



**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:	R & C Sequeira Holdings Ltd. dba Fort Motor Hotel 10024 - 100 Avenue Fort St. John, BC
Case:	EH05-065
For the Licensee:	Robert L. Sequeira
For the Branch:	Sonja Okada
Enforcement Hearing Adjudicator:	Edward W. Owsianski
Date of Hearing:	October 13, 2005
Place of Hearing:	Fort St. John, B.C.
Date of Decision:	October 31, 2005

INTRODUCTION

The licensee, R & C Sequeira Holdings Ltd. operates the Fort Motor Hotel in the City of Fort St. John, BC. Located in the hotel is a liquor primary licensed area (Licence No. 111098) known as Cowboys. The licensed hours for the sale of liquor are Noon – 2 a.m. Monday to Saturday and Noon to Midnight on Sunday. The licence permits 104 patrons in the main area, 50 in designated smoking area No. 1 and 30 in designated smoking area No. 2. The licence is subject to the terms and conditions contained in the branch publication “Guide for Liquor Licensees in British Columbia”.

ALLEGED CONTRAVENTION AND RECOMMENDED ENFORCEMENT ACTION

The branch’s allegations and recommended enforcement action are set out in the Notice of Enforcement Action (NOEA) dated June 16, 2005. The branch alleges that on Thursday, December 2, 2004, the licensee contravened Section 43(2)(b) 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 of the liquor licence (item 11 of Schedule 4, *Liquor Control and Licensing Regulation*).

Item 11 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 to \$7000.

The licensee disputes the contravention.

Section 43(2)(b) of the Act states as follows:

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.
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ISSUES

1. Whether the licensee contravened Section 43(2)(b) of the *Act* as alleged by the Branch.
2. If so, what is the appropriate penalty in the circumstances?

EXHIBITS

The following exhibits were presented:

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|------------------|----------------------------------------|
| Exhibit A | Book of Documents |
| Exhibit B | Incident report and notes of bartender |

EVIDENCE - THE LIQUOR CONTROL AND LICENSING BRANCH

A **corporal** from the R.C.M. Police Fort St. John Detachment testified, that he has been a police officer for approximately twelve years and has had considerable experience dealing with intoxicated persons and conducting walk thru inspections of licensed establishments. Prior to becoming a police officer he worked as a bartender for approximately one and a half years. He conducts routine walk thrus of licensed establishments in Fort St. John as proactive policing to deter impaired driving and to ensure that licensed establishments operate within the law.

On December 2, 2004, he and another police officer were making routine walk-thrus of licensed establishments and entered Cowboys at approximately 12:25/30 a.m. There were 10 – 12 patrons present, two of whom were seated in designated smoking area No. 1 and two at the bar. There were no employees visible at the entrance nor behind the bar. After approximately 4 – 5 minutes he noticed the bartender but was unaware where she had come from.

The police officers were standing near the bar looking into the smoking area. A female patron (female patron #1) seated at the bar fell off her chair onto the floor landing at the feet of one of the officers. She had difficulty getting up and was assisted to her feet by a male patron (male patron #1) who had been seated beside her at the bar. The corporal observed that the female had a hard time standing, was swaying, nearly falling down and had slurred speech. The male was likewise unsteady on his feet, swaying and had slurred speech. Both had partially consumed bottles of beer on the bar. They were brought to the attention of the bartender, escorted out of the licensed area and dispatched into a taxi.

The corporal testified that two patrons, a male and female were observed in designated smoking area No. 1 sharing a bottle of beer. The corporal had dealt with the female (female patron #2) earlier that night at another licensed establishment. She had been intoxicated and was escorted from that establishment and allowed to proceed in the company of a sober female companion. On speaking with her at Cowboys he noted that she had very slurred speech, a strong odour of liquor on her breath, staggered, nearly falling down and had to lean on the wall for support. She was again allowed to proceed in the custody of a sober companion, otherwise she would have been arrested due to her condition. The male (male patron #2) likewise had a strong odour of liquor on his breath, slurred speech, staggered, lost his balance catching the wall to avoid falling. He accompanied the sober female and female patron #2 from the establishment.

The corporal completed a Licensed Premises Check (LPC) form and outlined his observations to the bartender and the owner who had been summoned from his accommodations at the hotel. The corporal recorded his observations in his notebook and completed a report prior to going off duty.

A liquor inspector (the inspector) testified that he has been employed as an inspector for the past eight years and is responsible for the geographical area in which the establishment is located.

He was not present on December 2, 2004, when the alleged contravention occurred. He received a copy of the LPC (Exhibit 1, tab 3) issued by the corporal and a copy of his report (Exhibit 1, tab 4). He contacted the owner of the hotel and obtained a written statement and incident report from the employee working that night. The inspector completed a Contravention Notice (CN) (Exhibit 1, tab 3) which he served to the owner. He completed an Enforcement Action Recommended Report (EAR) (Exhibit 1, tab 2) in which he recommended that enforcement action be taken. He felt that a penalty was necessary as intoxication is a serious public safety issue. He recommended the minimum four day liquor licence suspension. He conducted a Compliance Meeting with the owner (Exhibit 1, tab 17). The owner advised that with few patrons he could not afford to have more than one employee on duty. The employee had been instructed to call him if there were any problems. The inspector subsequently issued a Notice of Enforcement Report (Exhibit 1, tab 1).

The liquor inspector testified that he is responsible for maintaining the branch records for this licensed establishment. He is aware of other problems occurring at the establishment and referred to copies of documents from branch files:

- February 19, 2001 - CN and LPC issued for permitting minor on premises (Exhibit 1, tab 9)
 - March 1, 2001 - CN and LPC issued for permitting liquor to be removed from the establishment (Exhibit 1, tab 10)
 - January 31, 2002 - CN and LPC issued for permitting minor on premises (Exhibit 1, tab 12)
 - March 16, 2003 - CN and LPC issued as a result of the bouncer using bear spray to subdue a patron (Exhibit 1, tab 13). Compliance Meeting held April 29, 2003 (Exhibit 1, tab 16).
 - March 29, 2003 - CN issued for failing to request identification from persons under 25 years of age (Exhibit 1, tab 14). Compliance Meeting held April 9, 2003 (Exhibit 1, tab 15).
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The inspector testified that the establishment served a one day liquor licence suspension, January 31, 2002, for permitting minors on the premises (Exhibit 1, tab 1 at page 8), enforcement action was not taken for other alleged contraventions.

EVIDENCE - THE LICENSEE

The **bartender** testified, that she had been working at the establishment for approximately two years at the time of the alleged contravention and was working at the time of the alleged contravention. She had received on the job training from another bartender and had completed "Serving It Right: Responsible Beverage Service" certification. The policy set by the licensee is to observe the number of drinks consumed by a patron. If more than five drinks are consumed in a 3 – 4 hour period liquor service is stopped. To judge their sobriety patrons are observed for their ability to stand and to focus. Altercations are normally dealt with by a bouncer, however, on the date of the alleged contravention the bouncer had quit and the temporary bouncer did not show up, which left her by herself to watch both entrances and to serve patrons. It was a slow night with 10 – 15 patrons. She had been instructed to call the owner if problems arose. She attempted to call him twice, at approximately 10:45 p.m. and again near Midnight but was unable to contact him. She was dealing with a domestic dispute between two patrons out of view of the main bar area when the police officers arrived.

She recalled the female patron (female patron #1) who had been seated at the bar. The patron arrived when the establishment opened at 9:30 p.m., took a seat at the bar and was served one beer. She did not appear to be intoxicated. ^[1]

She testified that female patron #2 arrived at the establishment intoxicated with a sober female companion shortly before midnight. The patron was refused service, a taxi was called for her and she was told to remain in the lobby area. She requested and was given a glass of water. She repeatedly left the lobby area and was told to wait there for the taxi. The female companion was served a beer and took it into the main area.

[1] Personal information severed pursuant to the Freedom of Information and Protection of Privacy Act.

The witness did not see male patron #1 enter the establishment. She believes that he must have entered just before the police arrived when she was busy attending to the domestic dispute. She did not serve him any liquor. She did not serve male patron #2. He was severely intoxicated and entered at the same time as the police. He was escorted out by the police and re-entered later and was made to leave.

Licensee Submissions

The licensee submitted that there was no contravention. Female patron #1 was served only one beer in three hours. This could not cause intoxication. Perhaps her condition was as a result of taking medication or drugs. Female patron #2 was not served, but because of the cold weather was allowed into the establishment to wait for a taxi. Male patrons #1 and #2 were not served. He submitted that the recommended penalty of a four day suspension was not fair.

REASONS AND DECISION

Having considered all of the evidence, I find that on December 2, 2004, the licensee or its employee permitted an intoxicated person to remain in the licensed establishment and in so doing contravened Section 43(2)(b) of the *Act*. In reaching this decision I accept the evidence provided by the R.C.M. Police corporal that during a routine check he identified and dealt with four patrons in the licensed establishment who were obviously in a state of intoxication. I am satisfied that because of the number and nature of problems encountered at the time of the police officers' walk-thru, the one employee on duty had insufficient control over the operation of the licensed establishment to identify the condition of the patrons, to refuse entry or to remove them from the licensed establishment. Thus they were permitted to remain in the licensed area of the establishment.

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. I am satisfied that that has not occurred in this instance. The condition of the patrons was readily observable, there was reasonable opportunity for staff to take appropriate action, yet no action was taken in a timely manner. The licensee had chosen to leave the operation of the establishment to one employee without effective contingency measures to deal with any problems encountered. The employee attempted to reach the owner of the establishment on two separate occasions on the night in question without success. I am satisfied that the defence of due diligence has not been made out by the licensee.

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 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*.

In the circumstances I am satisfied that a penalty is necessary to achieve voluntary compliance and that the minimum suspension penalty is appropriate.

ORDER

Pursuant to Section 20(2) of the *Act* concerning Liquor Primary Licence No. 111098, I suspend the liquor licence for a total of four (4) days starting as of the close of business

Wednesday, December 7, 2005, 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 67 of the *Regulation to the Liquor Control and Licensing Act*.)

Since I do not know whether the establishment would normally be open seven (7) days per week as of December 7, 2005, I do not know what the "business days" will be. To ensure that this order is effective, I direct that the liquor licence be held by the branch or the Fort St. John Detachment of the R.C.M.Police from the close of business Wednesday, December 7, 2005, until the licensee has demonstrated to the branch's satisfaction that the licensed establishment has been closed for four (4) business days. A suspension sign notifying the public shall be placed in a prominent location by a liquor inspector or police officer.

A liquor inspector or a member of the Fort St. John Detachment of the R.C.M.Police will be requested to attend the premises, take possession of the liquor licence and hold it in safekeeping during the term of the suspension.

Original signed by

Edward W. Owsianski
Enforcement Hearing Adjudicator

Date: October 31, 2005

cc: R.C.M.Police Fort St. John Detachment

Liquor Control and Licensing Branch, Surrey Regional Office
Attention: Mike Clark, Regional Manager

Liquor Control and Licensing Branch, Vancouver Regional Office
Attention: Sonja Okada, Branch Advocate
