



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 RSBC c. 267**

Licensee: L.S.T. Holdings Ltd.
dba Finnigans Wake
356 Van Horn Street
Cranbrook, B.C.

Case: EH03-046

Appearances:

For the Licensee Thomas Shypitka

For the Branch Marc Matoul

Enforcement Hearing Adjudicator Edward W. Owsianski

Date of Hearing July 8, 2003

Place of Hearing Via Teleconference

Date of Decision August 11, 2003

INTRODUCTION

L.S.T. Holdings Ltd. (dba Finnigans Wake) holds Liquor Primary Licence No. 207062. The hours of sale are Sunday - Thursday, 11:00 A.M. – Midnight, Friday and Saturday, 11:00 A.M. – 1:00 A.M. The patron capacity is 30 in area 1, 35 in area 2 and 20 in a patio area. This establishment is located in Cranbrook, BC.

ALLEGED CONTRAVENTION AND RECOMMENDED ENFORCEMENT ACTION

The Liquor Control and Licensing Branch has alleged that on February 9, 2003, the licensee contravened section 44(3) of the Regulations to the *Liquor Control and Licensing Act* by allowing a person to consume liquor in the licensed establishment beyond ½ hour after liquor service hours. Section 44(3) states:

Unless otherwise authorized by the general manager, a licensee must not allow a person to consume liquor in the licensed establishment beyond ½ hour after the time stated on the licence for the hours of liquor service.

For the alleged contravention, the Liquor Control and Licensing Branch is recommending a suspension of the liquor licence for ten (10) successive business days until completed. Pursuant to Schedule Four of the Regulations to the Act this represents the minimum penalty for a second contravention of this type.

ISSUES

The licensee admitted the contravention. The issue for the hearing is whether the recommended penalty is an appropriate penalty in the circumstances.

EXHIBITS

The following exhibits were presented:

Exhibit A Book of Documents

- Tab 1** Notice of Enforcement Action dated March 31, 2003
- Tab 2** Schedule 1
- Tab 3** Liquor License No. 207062
- Tab 4** Official Floor Plan
- Tab 5** Contravention Notice (C/N) A002048
- Tab 6** C/N A012802
- Tab 7** C/N A002794
- Tab 8** C/N A002798
- Tab 9** Case EH02-63
- Tab 10** Case EH02-122
- Tab 11** Branch Policy re: allowing to consume half-hour after closure
- Tab 12** Guide for Liquor Licensees re: hours of sale

EVIDENCE

The representative for the licensee agreed that the contravention as alleged by the branch did occur, namely that on February 9, 2003, the licensee allowed a person to consume liquor beyond one-half hour after liquor service hours. The representative did however take exception to the timelines of the incident as recorded by the liquor inspector.

Appendix A to the NOEA (Exhibit A at Tab 1) outlines the Branch's Summary of Evidence. The liquor inspector drove up to the establishment at approximately 1:35 A.M., walked up the stairs to enter the building and as she reached the top of the stairs heard the door being locked. Her knock on the door went unanswered. Looking through the window she saw a table of five persons conversing and drinking liquor. The inspector resumed knocking and was permitted entry approximately three minutes later.

Upon entering she noted two further groups of five persons near the front door consuming liquor. The inspector asked the manager why persons were still drinking and was told that they were waiting for a taxi to arrive. She asked why the liquor was not being cleared if the persons were just waiting for a taxi, upon which the manager became upset making derogatory comments and walked away. The inspector commenced to write up a Contravention Notice when at approximately 1:44 A.M. noticed a person at a table consuming liquor. Despite entreaties from the manager the person continued to consume the liquor until the glass was empty.

The representative for the licensee provided his summary of the incident. Last call for liquor sales was made at 12:52 A.M. At 1:15 A.M. a call was made for three taxis, told a wait of 15 – 20 minutes was anticipated. At 1:20 A.M. the patrons in the upper area (area 2) were moved downstairs and all tables in area 2 were cleaned. At 1:26 A.M. the last tab was settled and another call made to the taxi company, told a wait of 5 – 10 minutes was anticipated. The annual Winterfest activities were taking place in the City, consequently the taxi services were busy. At 1:30 A.M. all servers' transactions were completed. The manager noted two persons exit a van in the parking lot and proceed up the stairs to the establishment. Approximately one minute later he was collecting the final drink containers and responded to a knock at the door. The liquor inspector and another Branch employee entered. The inspector asked for the liquor license and advised that all patrons were to be out of the premises. He advised her that they were waiting for taxis to arrive. The inspector asked why the persons were still consuming liquor, to which he replied that he was about to collect their drinks when he responded to her knock at the door. The manager then took two bottles of beer from two patrons and picked up two glasses from a table. At 1:38 A.M. the taxis arrived and all persons left except persons in the washroom, one of who still had a glass of beer. All patrons were out of the establishment by 1:43 A.M. When asked why other employees were not engaged in the collection of liquor beverages from patrons he responded that they were busy cleaning up and cashing out.

Finding of Fact

Having considered the whole of the evidence I find that on February 9, 2003, the licensee allowed persons to consume liquor in the licensed establishment beyond one-half hour after the hours for liquor service for the establishment and in so doing contravened Section 44(3) of the Regulations to the Liquor Control and Licensing Act.

SUBMISSIONS

The branch advocate advised the Hearing that this was not the first contravention for this licensee for allowing persons to consume liquor in the licensed establishment beyond one-half hour after the hours for liquor service for the establishment. A previous contravention occurred in October, 2002, (see Exhibit A, tab 9). Further, the principal for this licensee had a previous liquor license suspended for four days in 1996 for not clearing patrons from the establishment within one-half hour after closing. This then is the third contravention for similar types of contraventions. He submitted that there appears to be a lack of attention to the rules on the part of this licensee. He advised that the branch views the contravention as serious and drew our attention to Branch policy (see Exhibit A, tab 11) and that the hours of liquor sale can affect surrounding residents and businesses. He advised that the recommended penalty of a ten day suspension was the minimum for a second contravention pursuant to schedule 4 of the Regulations and was necessary to ensure future compliance.

The representative for the licensee advised that he has been a licensee since 1986, owning and operating a cabaret prior to this establishment. There have not been any noise complaints for the three years that this establishment has been in operation. He submitted that he tries to do the best thing and admitted that he should have picked up the drinks earlier than he did. He submitted that all drinks had been collected by 1:34 A.M.

REASONS AND DECISION

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 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 to follow the minimums set out in Schedule 4 of the *Regulations* to the *Act*.

I have considered the evidence and submissions. I am satisfied that there was a clear breach of the provisions of section 44(3) of the *Regulations* and that breach continued for approximately 14 minutes beyond the regulatory requirements and was only brought to a close by the presence of the liquor inspector on site. This is not the first instance of this contravention at this establishment. A previous contravention was found in a Branch decision dated October 22, 2003, (see Exhibit A. tab 9). At that time the licensee was generously and leniently dealt with. I quote from the decision of the Adjudicator at page six of the decision: "He has satisfied me that these contraventions are not indicative of problem behaviour and that the branch can anticipate that he will voluntarily comply...." Further, at page seven: "The licensee has admitted a contravention. That will form part of the compliance history and, if there are further similar contraventions, the licensee can expect that penalties will be imposed as second contraventions."

I am satisfied that there is a continuing problem with the manner in which the licensee operates in closing the establishment at the end of the business day. It should be a priority of all employees to ensure that the establishment is operated in compliance with the law. The problem should have been addressed prior to this contravention occurring. In the result I find that there is insufficient reason to justify not imposing a penalty on this occasion. Quite to the contrary, in my view a penalty is necessary to ensure future voluntary compliance.

In the circumstances, I find that a licence suspension penalty is appropriate. A suspension penalty will affect the licensee, its staff and its patrons and should encourage future voluntary compliance on the part of all parties.

The recommended suspension penalty is the minimum within the range set out in Schedule 4 to the *Regulations* for a second incident of the alleged contravention. I find that the minimum license suspension is appropriate for this contravention.

ORDER

Pursuant to section 20(2) of the *Act*, I order the suspension of "A" Pub liquor licence No. 207062 for a total of ten (10) days starting as of the close of business Friday, September 19, 2003, and continuing on successive business days until the suspension is completed. "Business Day" means a day on which the licensee's establishment would normally be open for business (section 54(1) of the *Regulations to the Liquor Control and Licensing Act*.)

Since I do not know whether the establishment would normally be open 7 days per week as of September 19, 2003, I do not know what the "business days" will be. To ensure that this order is effective, I direct that the liquor licence, No. 207062, be held by the Branch or the Cranbrook Detachment of the R.C.M. Police from the close of business Friday, September 19, 2003, until the licensee has demonstrated to the Branch's satisfaction that the licensed establishment has been closed for ten (10) business days.

The suspension sign notifying the public shall be placed in a prominent location by a Liquor Inspector or Police Officer.

Originals signed by

Edward W. Owsianski
Enforcement Hearing Adjudicator

Date: August 11, 2003

cc: R.C.M.Police Cranbrook Detachment

Liquor Control and Licensing Branch, Victoria Office
Attention: Gary Barker, Regional Manager

Liquor Control and Licensing Branch, Vancouver Office
Attention: Marc Matoul, Branch Advocate
