



**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:	Jordan Enterprises Ltd. dba Quality Inn Pub 9830 - 100 Avenue Fort St. John, BC
Case:	EH05-016
For the Licensee	Robert K. Zeunert Dorothy Budnick
For the Branch	Sonja Okada
Enforcement Hearing Adjudicator	Edward W. Owsianski
Date of Hearing	July 21 & 22, 2005 Submissions via teleconference on August 11, 2005
Place of Hearing	Fort St. John, BC
Date of Decision	September 7, 2005

INTRODUCTION

The licensee, Jordan Enterprises Ltd. dba the Quality Inn Hotel in Fort St. John, BC. holds Liquor Primary Licence No. 119118 for a pub located in the hotel. The operation of the pub has been leased to Double D Ventures Ltd. dba Looney Tunes. Double D Ventures is approved by the Liquor Control and Licensing Branch (the branch) as a Third Party Operator. The licensed hours for the sale of liquor are Noon to 2:00 a.m. seven day a week. The licence permits 42 persons in the designated smoking area and 152 persons in the main area (designated as area 1). 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'.

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 May 12, 2005.

The branch alleges that on November 19, 2004, the licensee contravened Section 43(1) of the *Liquor Control and Licensing Act* (the *Act*) by selling or giving liquor to an intoxicated person or a person apparently under the influence of liquor.

The recommended enforcement action is a four (4) day suspension of the liquor licence (Item 9 of Schedule 4, *Liquor Control and Licensing Regulation* (the *Regulation*)).

Item 9 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 that the contravention took place.

Section 43(1) of the Act states as follows:

43 (1) A person must not sell or give liquor to an intoxicated person or a person apparently under the influence of liquor.

ISSUES

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

EXHIBITS

The following exhibits were presented:

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| Exhibit 1 | Book of Documents |
| Exhibit 2 | “Serving it Right: Licensee Program Manual” |
| Exhibit 3 | Undated letter from Eagle Vision Video Productions Ltd. to Callison Zeunert Law Corporation together with a VHS tape and a DVD disc. |
| Exhibit 4 | Letter of October 20, 2004 from R.C.M.Police Fort St. John Detachment |
| Exhibit 5 | Page of hand-written notes |
| Exhibit 6 | Staff list for Looney Tunes on November 18, 2004 |

EVIDENCE - THE LIQUOR CONTROL AND LICENSING BRANCH

A constable from the R.C.M.Police Fort St. John Detachment testified that he has been a police officer for four years and has training and experience in identifying and dealing with intoxicated persons. He conducts routine walk thrus of licensed establishments and makes patrols of their parking lots as part of a preventative plan to reduce problems with public intoxication and impaired driving.

On November 19, 2004, at approximately 12:40 a.m. he was making a routine walk thru of a licensed establishment located in close proximity to the Quality Inn Hotel. He noted that one of the patrons was noticeably intoxicated. He approached the patron at the same time as one of the staff. The patron did not have any liquor in his possession at the time but was exhibiting signs of intoxication: liquor on his breath, a blank stare, hunched over, staggering. The constable told the patron that he was too intoxicated to be permitted in any licensed establishment and that he must leave and was barred from being in any licensed establishment for a 24 hour period.

The constable observed the patron leave and begin walking down the street. The person was previously known to the constable as having been arrested for impaired driving, consequently the constable continued to observe him to ensure that he did not get into a motor vehicle. The person staggered and took exaggerated steps as he walked down the street into the next block and entered into the pub at the Quality Inn dba Looney Tunes. The constable took about five minutes to park his police vehicle and to check his Provincial Enforcement Authority booklet then entered the pub. He spoke with the doorman and described the person to him. The doorman said that he did not know the individual. The constable then saw the person near the rear of the pub, sipping from a drink in hand. The constable approached the individual, took the drink from him and placed him under arrest.

The constable testified that the normal procedure in dealing with intoxicated persons is not to arrest them unless they are considered a danger to themselves or others. In this case he did not arrest the individual at the previous establishment as he felt that he could safely make his way home. Later, at Looney Tunes, he arrested him to prevent the individual from proceeding to other establishments as he had just done. The individual was escorted to the police vehicle and subsequently incarcerated. In cross-examination the constable said that while he observed the person in the Looney Tunes pub he showed indicia of impairment. He did not expand on that comment nor was he asked to by the branch advocate or the licensee's counsel.

The constable completed a Licensed Premises Check form (LPC) (Exhibit 1, tab 3) which was served on the pub his next working shift. A copy of the LPC and a report (Exhibit 1, tab 4) completed by him were provided to the local liquor inspector.

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 November 19, 2004, when the alleged contravention occurred. He received a copy of the LPC (Exhibit 1, tab 3) issued by the police officer (the constable) and a copy of his report (Exhibit 1, tab 4). He contacted one of the principals of the third party corporation which operates the licensed establishment. At his request she obtained written statements from the employees working that night. He also reviewed the video surveillance tape which had recorded the period of time during which the intoxicated individual and the police officer had entered the pub. He found the tape hard to follow as it was time condensed thus making it difficult to determine whether the person was staggering. Consequently he did not use the tape in making his decision to recommend proceeding with enforcement. He completed a Contravention Notice (CN) (Exhibit 1, tab 3) which he served to the principal on February 1, 2005. He completed an Enforcement Action Recommended Report (EAR) (Exhibit 1, tab 2) in which he recommended that enforcement action be taken. He was concerned that the individual was required to leave the first establishment because of noticeable signs of intoxication, was observed staggering as he walked down the street and was permitted into the Looney Tunes pub and allowed to purchase liquor. He felt that a penalty was necessary as intoxication is a serious public safety issue and can lead to other offences. As this was the first contravention for this establishment he recommended the minimum four day liquor licence suspension. A Notice of Enforcement Report (Exhibit 1, tab 1) was subsequently issued.

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:

- March 18, 1998 Warning letter regarding intoxicated patrons (Exhibit 1, tab 9).
- March 17, 1999 Warning letter regarding illicit liquor (Exhibit 1, tab 10)
- August 15, 2000 Warning letter regarding overservice of liquor. (Exhibit 1, tab 11)
- June 16, 2001 CN and LPC issued for supplying liquor to minors (Exhibit 1, tab 12)
- April 25, 2003 Police Report and LPC issued for permitting minors in the establishment, selling liquor to minors and permitting intoxication (Exhibit 1, tab 13)

The inspector testified that the branch did not take any enforcement action concerning the above-noted matters.

The inspector testified that all licensees in the Fort St. John area received a copy of a letter dated October 20, 2004, (Exhibit 4) from the R.C.M. Police detachment expressing concern about liquor related offences in the area. This was discussed at a meeting with the R.C.M. Police, local licensees and himself on November 16, 2004, (notes at Exhibit 1, tab 14). It was agreed that the police would be conducting more walk thrus of licensed establishments and taking more enforcement action regarding liquor related matters.

He testified that he has a good working relationship with the management and staff of the pub.

EVIDENCE - THE LICENSEE

Witness A testified that on the date of the alleged contravention, August 19, 2004, he had been employed at the establishment for approximately ^[1]. He was working that night as the 'eye in the sky' which requires that he stay in the DJ booth to keep watch over the licensed area. The DJ booth is elevated and allows him to observe between 80 – 90% of the room. His duties in that position do not include acting as the DJ, he is there strictly to keep watch for problems. He recalls that it was a fairly busy night with

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

approximately 120 patrons. He remembers seeing the person alleged to be intoxicated enter the establishment at approximately midnight. He is a regular customer and is known to him. The person entered, talked to the doorman for a brief moment, proceeded to the bar where he purchased a drink and then to a table in the rear, near the dance floor. The distance from his position in the DJ booth to the entrance is approximately 60 feet thus he was not able to observe any facial features but he did observe him as he walked to bar, purchase his drink and proceed to the back area of the establishment. He did not appear to have difficulty standing or walking and did not bump into any people or furniture. He estimates that the person was in the room for approximately 5 – 6 minutes in total. He did not observe him the whole of that time.

He testified that he also works at the establishment as a doorman on the front door. His training includes taking the “Serving it Right” certification and on the job training which emphasized how to deal with patrons. The establishment has a policy book for doormen which is kept behind the bar and provides instructions on dealing with patrons and contains quite a bit of information on dealing with intoxicated persons. As a doorman he regularly refuses entry to persons. It can be up to 4 to 5 times a night on busy weekend nights. He also is required to escort intoxicated persons from the establishment when necessary. He has on one previous occasion refused entry to the person subject of this hearing. The establishment maintains an incident log which is completed by one of the doormen at the end of each night. Entries include incidents where persons are refused entry or are escorted out. He does not recall whether an entry was made in the log on this night.

Witness B testified that he has been employed at the establishment for ^[2] years as the DJ and back-up bouncer if necessary. He was working as DJ in the elevated booth November 19, 2004, and recalls seeing the person, subject of this hearing enter the establishment. He is a regular customer. He stopped to speak with the doorman for approximately 30 seconds then proceeded to the bar where he purchased a drink and went to his regular table near the back of the room. He appeared normal and sober. Using the traffic-light system for monitoring beverage alcohol service as found at

Appendix 4 of the “Serving it Right: Responsible Beverage Program Licensee Manual” (Exhibit 2 at page 53) he assessed him as a “green light”, i.e. as acceptable to serve.

Witness C testified that at the time of the alleged contravention she had been employed at the establishment for approximately ^[3] years as a server and bartender. She was working as a bartender that night and recalls seeing the subject person for a brief time at the bar. He is a regular customer and is known to her. It was a fairly busy night and there were three bartenders and three servers working. The subject person was served by one of the other bartenders. She was on her way to the washroom and noticed him waiting at the bar and upon returning noticed him leaving the bar area, drink in hand. She has completed the “Serving It Right” certification and is familiar with the signs of overservice and intoxication. She observes how a person walks, talks, moves and when they get their money ready to pay for their drinks. Employees are reminded nightly by management to watch for signs of overservice and intoxication. If a patron is seen to be stumbling or staggering a doorman is requested to have them removed. As a server she has had occasion to refuse service and to cut-off further service. The establishment maintains an incident log. It is completed by the head doorman each night but all staff have the opportunity for input as it is being written up at the end of the night. She recalls that at the end of the night meeting that night they all expressed surprise that the subject person was arrested so quickly. She recalls that the managers attended a meeting with the police, liquor inspector and other licensees on November 16, 2004. At the staff meeting of that night the managers told the staff that there would be increased enforcement for overservice and intoxication.

Witness D testified that she has been employed at the establishment for ^[4] years. The first ^[4] years as a bartender, then promoted to bar manager. She was not working November 19, 2004, the date of the alleged contravention, but was present as a patron and later made a written statement of her recollection (Exhibit 1, tab 5). She was leaving as two police officers entered. She was sitting in her car warming up the engine before driving away when she observed the two officers escort the subject person out of

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

[3] [4] Personal information severed pursuant to the Freedom of Information and Protection of Privacy Act.

the premises and into the police vehicle parked approximately 20 – 30 feet from her vehicle. She observed the subject person as he walked with the officers from the door to the police vehicle, he was not staggering or exhibiting any visible signs of impairment. She concluded that he must have been arrested for something unrelated to the operation of the establishment so she left for home. Had she known otherwise she would have gone back in to see what had occurred. She found out the circumstances the following day and discussed it with staff who were on duty. She was told that the subject person was not in the establishment for very long and did not show any signs of intoxication.

As the bar manager she is responsible for staff training, scheduling and supervision. They have a meeting at the end of each night to write up the incident log book and discuss any problems that have occurred and whether any changes are needed for the future.

She attended a meeting with police, liquor inspector and other licensees on November 16, 2004. It was a preventative meeting regarding liabilities related to overservice. She discussed it with staff that night.

Witness E testified that he has been employed at the establishment as a doorman for approximately ^[5] years. He had previously worked for ^[5] years as a bouncer in Alberta and had taken a course regarding a bouncer's responsibility in dealing with people who have been consuming liquor. He has "Serving it Right" certification in BC and is familiar with the traffic-light system for monitoring beverage alcohol service as found at appendix 4 of the "Serving it Right: Responsible Beverage Program Licensee Manual" (Exhibit 2 at page 53). Part of his duties as a doorman is to assess the condition of persons wishing to enter the establishment. He watches for signs of intoxication such as, staggering when they walk, difficulty in finding their identification, weaving when standing, aggressive behaviour, sweating, bloodshot eyes, tired appearance.

^[5] Personal information severed pursuant to the Freedom of Information and Protection of Privacy Act.

He was working November 19, 2004, at the time of the alleged contravention. The subject person is known to him as a regular patron who comes in two to three times a week. He recalls him arriving that night and greeting him at the door. He felt that the subject may have had a couple of drinks, but there was no need for caution as he was not displaying any signs of intoxication. His speech and walk were normal. He watched him walk to the bar, get his drink and proceed to the back of the room where he went out of his line of vision. He has had occasion to request him to leave on two previous occasions. When he has had too much to drink he becomes loud and overly friendly.

Two police officers came in approximately four to five minutes later and asked whether anyone had come in wearing a jean jacket in the last 10 minutes. He was unable to help them as they didn't mention the subject by name and lots of the patrons wear jean jackets. A few minutes later the police officers return to the front area with the subject, they didn't say why they were taking him out. He didn't notice anything unusual in the subject's appearance or behaviour at that time. He was walking normally, not staggering and neither belligerent nor aggressive. Staff discussed the incident at the end of the night, the police officers had told the general manager that they had arrested the subject for intoxication. At the request of the general manager he made a written statement (Exhibit 1, 5) on December 2, 2004, of his recollection of the incident.

The general manager of the establishment testified that she and her husband are the principals of the company which has leased and operated the establishment since April 1, 1989. She has worked in the establishment in various capacities since then and is familiar with the requirements of the *Act* and *Regulations*. She has "Serving it Right" certification and is familiar with the traffic-light system for monitoring beverage alcohol service as found at Appendix 4 of the "Serving it Right: Responsible Beverage Program Licensee Manual" (Exhibit 2 at page 53). She attended a meeting with the R.C.M. Police, liquor inspector and several other local licensees on November 16, 2004. The police advised that they had concerns about liquor related offences in the community and would be increasing their enforcement activities. She relayed this information to her staff at the staff meeting held at the end of the night. Staff were told to take a zero approach to intoxication. Persons coming to the door who had

been previously drinking and who already reached the cautionary level were not to be allowed in.

She was working on November 19, 2004, at the time of the alleged contravention. She was in the office doing the cash when the police officers arrived and arrested the subject person. One of the officers came back into the establishment and told her that they had arrested him for public intoxication.

The establishment maintains a video surveillance system which has four cameras videoing: the parking lot, inside the entrance, in front of the bar area and behind the bar area. The tape was saved at the request of the liquor inspector. It is not recorded at actual speed so when viewed it gives a speeded up version of the events. She had the tape converted into a DVD and slowed to the approximate actual speed of persons walking, etc. She viewed the tape and made notes (Exhibit 5) of the series of events occurring from the time of the subject's arrival, to when he was escorted out by the police officers.

The bartender who served the subject was requested to provide a statement (Exhibit 1, tab 5) as she was going to be out of the country during the time of the hearing. The statement indicates that the subject came to the bar, waited his turn, ordered and was served a drink and left the bar area. "We had a small conversation. He was fine, wasn't slurring his words, did not fumble for his money. Was not staggering or tripping when he approached or walked away." The bartender had been employed at the establishment for approximately 2 1/2 to 3 years at the time of the alleged contravention. She was considered to be a good employee who wanted to do things right and who would cut-off patrons from further liquor service when necessary.

Licensee Submissions

Counsel in his submission referred to the following cases:

- Roxy Cabaret, Decision of the General Manager, May 2005 (EH04-031)
 - Zodiak Pub, Decision of the General Manager, September 2003 (EH03-040/041)
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Counsel submitted that for a contravention to be found the condition of intoxication or the under the influence of alcohol must be “apparent”. The police officer in his testimony did not provide evidence of the appearance of the subject person while he was in this licensed establishment. The police officer made his assessment earlier at the other establishment when he told the subject to leave and not to enter another licensed establishment for 24 hours. If he was going to arrest the subject for intoxication he should have done it at that time. The evidence of the employees of the establishment was that while the subject may have consumed some liquor previously he did not show signs of intoxication. This was consistent with the evidence provided on the video.

Counsel submitted that this case was unlike the circumstances in the *Roxy* or *Zodiak* cases. In those cases the intoxication was readily apparent. In *Roxy* there were ongoing problems and the licensee had not heeded the warnings of the police. Here there were no previous problems identified to the licensee and there was no evidence that the establishment was flouting the law.

REASONS AND DECISION

This case is somewhat different from the usual case where the alleged contravention relates to the intoxicated condition of a person found inside a licensed establishment. In the usual case a police officer or liquor inspector is drawn to notice the condition of the person by obvious signs of intoxication and the evidence is such that the licensee or its employees knew or should have known of the person’s condition. This case is unusual as well in that through the evidence of the video tape and DVD I have had some opportunity to view the subject person as he was at the time and make my own assessment. The video has imprinted within the image the date and time in hours, minutes and seconds. I have taken extensive opportunity to view and analyze the video:

- At 00:56:31 the subject is seen approaching the interior door from the outside.
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- At 00:56:33 the doorman (witness E) opens the interior door for the subject to enter.
- At 00:56:37 the subject enters and passes by the doorman.
- At 00:56:40 the subject departs from sight into the room; a police vehicle pulls into the parking lot.
- At 00:57:27 the subject is seen at the bar, orders a drink, is served, pays and takes a sip of the drink.
- At 00:58:12 the subject departs from the bar and out of sight.
- At 01:00:33 two police officers enter and speak to the doorman.
- At 01:00:52 the police officers leave the doorman and proceed to their right.
- At 01:01:10 the police officers depart from sight into the room.
- At 01:01:42 the subject and the two police officers come into view and proceed out the door, onto the parking lot and to the police vehicle.

Having viewed and analyzed the video and DVD and considered all of the evidence I make the following findings:

1. The subject's walk, stance and movement in this establishment did not portray any obvious or apparent signs of intoxication.
2. The arresting police officer took only 32 seconds to proceed to the rear of the room where the subject was located, make the arrest, and return to the front of the room and back into the camera range. While I do not know the distance travelled, I am satisfied that the officer arrested the person for the intoxicated condition that he had earlier observed and not as a result of obvious signs of intoxication inside this establishment. [In making this finding I am not criticizing the officers actions, the subject's arrest or making a determination that the subject was not intoxicated or under the influence of liquor.]

In conclusion, I am satisfied that there is insufficient evidence to find on a balance of probabilities that the licensee contravened Section 43(1) of the *Liquor Control and Licensing Act* (the *Act*) by selling or giving liquor to an intoxicated person or a person apparently under the influence of liquor.

Original signed by

Edward W. Owsianski
Enforcement Hearing Adjudicator

Date: September 7, 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
