrance. The bar area was very busy with patrons attempting to purchase drinks at the bar and the serving staff attempting to get drink orders from the bartender.

Liquor Inspector No.1 observed a male patron bring six shooters on a tray from the bar area to the table to share with others sitting at the table. Less than 30 minutes later, a female server brought six shooters containing a clear liquid to the same table. Liquor Inspector No.1 observed a male offer another male (later identified as "the minor") a shooter glass which the minor consumed. He also observed the minor drinking beer from a mug.

At about 12:30 a.m. on April 22, 2012 (April 21 business day), two RCMP members entered the establishment to check for minors, at the request of the liquor inspectors. The RCMP constable checked the washroom and noted that the toilet was overflowing with vomit. The same constable noted a male observing the police so he approached this male (the minor) and asked him for identification. The RCMP constable eventually obtained the minor's name and date of birth. The minor was allowed to proceed. The

RCMP members advised the liquor inspectors that the minor male was 17 years old. The constable issued a Licensed Premises Check to a female staff member.

At about 12:40 a.m., the liquor inspectors left the establishment. At that time, they observed some staff members at the door checking incoming patrons for identification.

Evidence re: Intoxicated Patrons

Shortly after midnight on April 22, 2012 (April 21 business day), the two liquor inspectors observed a female walking to the washroom. She was staggering as she walked and had difficulty maintaining her balance. At one point she stumbled and had to catch herself on the counter with one hand. She steadied herself on the opposite wall with her other hand. She had difficulty negotiating the corner leading to the washroom, bumping into the wall as she made her way around the corner. She had droopy, glazed and unfocused eyes. Her facial muscles lacked tone, causing a sagging appearance. As she exited the washroom a few minutes later, she walked unsteadily up the ramp using the edge of the counter for balance. She walked past the front of the bar where several staff members were standing. She walked slowly with an exaggerated attempt to maintain her balance. She had to use the backs of chairs to maintain balance while returning to her seat. She then sat down at a table with several other females. She sat quietly without interacting with the others at the table. She was drinking from a pint of beer but appeared to have difficulty getting the mug to her mouth. Several staff members walked past the table; none took notice of her intoxication nor did anyone ask her to leave the premises.

The two liquor inspectors observed another patron, a male, with half closed and unfocused eyes carrying a mug of beer. He walked to the washroom, maintaining his balance by holding onto the edge of the counter while walking down the ramp. Liquor Inspector No.1 observed him in the washroom, vomiting into the toilet. Further observations of this male were that his reactions to stimuli were very retarded. He reacted to the end of a karaoke song by clapping several seconds after the song ended.

He reacted to the loud cheering as opposed to the end of the song. He continually bumped into other patrons, chairs and tables, as he walked around the establishment. At one point, this male stood in front of the bar, very close to several staff members, who did not acknowledge him nor make any attempt to remove him. He eventually left on his own accord.

A branch regional inspector notified the licensee of the contraventions on April 23, 2012, and sent a Contravention Notice by registered mail on April 25, 2012.

The branch recommends enforcement action because the evidence clearly demonstrates, and the licensee agrees, that the contraventions occurred. Staff were nearby and did nothing to deal with these contraventions. The sale of liquor to minors or permitting minors on the premises, as well as permitting intoxicated patrons on the premises, present significant public safety issues. A penalty is warranted in order to ensure future voluntary compliance.

With respect to either a section 33(1)(a) or section 35 contraventions, the branch says the minor was in the establishment for at least an hour prior to being removed by the police. He was served several alcoholic drinks by staff members and no one asked him to produce identification despite his youthful appearance. With respect to the section 43(2)(b) contravention, the branch says that two patrons were exhibiting clearly visible signs and symptoms of intoxication in very close proximity to several staff members.

The branch proposes licence suspensions for both contraventions to convince the licensee of the need for immediate and continuing compliance.

The Licensee

The licensee does not dispute the facts as outlined in the NOEA. The licensee asks for leniency in the enforcement actions. The licensee submits statements from six of its employees, outlining how the proposed suspensions will affect them and commenting on the incident of April 21, 2012.

The licensee submits that they are trying to comply with the strictest terms possible and have implemented several new steps to prevent any further contraventions:

- The licensee had hired a security company for door control but they were unavailable on the weekend of April 21, 2012;
- The licensee has, since the contravention, hired a regular doorman from 9:30 p.m. to 1:30 a.m. on weekends;
- The licensee has asked liquor inspectors to come to talk with their staff about over serving, underage patrons, and other staff concerns;
- The licensee has bought the international and the U.S./Canada ID guides for staff information.

The licensee states that their staff are devastated by the possibility of the impending closure of the establishment. The licensee says seventeen people's jobs will be affected by the decision. Four of their staff members have been with them for at least eleven years. Fourteen days without work "will seriously cripple the majority of our people financially."

The employees' statements emphasize the serious economic impact of a ten to fourteen day suspension on their incomes and on those of their fellow workers, including those who did not work on the evening of the incident as well as those who worked in the kitchen and had no responsibility for service of liquor. They also refer to the changes that the licensee has brought in since the contravention, as noted above by the licensee. Most recognize that some penalty may be imposed for the contraventions but they ask for a reduced penalty in consideration of the hardship that all employees will suffer if a long closure occurs.

The female server who was responsible for the table where the minor was sitting wrote out a statement about the incident on the night in question. She stated that the security company that had been hired to provide a doorman did not provide one for the evening of April 21, 2012. During the evening, she asked for two pieces of ID of a number of young people and asked one to leave as he did not have his ID. He then left. This occurred again in the evening with another young man being asked to leave. When she delivered some shooters to the table where the minor was sitting, she noticed there were a few new faces but, as they already had drinks, and as she had not served them, she assumed that they had come from another section of the pub or that the bartender had served them and that they had been asked for ID already. The new faces at the table did not order anything from her nor did they pay her for anything. She regrets not asking the minor for ID and stated that "it happened in a split second amidst a million other things I was occupied with in performing my duties." She admits making a mistake in the middle of a busy night when they were supposed to have had a doorman to ask for ID at the door. She requests a reduction in the penalty to avoid hardship for her and her co-workers.

REASONS AND DECISION

Minor – section 33(1)(a)

The licensee has admitted the contravention. The liquor inspector observed a male patron bringing six shooters to the table where the minor was sitting. The same inspector later observed the female server delivering six shooters to the same table. The inspector then saw the male patron give a shooter to the minor. He observed the minor drinking the shooter and observed him drinking beer from a mug. This is consistent with the statement of the female server in exhibit 2. She admits delivering the drinks to the table and that she noticed some new faces, but did not ask for ID.

There is no dispute that the minor who provided his birthdate to the police was 17 years old at the time of the incident. There is no dispute that the licensee's employee supplied the liquor to the table where the minor was sitting. The liquor inspector observed the minor drinking the liquor. The minor was in the establishment for at least 50 minutes before RCMP arrived and requested identification from him. At no time, while the minor was in the establishment, did any staff ask him for identification.

Due Diligence re: section 33(1)(a)

The licensee is entitled to a defence if it can be shown that it was duly diligent in taking reasonable steps to prevent the contravention 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 are dealt with.

I find that the licensee did not take all reasonable steps to prevent the contravention. The licensee had contracted with a security company to provide a doorman but the doorman was not available on April 21, 2012. The licensee made no effort to post a staff member at the door on an admittedly busy night with a full crowd in the bar. After the police saw the minor and he agreed to leave, staff were then posted to the front door. This step should have been taken earlier in the evening, but was not.

The patrons in the bar were moving around and ordering both from servers and the bartender which thus reduced the opportunity for busy servers to ensure individuals had been properly ID'd when being served. Without a doorman, the licensee could have reduced the opportunity for minors to be on the premises by limiting service to table service only and not allowing patrons to buy from the bartender and return with drinks to their table. The statements from the server shows that she had knowledge of the need to ask for two pieces of ID, but failed to do so on this occasion and, despite noting there were "new faces" at the table, she provided the liquor to the table where the minor was sitting without requesting ID from him.

I find that neither the licensee nor its employees were duly diligent on the evening in question, and did not ensure the procedures it had in place (e.g. recognition of need for a doorman on the weekends; consistent implementation of the requirement to request ID) were in fact acted upon.

I find the licensee therefore contravened section 33(1)(a) of the Act on the evening of April 21, 2012. I do not need to deal with the alternate contravention of section 35.

REASONS AND DECISION

Intoxicated Patrons on the Premises – section 43(2)(b)

The two liquor inspectors who attended at the establishment on April 21, 2012, observed two patrons; one female and one male, in an intoxicated state. The indicia of intoxication for the female included: a staggering walk, stumbling, difficulty maintaining her balance, glazed and unfocused eyes, and difficulty getting her mug to her mouth.

The liquor inspectors observed several staff members walk past the table. None of the staff members took notice of her intoxication nor did anyone ask her to leave the premises.

The indicia of intoxication for the male patron included: half closed and unfocused eyes, difficulty maintaining his balance, holding onto the edge of the counter to steady himself as he walked to the washroom, vomiting in the washroom, obviously slow reactions to the karaoke songs finishing, bumping into other patrons, chairs and tables.

The liquor inspectors observed this male at one point standing in front of the bar, very close to several staff members, who did not acknowledge him nor make any attempt to remove him. He eventually left on his own accord.

The licensee has admitted the facts as set out in the NOEA. I find that there were two intoxicated patrons in the establishment on the evening of April 21, 2012.

Due Diligence re: section 43(2)(b)

As noted above under the discussion of the minor, the licensee is entitled to a defence of due diligence if it can prove that it took all reasonable measures to avoid the contravention.

The licensee has provided no evidence of policies or training manuals to ensure staff are informed of their responsibilities under the Act with respect to not serving and/or removing intoxicated patrons. The liquor inspectors observed clear signs of intoxication and noted that these should have been obvious to staff who were nearby. The fact that the evening was a busy one does not excuse the staff or the licensee from exercising due diligence to avoid this contravention.

I find that the absence of evidence of written policies leads me to the conclusion that the licensee has not exercised due diligence with respect to ensuring intoxicated patrons are not permitted to remain on the premises. At the time of the contravention, the licensee had not implemented adequate training or other systems to prevent the contravention.

I find that the licensee contravened section 43(2)(b) of the Act on the evening of April 21, 2012.

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 may do one or more of the following:

- Take no enforcement action
- Impose terms and conditions on the licence or rescind or amend existing terms and conditions
- Impose a monetary penalty on the licensee
- Suspend all or any part of the licence
- Cancel all or any part of the licence
- Order the licensee to transfer the licence

I am not bound to order the penalty proposed in the Notice of Enforcement Action. However, if I find that either a licence suspension or a 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.

The branch's primary goal in bringing enforcement action and imposing penalties is achieving voluntary compliance. The factors that are considered in determining the appropriate penalty include whether there is a proven compliance history, 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.

Minors and alcohol can cause serious harm to themselves and to others. The potential for harm has been well documented. This is a significant public safety issue because of the following:

- The effects of alcohol on growing bodies and developing minds;
- The effect on individuals and society of irresponsible drinking behaviour learned at an early age;
- A minor's lack of capacity to metabolize alcohol in the same manner as an adult; therefore, liquor has a more intoxicating effect on minors; and
- Liquor is a significant factor in many crimes committed by youth, including serious driving offences, assault, sexual assault and theft.

The licensee, in its submission, indicates it had hired a security company for door control but that no one was available on the evening of April 21, 2012. I consider the licensee's failure to ensure a doorman (whether from security company or from its staff) to be a contributing factor in the section 33(1)(a) contravention. As well, the licensee's employees failed to notice the presence of a 17 year old minor who was in the establishment for about an hour and who was observed drinking shooters at a table where a server supplied the drinks.

Intoxicated individuals can put themselves and others at risk. On the section 43(2)(b) contravention I find that the employees on duty were not sufficiently informed or trained as to the importance of ensuring intoxicated patrons were not permitted to remain, nor were they diligent in responding to the need to deal with the two patrons who were displaying clear signs of intoxication.

Since the contravention, the licensee says they have invited liquor inspectors to speak to their staff about various issues including over serving. Staff clearly need these reminders as well as ongoing training and written policies for them to follow. In arguing for a reduction in penalty, the licensee refers to the actions it has taken since the date of the contraventions. These actions taken after contraventions do not relieve a licensee of its obligations to ensure such contraventions do not occur in the first place.

I find that a penalty is warranted for both contraventions and is necessary to ensure future voluntary compliance.

I have given consideration to the submission of the licensee and the statements from its employees as to the effect of a lengthy suspension on their livelihoods. The six employees have emphasized the economic impact that a long closure will have on them personally. Suspensions of liquor licences affect all employees regardless of their involvement in the contravention. The impact on the licensee's employees is the result of the failure of the licensee to ensure it meets its obligations as a licensee to comply

with the Act and the Guide. To avoid the impact on all its employees, a licensee could choose to continue the salaries of those who had no involvement in the contravention, during the period of suspension.

As I find a penalty is warranted, I am bound to follow the minimums in the Regulation, and may impose a higher penalty. I have no discretion to impose a reduced penalty once I find a penalty is warranted.

There is no record of a proven contravention of the same type for this licensee at this establishment within the preceding twelve months of this incident. Therefore, I find both contraventions to be first contraventions for the purposes of Schedule 4 and calculating a penalty.

For the section 33(1)(a) contravention, item 2 in Schedule 4 provides a licence suspension for ten to fifteen days and/or a monetary penalty of \$7,500 - \$10,000. The branch recommends a suspension of ten (10) days, the minimum for this contravention, and submits a suspension is necessary to serve the branch's objective of convincing the licensee of the need for immediate and continuing compliance. I find this to be a necessary and appropriate penalty for the section 33(1)(a) contravention.

For the section 43(2)(b) contravention, item 11 in Schedule 4 provides a range of penalties for a first contravention of this type: a four to seven day licence suspension and/or a monetary penalty of \$5,000 to \$7,000. The branch recommends a suspension of four (4) days, the minimum for this contravention. I find that a suspension of four (4) days is necessary and appropriate for this contravention.

The suspension will serve as a reminder to the licensee and its staff of the importance of implementing measures to avoid this contravention. It also serves as a reminder to those in the community that the branch takes such contraventions very seriously.

ORDER

Pursuant to section 20(2) of the Act, for the finding of a section 33(1)(a) and a section 43(2)(b) contravention, I order a suspension of Liquor Primary Licence 011049 for a period of fourteen (14) days to commence at the close of business on January 4, 2013, and to continue each succeeding business day until the suspension is completed. I am exercising my discretion, pursuant to section 67(3) of the Regulation, to order the suspension to take place after the busy holiday season in December.

To ensure this order is effective, I direct that the liquor licence be held by the branch or the Kamloops RCMP detachment from the close of business on January 4, 2013, until the licensee has demonstrated to the branch's satisfaction that the suspension has been served.

Signs satisfactory to the general manager notifying the public that the licence is suspended will be placed in a prominent location in the establishment by a branch inspector or a police officer, and must remain in place during the period of suspension.

Original signed by

Nerys Poole
Enforcement Hearing Adjudicator

Date: November 9, 2012

cc: Liquor Control and Licensing Branch, Victoria Office
Attn: Gary Barker, Regional Manager
Liquor Control and Licensing Branch, Vancouver Office
Attn: Peter Mior, Branch Advocate