



**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:	Stanley Stewart Junglas dba Yahk Hotel 9008 Railway Avenue Yahk, BC
Case:	EH03-121
Appearances:	
For the Licensee	Stanley S. Junglas, Licensee
For the Branch	Peter K. Jones, Advocate
Enforcement Hearing Adjudicator	Edward Owsianski
Date of Hearing	December 9, 2003
Place of Hearing	Cranbrook, BC
Date of Decision	February 27, 2004

INTRODUCTION

Stanley Stewart Junglas (dba Yahk Hotel) holds Liquor Primary Licence No. 002851. The hours of sale are Noon to 2:00 A.M. Monday to Saturday, 11:00 A.M. to Midnight Sunday. The patron capacity is 64. The establishment is located in Yahk BC.

ALLEGED CONTRAVENTIONS AND RECOMMENDED ENFORCEMENT ACTION

The Branch alleges

1. That on May 31, 2003, the licensee contravened section 43(2)(b) of the of the *Liquor Control and Licensing Act* by permitting an intoxicated person to remain in that part of a licensed establishment where liquor is sold, served or otherwise supplied. The recommended enforcement action is a four (4) day suspension.
2. That on May 31, 2003, the licensee contravened section 42(4) of the *Liquor Control and Licensing Regulations* by allowing liquor to be removed from the establishment. The recommended enforcement action is a \$1000 penalty.
3. That on May 31, 2003, the licensee contravened section 35 of the *Liquor Control and Licensing Act* by authorizing or permitting a minor to enter on or to be on premises where liquor is sold or kept for sale. The recommended enforcement action is a \$1000 penalty.

Sections 35 and 43(2)(b) of the *Act* provide as follows:

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.

Section 42(4) of the *Regulations* provide:

Consumption of liquor in licensed establishments

42

(4) All liquor sold or served in a licensed establishment must be consumed there, and the licensee must not allow liquor, other than the following, to be taken from the licensed establishment:

- (a) a bottle of wine that is unfinished by a patron and sealed by the licensee before being taken by that patron from the licensed establishment;
- (b) liquor that is sold for consumption off premises in accordance with the Act, this regulation and the terms and conditions of the licence.

Schedule Four of the *Regulations to the Act* provides the following penalties:

- For a first contravention of section 35 of the *Act*, a license suspension of 1 – 3 days and a monetary penalty of \$1000 to \$3000.
- For a first contravention of section 43(2)(b) of the *Act*, a license suspension of 4 – 7 days and a monetary penalty of \$5000 to \$7000.
- For a first contravention of section 42(4) of the *Regulations*, a license suspension of 1 – 3 days and a monetary penalty of \$1000 to \$3000.

ISSUES

1. Whether the licensee contravened Sections 35 or 43(2)(b) of the *Act* or Section 42(4) of the *Regulations*.
2. If so, are the recommended penalties appropriate in the circumstances?

EXHIBITS

The following exhibits were presented:

1. Book of Documents
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EVIDENCE - The Liquor Control and Licensing Branch

A **Constable from the R.C.M. Police** Creston Detachment testified, that the Creston Detachment is responsible for policing the small community of Yahk, B.C located approximately 30 to 40 minutes driving time from Creston. On the May 31st weekend of 2003, the community was celebrating Yahk Days during which the population doubles with an influx of people attending ball tournaments and community activities. The Constable was assigned to patrol the community from 5:00 P.M. until 3:00 A.M. He was accompanied by a young university student on a ride-along. The student was not a peace officer and was unable to assist in policing duties. During the course of his shift, the Constable made continuing patrols between the three prime areas of activity; the Yahk Hotel which was offering karaoke entertainment, the Community Centre where a dance was in progress, and the campground where many out of town visitors were staying. Policing of the event required a great deal of discretion on the part of the police officer on duty. People are in a party mood and there is considerable amount of liquor being consumed. Because there is only one police officer on duty and no immediate police back-up support, in the event of an emergency, the police officer must rely on the support of the community and act to deter problems rather than taking strict enforcement action. Public consumption of liquor is dealt with by having the person empty the container onto the ground; public intoxication by having a friend take the inebriate home.

The Constable testified that he made his first visit to the hotel at approximately 10:30 – 11:00 P.M. There were only two employees on duty, the owner and an elderly female server. The hotel was very crowded, with standing room only, and far in excess of the licensed capacity of 64 patrons. He observed a minor male, who he knew to be only 18 years of age. He also observed several intoxicated persons, one, a woman sitting on a stool, knocked her bottle of beer to the floor and she fell off the stool when she went to retrieve it. This patron, despite being intoxicated, stayed until closing time and was one of the last patrons to leave the hotel after closing.

The Constable made several patrols between the three areas of concern during the course of the night, dealing primarily with the public consumption of liquor, and keeping persons from walking on the highway. During several patrols by the hotel, he noted persons standing and consuming liquor in front of the hotel, and leaving the hotel with open liquor. Upon noting his presence, they would re-enter the hotel.

The Constable attended at the hotel shortly before the closing time of 2:00 A.M. Four young females were observed leaving the hotel and getting into a vehicle. Three were determined to be 18 years of age. The Constable entered the hotel to speak with the owner about the necessity of having someone at the door, at closing time, to control persons leaving with open liquor. Upon entering, he observed a young male he knew to be 17 years of age. He was sent on his way. The Constable approached the owner, who immediately began to swear at him. The owner yelled out to the crowd inside the hotel, that he was closing down, unless someone would get this (expletives deleted) outside, who was shutting him down. This created hostility towards the Constable amongst the crowd of patrons. The Constable left the hotel for his police vehicle where he observed patrons dispersing from the hotel. He left the community after 3:00 A.M., when he was satisfied that his presence was no longer necessary.

EVIDENCE - The Licensee

Witness A testified, that she is employed as a part-time server at the hotel and was working in that capacity on May 31, 2003. She testified that they were not very busy until the karaoke entertainment started at approximately 9:30 P.M. and even then the crowd numbered 55 – 60 persons at most. There was a large influx of people sometime between 10:00 to 10:30 P.M. when things got confused. Business quietened down by 12:30 A.M. when most patrons had left. During the course of the night, she checked the identification of several young persons to ensure they were of age, and recalls refusing service to three persons without identification. Identifications presented were primarily driver's licenses from either B.C. or Alberta. She was unaware then, that two pieces of identification were required. During the course of the night, several persons were

prevented from bringing liquor into the hotel, or taking liquor outside when they went out for a smoke. She testified, that she recalled seeing the woman described by the Constable as being intoxicated and falling off her stool. She did not pay much attention to her, as she was not sitting in the area in which she was serving. She did hear that the woman had quite a bit to drink and was probably drunk.

Witness B testified that she is employed by the hotel as a bookkeeper. She was present during the evening of May 31, 2003, as a patron, arriving at approximately 8:30 P.M. and leaving at approximately 2:30 A.M. She recalled seeing the server ask people for identification during the course of the night and stopping people from bring liquor into the hotel. She testified, that the hotel was not overcrowded, and that there were 50 – 55 people at the most at any one time. There was a large influx of people sometime between 12:00 Midnight – 12:30 A.M. She knows the woman described by the Constable as being intoxicated. She did not notice her during the course of the night, but recalls seeing her sitting inside by the window at approximately 2:15 A.M. She was intoxicated and wouldn't leave. The witness and several others finally coaxed her out of the hotel. She recalls seeing the Constable come into the hotel at approximately 1:15 A.M. and speak with the owner. She did not overhear the conversation, but afterwards the owner announced; "Alright, party's over, everybody out". Until that time everyone was having fun.

SUBMISSIONS

The Licensee

The licensee agreed that mistakes had been made, however, no injuries resulted. He submitted, that it is difficult to eject people from the hotel when there is no taxi service to transport them home. A door control person will be employed for next year's celebration. He requested that if penalties were necessary, he would prefer license suspensions as he is unable to afford the fines.

Finding of Fact

Having considered all of the evidence, I find on a balance of probabilities that on May 31, 2003; the licensee permitted an intoxicated person to remain in the licensed establishment, the licensee permitted liquor to be removed from the establishment and permitted a minor to be in the licensed establishment.

REASONS AND DECISION

I find that the licensee has contravened sections 35 and 43(2)(b) of the *Act* and section 42(4) of the *Regulations to the Act*.

In reaching this decision, I accept the evidence of the Police Officer that during the evening and early morning hours of May 31/June 1, 2003; he observed an intoxicated person remain in the licensed establishment for several hours, that on several occasions he observed people carrying liquor outside of the establishment, and that he observed two minors known to him to be underage in the licensed establishment. While I accept the evidence of witnesses A and B, that the server did check the identification of some young persons, I am not satisfied that a defence of due diligence has been made out. The server was unaware that the *Regulations* at section 45(2) and (3) require that two pieces of identification be requested from all persons appearing to be under the age of 25 years, before they are allowed to enter the licensed establishment. Although the server prevented some people from leaving the establishment with liquor, I am not satisfied that the defence of due diligence has been made out. The server's primary responsibility was serving liquor to patrons; this made it impossible to be at the doorway of the hotel at all times to prevent persons from carrying liquor in or out of the hotel.

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
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- 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.

The purpose of the branch in bringing about enforcement action is to encourage voluntary compliance. Although there have been no previous contraventions or enforcement action for this licensee, I am satisfied that in the circumstances of this case, a penalty for each contravention is necessary to ensure future voluntary compliance. I find that the minimum suspension penalties for each contravention are warranted and sufficient.

ORDER

Pursuant to section 20(2) of the *Act*, I order the suspension of liquor licence No. 002851 for six (6) days, starting as of the close of business Friday, April 9, 2004, 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 April 9, 2004, I do not know what the "business days" will be. To ensure that this order is effective, I direct that the liquor licence No. 002851 be held by the Branch or the Creston Detachment of the R.C.M. Police from the close of business Friday, April 9, 2004, until the licensee has demonstrated to the Branch's satisfaction, that the licensed establishment has been closed for six (6) business days. The suspension sign notifying the public shall be placed in a prominent location by a Liquor Inspector or Police Officer.

Original signed by

Edward W. Owsianski
Enforcement Hearing Adjudicator

Date: February 27, 2004

cc: R.C.M. Police Creston Detachment

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

Liquor Control and Licensing Branch, Victoria Office
Attention: Peter Jones, Branch Advocate
